

IN THE SUPERIOR COURT FOR THE STATE OF ALASKA
FOURTH JUDICIAL DISTRICT AT FAIRBANKS

COMMITTEE FOR SAFE COMMUNITIES

Plaintiff,

vs.

STATE OF ALASKA, DEPARTMENT OF
TRANSPORTANT AND PUBLIC
FACILITIES,

Defendants.

Case No. 4FA-23-_____ CI

COMPLAINT

COMES NOW the Plaintiff, Committee for Safe Communities, (hereafter "CSC")
through undersigned counsel, Jason A. Weiner of Jason Weiner & Associates, P.C., and hereby
alleges:

INTRODUCTION

This is an action seeking injunctive relief and orders to compel the Defendant to follow
and enforce applicable state law and regulations, to abate an attractive public nuisance, and to
stop violating the Plaintiff's and the public's right of equal protection.

BACKGROUND

1. Plaintiff Committee for Safe Communities (CSC) is an Alaska non-profit
corporation, in all ways qualified to bring this action, and qualified for tax exempt status under
section 501(c)(3) of the Internal Revenue Code. CSC was formed by a group of Alaskans
concerned with public safety on Alaska roads and in Alaska communities. All members live in
the Alaska Richardson Steese Highways Corridor between Tetlin and Fort Knox

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Committee for Safe Communities v.
Alaska Department of Transportation
and Public Facilities and Alaska
Department of Environmental
Conservation

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(hereafter referred to as the “Corridor”). One Director lives within 60 miles of the Manh Choh mine in Tetlin and would be cut off from all emergency services should bridges out of Tok and into Delta Junction be damaged or destroyed. CSC is headquartered in the Fourth Judicial District, State of Alaska and the immediate concerns that have led to this lawsuit primarily involve communities in the Fourth Judicial District, State of Alaska. CSC is a public interest litigant.

2. Defendant State of Alaska, Department of Transportation and Public Facilities (ADOTPF) is a department within the State of Alaska tasked with maintaining and ensuring the safety of Alaska roadways and public facilities, including the safety of the public using roads and highways within the Corridor.

3. Beginning in approximately 2021, Kinross Gold Corporation and Contango, ORE, Inc., operating as Peak Gold, LLC (Peak Gold) announced plans to extract gold ore at Manh Choh mine near Tetlin, Alaska. Peak Gold plans to haul ore from Manh Choh mine using 248 miles of public roads, to the Fort Knox Gold mine east of Fox in the Fairbanks Mining District (hereinafter referred to as the “Ore Haul Operation”). The public roads Peak Gold plans to use for the Ore Haul Operation have not been designated by AKDOT for industrial use. Peak Gold has not obtained any transportation special permits. No Environmental Impact Statement has been prepared for any part of the mining plan or Ore Haul Operation. The distance of travel will be approximately a total 496-mile round trip on public roads. The roads it will use are the Alaska Highway from Tetlin to Delta Junction, the Richardson Highway from Delta Junction to the Mitchell Expressway, the Mitchell Expressway to Peger Road, Peger Road to the Johansen Expressway, the Johansen Expressway to the Steese Expressway, the Steese Expressway to the junction with the Elliott Highway, and the Steese Highway from the Elliott Highway junction to

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the Fort Knox Road junction. The trucks Peak Gold announced it will use are known as “B-Trains,” as they will consist of a tractor pulling two trailers. They will be 95 feet long and will weigh 30 tons unloaded and over 80 tons loaded. Peak Gold intends to run trucks directly through the heart of Fairbanks using Peger Road and Johansen Expressway to get from Tetlin to Fort Knox so as to avoid the bridge that traverses on the Steese Expressway to traverse the Chena River which has been found to be unable to support the weight of the trucks. Trucks will run every 12 minutes, 24 hours a day, 365 days a year for approximately five years or longer. Peak Gold’s current plan would start “trial runs” of this Ore Haul Operation in the fourth quarter of 2023, ramping up to 120 transits every day through Fairbanks by summer, 2024.

