

THIRD MEETING

The Board of Commissioners of the County of Fremont, State of Colorado, met in Regular Session on February 14, 2017, 615 Macon Avenue, Room LL3, Fremont County Administration Building, Cañon City, Colorado. Commissioner Chairman Debbie Bell called the meeting to order at 9:30 a.m.

Debbie Bell	Commissioner	Present
Tim Payne	Commissioner	Present
Dwayne McFall	Commissioner	Present
Katie Barr	Clerk and Recorder	Present
Brenda Jackson	County Attorney	Present
Sunny Bryant	County Manager	Present
Matt Koch	Planning & Zoning Director	Present

Those present recited the Pledge of Allegiance to the Flag of the United States of America.

APPROVAL OF AGENDA

Commissioner Payne moved to approve the Agenda. Commissioner McFall seconded the motion. Upon Vote: Commissioner Payne, aye; Commissioner McFall, aye; Commissioner Bell, aye. The motion carried.

CONSENT AGENDA

1. Approval of Minutes / January 24, 2017
2. Approval of Bills for \$1,730,947.22
3. Consideration of the 2017 Fremont County Annual Operating Plan for Wildland Fire Management
4. Consideration of IGA with the Colorado Department of Natural Resources for Cooperative Wildfire Protection
5. Adoption of Resolution #9, Series of 2017, correcting Resolution #6, Series of 2017 CUP 98-3 Energy Fuels Coal (Southfield Mine) that has an error in the title.
6. Schedule Public Hearing for February 28, 2017 at 10:00 a.m.:
 - a. Request the issuance of an Optional Premises Cultivation license for JMC Enterprises, doing business as Fremont County Cannabis, for property which is owned by Marcia Greene. The address of the property is 1800 C.R. 835C, south of Florence off of Siloam Road. The property contains 100 acres more or less, the grow area including structures contains 2 acres more or less. The grow area will use an existing metal agricultural building and 2 new green houses. The grow will utilize metal containers for grow rooms inside the agricultural building for starting the plants, they will then be transplanted to the green houses and the outdoor grow area. The property is zoned Agricultural Forestry.
 - b. Request Modification of CUP 07-003 Front Range Aggregates (Parkdale Pit).
Request approval of a Modification of condition J, changing the blasting times from 8:00 A.M. to 9:00 A.M., from Memorial Day to Labor Day, and 10:00 A.M. to 4:00 P.M. all other days, changing to 10:00 A.M. to 5:00 P.M., not more than 5 days per week.

Commissioner McFall moved to approve the Consent Agenda. Commissioner Payne seconded the motion. Upon Vote: Commissioner McFall, aye; Commissioner Payne, aye; Commissioner Bell, aye. The motion carried.

ADMINISTRATIVE/INFORMATIONAL

1. Staff / Elected Officials:

- a. County Clerk's Monthly Report, Katie Barr, County Clerk and Recorder

Clerk Barr reported for the year of 2016 the total Motor Vehicle Fees, Sales Taxes and Recording Fees collected was \$12,115,822.86.

Clerk Barr reported the total Motor Vehicle Fees, Sales Taxes and Recording Fees collected for January 2017 was \$1,000,145.43.

Commissioner Payne moved to accept the County Clerk's Monthly and Year-End Reports. Commissioner McFall seconded the motion. Upon Vote: Commissioner Payne, aye; Commissioner McFall, aye; Commissioner Bell, aye. The motion carried.

- b. County Manager Report, Sunny Bryant, County Manager

Manager Bryant reported on attending the Colorado City and County Managers Conference and the ribbon-cutting ceremony at the Sheriff's Department for the Kitchen and Laundry Remodel.

Commissioner Bell reported on attending rural legislative days in Denver the previous weekend. The focus of Action 22, co-sponsor of the event, is to remind legislators of rural Colorado.

2. Citizens who wish to address the Commissioners on a matter not scheduled on the agenda

George Storey wished everyone a Happy Valentine's Day, and complimented the improvements being made on Main Street, Canon City.

Lisa Hyams invited citizens to a Town Hall Meeting that the Canon City Chamber of Commerce is hosting with Colorado Correctional Industries on February 22, at the DOC training facility. The meeting will give citizens the opportunity to ask questions and discover how CCI benefits the community.

Kathy Madonna requested information on a proposed homeless project in Florence. She was informed that permits have not been issued, and the project is still in the planning phases. Ms. Madonna also inquired about having a property on Grand Ave cleaned up. Filing a complaint with Planning & Zoning will be her first step.