AKDOT has announced publicly and on its website, that the Ore Haul Operation is appropriate and “legal.” AKDOT has not required Peak Gold to follow the requirements of 17 AAC 35 or 17 AAC 25 in designing this Ore Haul Operation. Nor has AKDOT required any special permit of Peak Gold to use public highways and bridges for the Ore Haul Operation. In approving a route for the Peak Gold industrial Ore Haul Operation, from Tetlin to Fort Knox, AKDOT has designated the Ore Haul Operation route to be an industrial road without following the requirements set out in its regulations at 17 AAC 35, 17 AAC 25.011 and 17 AAC 25.014, and in violation of the Administrative Procedures Act (APA), AS 44.62,

4. During the 2022-2023 school year, there were 86 school bus stops (requiring a full stop on the highway in both directions) on the Corridor route between Tetlin and Fox: 12 on the Alaska Highway near Tok, 27 on the Alaska and Richardson Highways near Delta Junction, 34 stops on the Richardson Highway near Salcha, and 13 on the Steese Highway near Fox. Kinney Engineering, a company hired by AKDOT to analyze the Tetlin to Fort Knox route planned for the Ore Haul Operation, reported on these stops on July 26, 2023. It found that when

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there is ice, the Stopping Sight Distance for the Peak Gold trucks travelling the speed limit is inadequate for them to stop in time to avoid a collision with a stopped school bus at 35 of the 74 school bus stops directly on the Corridor route; 11 of the 27 school bus stops on the Alaska and Richardson Highways in the Delta/Greeley School District; 16 of the 34 school bus stops on the Richardson Highway in the Fairbanks School District; and 8 of the 13 school bus stops on the Steese Highway in the Fairbanks School District. The 12 school bus stops in the Gateway School District had adequate sight distances for the posted speed limits.

To assist the Peak Gold Ore Haul Operation, on September 25, 2023, AKDOT issued an Invitation to Bid # 2524IH018 for brush cutting on the Alaska, Richardson and Steese Highways. The brush cutting work must be accomplished by Dec. 31, 2023, according to the contract document.

5. In early 2023, AKDOT announced that in order to facilitate the overlength and overweight Peak Gold trucks, which it referred to as “heavy freight haulers,” five bridges will need to be replaced. Passing lanes will need to be constructed. Road repairs and reinforcement will be required. The needed bridge replacement and upgrades will not be completed prior to the commencement of the Ore Haul Operation.

COUNT I – VIOLATION OF 17 AAC 25.011

6. Plaintiff incorporates the preceding paragraphs as though set forth below in full.
7. State of Alaska Regulation 17 AAC 25.011 states:

17 AAC 25.011. Prohibited vehicles and loads Except under a permit issued under this chapter, or a traffic control plan approved, as part of a construction contract, by the department within the limits of a highway construction project, a vehicle, including load, that exceeds the size or weight limitations set out in this chapter, 17 AAC 28, or 17 AAC 35 may not be driven or moved upon the state highway system. A vehicle that is owned by the state and operated by a

department employee acting within the scope of departmental employment is not subject to the provisions of this chapter.

[Emphasis added.]

8. Alaska regulations limit vehicle lengths to 75 feet on both the National (17 AAC 25.012(c)(4)) and Alaska Highway Systems (17 AAC 25.012(d)(3)) for a truck tractor and two cargo-carrying trailers, like Peak Gold says its trucks will be and consistent with the trucks Peak Gold has been testing on the roadway since October 1, 2023.

9. The Peak Gold trucks will be just 1.5 inches less than 95 feet long. To exceed the 75-foot limitation, the Peak Gold trucks must fall within an exception to the 75-foot length limit. Alaska regulations contain an exception allowing trucks like the 94'10.5" Peak Gold trucks to drive only on certain routes as Long Combination Vehicles (LCVs). The LCV exception, however, applies only to certain highway portions listed in the regulation, and do not allow 95-foot LCVs to use Peger Road or Johansen Expressway as a regular through-route, as Peak hopes to do.

10. 17 AAC 25.014(a) allows 95-foot LCV doubles to use as a regular route the following portions of the Ore Haul Operation route::

- 1) The Alaska Highway, AK-2, from Tetlin to the junction with the Richardson Highway, AK-4, in Delta Junction (17 AAC 25.014(a)(3));
- 2) The Richardson Highway, AK-2, from Delta Junction to the junction with the Mitchell Expressway, AK-3, in Fairbanks (17 AAC 25.014(a)(5));
- 3) The Mitchell Expressway (Parks Highway, AK-3) to Peger Road, if the lead trailer in a truck tractor, two-trailer LCV is not greater than 53' and the total cargo carrying length including the connecting device, does not exceed 95 feet. 17 AAC 25.014(a)(4);
- 4) The Steese Expressway, (AK-2) from the junction with the Mitchell Expressway, AK-3, in Fairbanks to the junction with the Dalton Highway, Alaska Route 11 (AK-11). (17 AAC 25.014(c)(3)(A)).

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Peger Road is a “minor arterial road” not on the Alaska or National Highway Systems. Johansen Expressway is on the National Highway System, but is not an approved LCV route. Since they are not included in the list of specific roads on which LCVs are allowed, LCVs are not allowed to use these two roads as their regular route, and vehicle length is limited to 75 feet or less, on both Peger and Johansen.

11. AKDOT, in responses to questions posed by the public and the Technical Advisory Committee to the Kinney Engineering study, has admitted that it has approved the use of LCVs on Peger Road and Johansen Expressway as the route through Fairbanks for Peak Gold. It has pointed to detours from approved LCV routes allowed for specific purposes not met in this case. 17 AAC 25.014(f) allows a detour from the LCV highways specified in 17 AAC 25.014. However, that detour exception does not apply to Peak Gold’s trucks because the three required conditions are not met:

- 1) Vehicles must meet the length limitations set out in 17 AAC 25.014, 75 feet on Peger Road and Johansen Expressway. Peak Gold’s trucks are 95 feet.
- 2) Vehicles may only detour to access or return from terminals or facilities for fuel, servicing, delivering or receiving cargo, or food and rest for the vehicle’s operator. Here, Peak Gold trucks will be using Peger and Johansen as the main, regular through-route from Tetlin to Fort Knox; and
- 3) Vehicles may only travel off approved LCV routes for up to but no more than 5 miles. The Peger-Johansen route is more than 5 miles off the regular LCV route.

17 AAC 25.014(f) provides:

(f) A vehicle that meets the requirements of this section may move to or from routes specified in (a) - (d) of this section to access or return from terminals or facilities for fuel, servicing, delivering or receiving cargo, or food and rest for the vehicle's operator. A vehicle must use the most direct interconnecting truck route wherever possible when moving to or from the specified routes. Vehicle movement off the state highway system is subject to local ordinance. A vehicle moving to or from specified routes may not travel further than a five-mile distance from these routes, except if using the following roads: . . .

(5) the Steese Highway, Alaska Route 6 (AK-6), from the junction with the Elliot Highway, AK-2, in Fox to Milepost 30; . . .

10) a road other than one listed in (1) - (9) of this subsection, if the department determines that the(A) road will accommodate the necessary movement;(B) necessity for the use will exist for more than 30 days; and(C) frequency of the transits makes the issuance of overlength vehicle permits under this chapter impractical.

Peak Gold's trucks do not meet the length, purpose, or the distance conditions outlined to enable it to use Peger or Johansen as a detour from approved LCV routes for its 95-foot LCVs. At best, if AKDOT made a determination in 17 AAC 25.014(f)(10), the 5-mile limit could be waived, but not the purpose for the detour.

12. Peak Gold's use of Peger Road and Johansen Expressway does not fall within the limited purposes allowed for a detour off an approved LCV route. Ninety-five foot LCVs cannot use Peger or Johansen as a regular route as Peak Gold proposes at least 120 times per day every day of the year. AKDOT cannot approve of Peger or Johansen for Peak Gold's 95-foot LCVs without a regulation change under the APA, to add Peger Road, a minor arterial road, and Johansen Expressway as an approved LCV route.