Tina Heffner reported the Penrose Park and Recreation District has appointed Patty Nicholson as the fifth board member. The district has received a grant from St. Thomas Moore Hospital for exercise equipment and will start offering classes. The Penrose Community Center is being renamed to Penrose Station in an effort to eliminate confusion on similarly named buildings in Penrose. A ribbon-cutting ceremony will be scheduled.

OLD BUSINESS

1. OPC 14-001 Today's Health Care, LLC/Today's Health Care II, LLC dba Today's Health Care II - Modification #2

Request approval of a Modification of Premises for Department file #OPC 14-001 Today's Health Care/Today's Health Care II, LLC (Optional Premises Cultivation-Commercial, Greenhouse), by Today's Health Care/Today's Health Care II, LLC, (dba Today's Health Care/Today's Health Care II, LLC), for property which is owned by Coaz North, LLC. The address of the property is 934 C St, Penrose, Colorado (indoor grow), in the Beaver Park/Penrose Area, which is located on the east side of C Street, approximately 978 feet to the center of the property from the intersection of State Highway 115 and C Street. The property is zoned Agricultural Rural and contains 10 acres more or less. The modification will allow for 3 additional greenhouses, a new greenhouse replacing an existing greenhouse, and a 2,400 sq. ft. framed building for storing, curing, and processing.

Representative: Natalie Romolt/Angela Morton

Commissioner Payne explained the commissioners had decided on a compromise that would help with odor mitigation and allow some improvement at the facility. The plan is to approve the stick-built separate building for processing and to allow the Quonset hut to be replaced with a new greenhouse. The additional requested greenhouses would be denied.

Commissioner McFall expressed that this an opportunity for the facility to be a good neighbor.

Commissioner Bell urged the applicant to take advantage of the opportunity for improvement.

Natalie Romolt reiterated that the expense of the two modifications cannot be justified without the additional growing space from more greenhouses.

Commissioner Payne moved to approve Resolution #10 which approves the compromise and creates finding for the OPC 14-001 Today's Health Care, LLC/Today's Health Care II, LLC. Commissioner McFall seconded the motion. Upon Vote: Commissioner Payne, aye; Commissioner McFall, aye; Commissioner Bell, aye. The motion carried.

NEW BUSINESS

1. Ratification of Chairman's Signature on Change Order #23, #24 and #25 for the Fremont County Justice Center Kitchen and Laundry Remodel

Manager Bryant explained Change Order #23 was for an increase of \$2,355.84; Change Order #24 was for an increase of \$2,203.03; and Change Order #25 was for an increase of \$2,591.19.

Commissioner McFall moved to ratify the Chairman's signature on Change Orders #23, #24, and #25 for the Fremont County Justice Center Kitchen and Laundry Remodel for a total of \$7,150.06. Commissioner Payne seconded the motion. Upon Vote: Commissioner McFall, aye; Commissioner Payne, aye; Commissioner Bell, aye. The motion carried.

2. Request: Transfer CUP 96-1 Valco, Inc. to South Forty Recreation, LLC
Request approval of a transfer of CUP 96-1 Valco Inc., located on Mackenzie Ave., on the north side of the Arkansas River, to South Forty Recreation, LLC. Site is in reclamation and no longer being mined.
Representative: Steve Lindner

Bryan Frederickson, attorney for the applicant, explained there is no mining occurring on the property at this time. South Forty Recreation is purchasing the property and would

like the CUP transferred conditional upon the real estate transfer. The timeline for completion of the reclamation is 2018.

Director Koch clarified that South Forty will be responsible for the remaining reclamation that the State is requiring. The department is in favor of the transfer.

Steve Lindner said the property will remain open space for family recreation use.

Commissioner Payne moved to approve the transfer of CUP 96-1 Valco, Inc. to South Forty Recreation, LLC conditional upon the real estate transfer. Commissioner McFall seconded the motion. Upon Vote: Commissioner Payne, aye; Commissioner McFall, aye; Commissioner Bell, aye. The motion carried.

3. Consideration of Resolution #11 Rescission of Temporary Use Permit TUP 11-008 Over the River

Attorney Jackson said the artist Christo's attorney has sent communication that the project has been abandoned.

Commissioner Bell expressed her disappointment in Christo's decision to allow federal politics to be the reason to abandon the project.

Commissioner McFall moved to approve Resolution #11 Rescission of Temporary Use Permit TUP 11-008 Over the River. Commissioner Payne seconded the motion. Upon Vote: Commissioner McFall, aye; Commissioner Payne, aye; Commissioner Bell, aye. The motion carried.