13. Peak Gold's Ore Haul Operation route from Tetlin to Fort Knox violates 17 AAC 25.011. AKDOT has refused to enforce 17 AAC 25.011 and has given the green light to the

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route. Plaintiff is entitled to an order requiring AKDOT to follow the regulations and enforce 17 AAC 25.011 and .014 both under the laws of the State of Alaska and in the public interest.

Plaintiff is entitled to an order requiring AKDOT to follow the requirements of the Alaska Administrative Procedure Act (A.S. 44.62) (“APA”) before effecting a change in its regulations.

Plaintiff is entitled to an order requiring AKDOT to follow the requirements of constitutional due process before enacting changes to regulations, and not to favor Peak Gold and its LCVs over others required to follow the regulations.

COUNT II – AKDOT’S DESIGNATION OF THE ROUTE PLANNED FOR PEAK GOLD’S ORE HAUL OPERATION VIOLATES 17 AAC 35, “TOLL HIGHWAYS,” THE APA AND DUE PROCESS REQUIREMENTS

14. Plaintiff incorporates the preceding paragraphs as though set forth in full.

15. AKDOT has designated a route for Peak Gold’s industrial Ore Haul Operation between Manh Choh Mine and Fort Knox Mine without taking the steps required by 17 AAC 35, “Toll Highways”. Those regulations require different treatment for industrial road use (like Peak Gold’s Ore Haul Operation) than for personal or commercial use. AKDOT can, by regulation, designate a specified highway as an industrial use highway if it can accommodate long or heavy loads. Long or heavy vehicles then must obtain permits to use the industrial highway. 17 AAC 35.010 (a)-(b). None of the roads Peak Gold plans to use is designated for industrial use. By approving the Peak Gold Ore Haul Operation route, AKDOT is designating that route as appropriate for this industrial use without following the steps required by its own regulations.

When Peak Gold asked AKDOT for approval to use public roads in the Corridor for a new industrial Ore Haul Operation, AKDOT should have required a written petition from Peak Gold, as required by 17 AAC 35.030.

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The petition must include: the proposed use that dictates designation for industrial use, the condition of the facilities; design changes and improvements needed and their cost; the economic, environmental and social impact of such a designation; how much such use and designation will improve the general welfare of the people of the state; and various means of financing the cost of the facility changes necessary. 17 AAC 35.010(c). Peak Gold has yet to fulfill these requirements for the roads it wants to use.

16. Under 17 AAC 35.010(d), any industrial use designation is “dependent upon” an AKDOT study of: (1) the ability of the route to handle the vehicle lengths and loads, (2) the safety of the long or heavy loads and their impact upon users of the route, (3) design changes necessary for the roadway and structures, maintenance operations requirements, traffic engineering including the location and proposed design of vehicle pullouts, passing lanes, and other improvements for the route to accommodate the movement of long or heavy loads, (4) the economic, environmental, and social impact and the degree to which designation as an industrial use highway will improve the general welfare of the people of the state, and (5) the various means of financing the costs of the changes to the route to enable it to accommodate long or heavy loads. 17 AAC 35.010(d). The state can make the road length and weight limits more stringent and it can repeal a designation upon a finding that continued industrial use of the route is not in the public interest. 17 AAC 35.010(e) and (f).

17. After an industrial designation, a permit is required for vehicles over regular lengths and weights. 17 AAC 35.020, as the Peak Gold trucks are for portions of the route. The permit application requires disclosure of information the public has asked Peak Gold to provide: the vehicles to be used, horsepower rating, number of axles, braking power, the GVW, length

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and load for each vehicle, the number of movements, and additional information requested by the department. 17 AAC 35.030. AKDOT can either grant or deny the permit, and impose limitations in the state's best interests, including to ensure safety of other users of the route and to require that operations occur during off-peak hours. The permit is valid for 365 days unless some shorter period is stated.

18. The permit can be revoked for non-payment of fees; or if vehicle operations are not as specified in the permit, cause excessive damage to the roadway, or represent an unacceptable risk to other users; or if continued use is not in the state's best interest. A permit fee "will be" charged based upon each vehicle Equivalent Axle Load, calculated to offset the state's costs to maintain the roadway surface and structures to accommodate the loads, and administrative permitting costs. 17 AAC 35.040 -.050.