4. Consideration of Resolution #12 appropriating additional sums of money to defray expenses in excess of amounts budgeted for and appropriated by Fremont County, Colorado for the budget year ending December 31, 2016

Manager Bryant explained the appropriation of funds is to close out the 2016 budget. The funds effected are Department of Public Health, Lodging Tax Fund, Capital Expenditure Fund, PILT Fund, and Self-Funded Insurance for a total of \$3,342,000.

Commissioner Payne moved to approve Resolution #12 appropriating additional sums of money to defray expenses in excess of amounts budgeted for and appropriated by Fremont County, Colorado for the budget year ending December 31, 2016. Commissioner McFall seconded the motion. Upon Vote: Commissioner Payne, aye; Commissioner McFall, aye; Commissioner Bell, aye. The motion carried.

5. Consideration of Resolution #13 authorizing the transfer of appropriated funds between the various funds of Fremont County, Colorado for the budget year ending December 31, 2016

Manager Bryant explained a resolution is necessary to document the transfer of funds that have been appropriated.

Commissioner McFall moved to approve Resolution #13 authorizing the transfer of appropriated funds between the various funds of Fremont County, Colorado for the budget year ending December 31, 2016. Commissioner Payne seconded the motion. Upon Vote: Commissioner McFall, aye; Commissioner Payne, aye; Commissioner Bell, aye. The motion carried.

6. Consideration of Resolution #14 authorizing the Colorado New Energy Improvement District to conduct its New Energy Improvement Program, called Colorado Commercial Property Assessed Clean Energy (C-PACE), within Fremont County

Commissioner Payne explained the Colorado New Energy Improvement District was created through legislation that became effective in 2016. The New Energy Improvement Program, known as Colorado Commercial Property Assessed Clean Energy, allows commercial buildings to obtain improvement loans through the district and private lenders.

Commissioner Bell explained the program is a loan program, with the repayment of the loan occurring through property tax collection. The program is an option for business owners, and although participation is not required, the Board is hoping it will be incentive for new businesses in Fremont County.

Commissioner Payne moved to Resolution #14 authorizing the Colorado New Energy Improvement District to conduct its New Energy Improvement Program, called Colorado Commercial Property Assessed Clean Energy (C-PACE), with Fremont County. Commissioner McFall seconded the motion. Upon Vote: Commissioner Payne, aye; Commissioner McFall, aye; Commissioner Bell, aye. The motion carried.

PUBLIC HEARINGS SCHEDULED FOR 10 A.M.

None.

Chairman Bell adjourned the meeting at 10:19 a.m.

Clerk and Recorder

RESOLUTION NO. 9
Series of 2017

AMENDED to correct title error of previous Resolution No. 6, Series of 2017 at Reception #946381.

RESOLUTION CANCELING CONDITIONAL USE PERMIT
CUP 98-3 ENERGY FUELS COAL, INC (SOUTHFIELD MINE)

BE IT RESOLVED by the Fremont County Board of County Commissioners (hereafter "Board"):

THAT WHEREAS, Mine Manager Allen S. Weaver has requested through written correspondence to terminate the Conditional Use Permit that was approved on April 14, 1998, by Resolution 18, Series of 1998.

NOW THEREFORE, BE IT RESOLVED by the Board that in accordance with the request of Applicant, Energy Fuels Coal, Inc. (Southfield Mine) Conditional Use Permit CUP 98-3 Energy Fuels Coal, Inc. (Southfield Mine) which is legally described as:

LEGAL DESCRIPTION

The following described lands situate in Sections 23, 24, 25, 26 and 36, Township 20 South, Range 70 West., 6th P.M., also Sections 19, 30, and 31, Township 20 South, Range 69 West., 6th P.M., in Fremont County, Colorado.