19. By designating this Ore Haul Operation route as appropriate for Peak Gold's industrial use, without taking the steps required by its regulations, AKDOT is violating its own regulations, and exposing the public to unreasonable safety risks. AKDOT is also violating the APA by, in effect, changing its regulations without proper and constitutional due process requirements. It is favoring one user over all others, denying equal protection of the laws to all users.

Plaintiff is entitled to an order requiring AKDOT to fulfill all steps required by 17 AAC 35 before allowing a new industrial use of roads never designated before for industrial use.

These include completion of the studies and construction of improvements required to make the route safe and appropriate for such industrial use.

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By failing to follow its own regulations, AKDOT is creating unreasonable risks to public safety and an attractive public nuisance.

COUNT III – AKDOT’S ACTIONS CREATE AN UNREASONABLE RISK TO PUBLIC SAFETY AND CONSTITUTE AN ATTRACTIVE PUBLIC NUISANCE

20. Plaintiff incorporates the preceding paragraphs as though set forth in full.

21. AKDOT is seeking to attract industrial unrestricted use of the Corridor by the Ore Haul Operation, which creates multiple public nuisances involving school bus operations, safe bridge operations, other commercial and non-commercial use, and other impacts.

22. AKDOT’s efforts to attract, approve and direct the Ore Haul Operation to use the Corridor interfere with the safe operations of school buses in the communities along the Corridor.

23. Kinney Engineering (“Kinney”), the contractor retained by AKDOT, determined that there are 86 bus stops on the corridor between Tok and Fox.

24. The Kinney report made AKDOT aware that 35 of the 86 bus stop locations did not have appropriate sight stopping distance (SSD) features necessary to avoid collisions between school buses and B-trains being used in the Ore Haul Operation, based upon an “initial ‘Stop Sight Distance’ analysis on the Ore Haul Operation, which considered reaction distance and braking distances for both large and small vehicles, summer and winter road conditions, “such as ice and rain and overall road features.”

25. AKDOT is knowingly attracting and allowing the Ore Haul Operation, which will increase unreasonably the danger to children traveling to school on school buses using the Corridor route, thereby creating an attractive public nuisance.

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26. AKDOT's efforts to attract and approve the Ore Haul Operation's use of the Corridor route interferes with the safe operations of bridges used by the general public along the Corridor.

27. The Ore Haul Operation will cross a number of bridges located on the Alaska Highway, Richardson, and Steese Highways, including the Johnson River Bridge, Gerstle River Bridge, and the Robertson River Bridge.

28. According to AKDOT, the Johnson and Gerstle River Bridges are structurally deficient based on a formal inspection and rating criteria conducted by AKDOT.

29. AKDOT has announced it will replace the Johnson and Gerstle River Bridges to accommodate heavy commercial traffic along the Alaska Highway, including the Ore Haul Operation.

30. Current AKDOT plans call for the replacement of the Johnson River bridge by the end of 2026.

31. Current AKDOT plans call for the replacement of the Gerstle River bridge by the end of 2028.

32. Under normal conditions, the Johnson River and Gerstle River bridges are intended by AKDOT to accommodate a normal Gross Vehicle Weight (GVW) restriction of 80,000 pounds for the roads at issue and established under 17 AAC 25.013.

33. The Ore Haul Operation trucks, which AKDOT seeks to attract, direct, and allow, will have a loaded GVW of 164, 900 pounds, which is over twice the intended GVW for the roads and bridges as specified in 23 U.S.C. 127, which creates an unnecessary danger of collapse of bridges that are structurally deficient and damage to the Corridor roadway presenting an

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unreasonable risk of danger to residents and motorists using the Corridor in a manner consistent with safety standards.

Plaintiff is entitled to an order requiring AKDOT to complete the studies and complete the construction needed to assure protection of public safety and the infrastructure to be used, before any industrial use by Peak Gold or others is allowed.