Starting at the S.W. corner of said Section 25,
thence (Az. 88°-04'-02") a distance of 4,447.53',
thence (Az. 179°-10'-30") a distance of 625.06',
thence (Az. 89°-13'-54") a distance of 671.06',
thence (Az. 179°-20'-45") a distance of 1,314.09',
thence (Az. 90°-00'-00") a distance of 3,511.00',
thence (Az. 0°-04'-55") a distance of 6,997.01',
thence (Az. 67°-00'-41") a distance of 286.78',
thence (Az. 275°-50'-22") a distance of 265.38',
thence (Az. 360°-00'-00") a distance of 124.00',
thence (Az. 313°-53'-25") a distance of 584.18',
thence (Az. 11°-02'-27") a distance of 334.19',
thence (Az. 32°-21'-08") a distance of 332.63',
thence (Az. 10°-56'-32") a distance of 152.78',
thence (Az. 290°-50'-00") a distance of 120.90',
thence (Az. 200°-14'-37") a distance of 150.28',
thence (Az. 202°-17'-32") a distance of 390.16',
thence (Az. 290°-08'-11") a distance of 63.91',
thence (Az. 200°-58'-59") a distance of 377.00',

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RESOLUTION NO. 10, SERIES OF 2017

RESOLUTION GRANTING IN PART AND DENYING IN PART
SECOND REQUEST FOR MODIFICATION OF MEDICAL MARIJUANA
OPTIONAL PREMISES CULTIVATION LICENSE

OPC 14-001 TODAY'S HEALTH CARE, LLC/TODAY'S HEALTH CARE II, LLC

WHEREAS, on July 8, 2014, the Board of County Commissioners adopted Resolution No. 22, Series of 2014, enacting Medical Marijuana Business Licensing Regulations within the unincorporated areas of Fremont County; and

WHEREAS, on June 22, 2016, Today's Health Care, LLC/Today's Health Care II, LLC ("THC") submitted an application for modification of a Medical Marijuana Business License, requesting addition of five greenhouse facilities to the licensed premises, which presently contains two greenhouses; and

WHEREAS, on September 13, 2016, the Licensing Authority approved written findings denying the Modification Application; and

WHEREAS, on November 29, 2016, Today's Health Care, LLC/Today's Health Care II, LLC ("THC") submitted a second Application requesting modification of the medical marijuana optional premises cultivation license; and

WHEREAS, the second modification request proposed the replacement of one existing "Quonset hut" type greenhouse, construction of a 2,400 square foot framed building for storing, curing and processing, and the addition of three new greenhouses on the premises; and

WHEREAS, the Board of County Commissioners, as the Local Licensing Authority for Medical Marijuana Business Licensing, held a public hearing on January 16, 2017, for consideration of the Second Modification Application; and

WHEREAS, Natalie Romolt, manager and representative for THC, appeared at the hearing, together with her attorney/representative Vince Linden, Esq.; and

WHEREAS, the Licensing Authority conducted a question and answer session with Ms. Romolt and Applicant's attorney on the Application; and

WHEREAS, the Licensing Authority considered all written comments from the public on the Application, public comments made during the public hearing, recommendations from county staff and comments and responses from the Applicant; and

WHEREAS, based on the findings set forth below, the Licensing Authority believes that the modification contains a mixture of acceptable proposals and unacceptable proposals and that the Second Modification Application should be granted in part and denied in part.

Findings of the Local Licensing Authority

1. The Applicant now operates a licensed Optional Premises Cultivation (OPC) facility with an address of 934 "C" Street, Penrose, CO. The OPC consists of two greenhouses and two accessory structures. The square footage of the existing greenhouses is approximately 13,000. Of the 13,000 square feet, approximately 9400 square feet, or 71% is used for flowering marijuana plants.

2. The second proposal for modification property at 934 "C" Street requests
a) replacement of a 3,000 square foot "Quonset hut" type greenhouse with a new 5,040 square foot greenhouse; b) addition of three new greenhouses having a combined total of 15,120 square feet and used for flowering plants; and c) construction of a 2,400 square foot enclosed building to be used for processing, curing and storage, which would also house restroom facilities and be connected to a new Onsite Wastewater Treatment System (septic system).

3. It is undisputed that the odor of a marijuana plant is strongest when the plant is in the flowering stage and not when the plant is in an immature non-flowering stage. It is also undisputed that the odor is very strong during harvesting and processing of mature marijuana plants.

4. Applicant presently harvests and processes the mature marijuana plants in the large, newer greenhouse.

5. The existing "Quonset hut" greenhouse is an older structure for which odor and light mitigation are difficult and often, ineffective endeavors. This older greenhouse is presently used as a nursery for vegetative plants that are not yet in a flowering stage.

6. Applicant indicates that there are no plans to increase the number of plants being grown at the site, but the expectation is for the yield of each plant and therefore of the OPC, to be increased.

7. Applicant's proposal seeks to increase the square footage for the nursery, or vegetation of immature plants from 3,000 to 10,080. The square footage for flowering plants would increase from 10,080 to 20,160. Processing would be done within the newly constructed 2,400 square foot building, and not in a greenhouse. The Modification Application indicates that the same odor control system that is being used for the existing newer greenhouse on site will be used for the three new greenhouses and one replacement greenhouse.