**COUNT IV – IMMINENT, DANGER TO TRANSPORTATION OF CHILDREN
TO AND FROM SCHOOL – ACCOMPLICE TO NEGLIGENT DRIVING UNDER AS
28.35.410 per se**

34. Plaintiff incorporates the preceding paragraphs as though set forth in full.

35. An article in the Daily Newsminer on September 10, 2023 stated that “Anchorage-based Kinney Engineering has been conducting an analysis on bus stops as part of an overall corridor action plan for the Alaska, Richardson, and Stees highways. As more information becomes available, he said, Durham will start meeting with Black Gold.”

36. A report by Kinney Engineering indicates that there are 86 bus stops on the corridor between Tok and Fox.

37. Kinney has only conducted an “initial ‘Stop Sight Distance’ analysis, which takes into consideration reaction distance and braking distances for both large and small vehicles. Other factors include both summer and winter road conditions, such as ice and rain and overall road features.”

38. Kinney’s initial report “indicated that 35 of the 86 bus stop locations did not have appropriate stopping sight distance features for large vehicle operation during icy road conditions.

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39. Based on the article, route risks have yet to be fully studied and identified. Such route risks exist based on the simple fact that 35 of the 86 bus stop locations did not have appropriate stopping sight distance features.

40. Some precautionary measures have been suggested such as cutting brush along the highway to improve site distances and installing GPS trackers in the school buses so that the ore haul trucks will know when a bus is ahead. Brush cutting is not scheduled to be completed until the end of 2023. There is no timeline for installation of GPS trackers on the buses that will enable to trucks to track the school buses. There is no plan to improve site distances for those school bus stops that have site distance issues due to the grade of the road.

41. Under AS 28.35.410, “a person who drives a motor vehicle in the state in a manner that creates an unjustifiable risk of harm to a person or to property and who, as a result of the creation of the risk, actually endangers a person or property is guilty of negligent driving.

42. An unjustifiable risk “is a risk of such a nature and degree that a failure to avoid it constitutes a deviation from the standard of care that a reasonable person would observe in the situation.”

43. Legal accountability for the conduct of another constituting an offense occurs if “with intent to promote or facilitate the commission of the offense, the person...(B) aids or abets the other in planning or committing the offense.” Under AS 11.16.110.

44. AKDOT has been advised of the minimum measures that would need to be taken to ensure the safety of school buses along the Corridor, yet it is facilitating the Ore Haul Operation prior to the implementation of the minimum recommended measures. AKDOT also has not instituted an approved solution for school bus stops that lack adequate site distances due to the grade of the road.

45. AKDOT should be enjoined from permitting the Ore Haul Operation to proceed and thereby endanger the children of along the Corridor.

WHEREFORE, Plaintiff prays this court prohibit AKDOT and AKDEC:

1. Require that AKDOT enforce 17 AAC 25.011 and 17 AAC 35.
2. Require AKDOT to follow its regulations, to enforce 17 AAC 25.011, .014, and 17 AAC 35, and to limit vehicles using Peger Road and Johansen Expressway as a regular route to be limited to 75 feet in length.
3. Require that AKDOT follow the requirements of the Alaska Administrative Procedure Act (A.S. 44.62) (“APA”) before effecting a change in its regulations.
4. Require AKDOT to follow the requirements of constitutional due process before enacting changes to regulations, and not to favor Peak Gold and its LCVs over others required to follow the regulations.
5. Require AKDOT to complete the studies and complete the construction of improvements needed to assure protection of public safety and of the infrastructure to be used, before any industrial use by Peak Gold or others is allowed.
6. Require AKDOT to abate the attractive nuisance created by AKDOT in attracting, directing and allowing unrestricted industrial use of the Corridor by the Ore Haul Operations.
7. Require AKDEC enforce the conditions of POA 2013-00286 and protect the public from sulfuric acid leaching into wetlands and the Upper Tanana River.

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8. Prevent AKDOT from facilitating the Ore Haul Operation in a manner that will endanger the transportation of children to and from school and act as an accomplice to negligent driving under AS 28.35.410 as a matter of law.
9. For attorney fees and costs.
10. For such other, and further, relief as this Court deems to be appropriate.

DATED on the 19 day of October, 2023, at Fairbanks, Alaska.

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