8. The immediate neighborhood surrounding Applicant's OPC is comprised of residences and agricultural property, all of which pre-date the OPC operation.

9. County Code Enforcement receives frequent complaints about marijuana odor from neighbors and concerned citizens about marijuana odor in the area. The Authority specifically finds that Code Enforcement has investigated odor complaints concerning Applicant's OPC, but none have been confirmed.

10. The Authority has heard from residents in the area, who state that the present operation has an odor management issue and that they can smell the operation on surrounding properties. The marijuana enforcement office for the Fremont County Sheriff, Deputy Jenkins, stated that he receives frequent odor complaints about the facility from the residents in the area.

11. Residents in the area complain that the OPC property contains an amount of brush, limbs and trash along the property line, which is a nuisance and potential fire hazard. The Authority is concerned, because this issue was raised in the August 23, 2016 public hearing for the first THC modification application, but little or no effort has been made to correct the situation.

12. The Authority also heard complaints and reports from neighboring residents regarding the audible alarm system for the OPC. The residents indicate that when the alarm is activated, the sound can be heard on neighboring properties. The alarm has sounded in the middle of the night, early morning hours and other inconvenient times. The complaints focus on the amount of time it has taken for Applicant to respond to the alarm and turn it off, which in some cases is more than 20 minutes. Ms. Romolt indicated that the alarm is sounding on a neighboring property where THC has a second OPC, and admits that the alarm was a problem at one point in time, but believes the issue has been resolved. Ms. Romolt indicates that the OPC has a security guard on site and a manager for the OPC, Ms. Adams, though neither was apparently able to resolve the alarm issue with expediency.

13. The Authority finds that greenhouses have limited means of controlling odors. The Licensing Regulations do not require complete odor control, but it is reasonable to conclude that additional flowering greenhouse OPC facilities in the area will intensify the odor and other issues that occur with marijuana cultivation.

14. The Authority finds that replacement of the "Quonset hut" greenhouse with a new greenhouse equipped with odor mitigation equipment may reduce the odor from the OPC, and is a positive step toward resolution of the neighborhood issues. The Authority further finds that construction of an enclosed building for processing of mature marijuana will reduce the odor from the operation, since the processing will no longer occur in the greenhouse.

15. The Authority finds that construction of a septic system and restroom facilities on site will be a benefit to the property and to the OPC operation. Employees presently use the restroom facilities at the second OPC operated by THC, which is located nearby.

16. The Authority specifically finds that the complaints about lighting are not valid and are not a factor taken into consideration in arriving at a final decision. The Marijuana Business Licensing Regulations state that on-site lighting must prevent the beams or the rays from any light source, including indoor greenhouse lighting, from being directed toward or onto adjacent residential properties. Having artificial lighting on site is permissible and necessary. The Authority finds that the evidence does not support a finding that the lighting unnecessarily or unreasonably disturbs the comfort and repose of the adjoining or neighboring landowners. The Authority notes that the Kwik Stop and other business establishments along Colorado State Highway 115, and the highway street lighting, emit significantly more light onto adjoining properties and do not appear to be a problem for the neighbors.

17. There are nine OPC facilities in the Penrose area that began operations prior to the adoption of the Fremont County Medical Marijuana Business Licensing Regulations, which were allowed to continue, provided the owners/operators brought the facilities into compliance with the Regulations. The regulations clearly state that no person shall have any entitlement or vested right in such operation.

18. The local licensing authority may refuse issuance of a license, or modification of licensed premises, based on the number and type of optional premises cultivation operations located near the premises under consideration. §12-43.3-303, C.R.S. The Licensing Authority finds that there is an undue concentration of OPC premises existing in the Penrose area, near OPC 14-001, and that additional greenhouses at this location is incompatible with the existing neighborhood.

Based upon the findings set forth above, the Board of County Commissioners, in its capacity as the Local Licensing Authority for medical marijuana businesses in Fremont County concludes as follows:

A. On July 8, 2014, the Fremont County Medical Marijuana Business Licensing Regulations were duly adopted pursuant to Resolution #22, Series of 2014.

B. Article 3, Section c, of the Regulations provides that any person who is lawfully engaged in the business of selling, cultivating, or manufacturing medical marijuana as permitted by State law may continue in business if, on or before September 30, 2014, the person submits an application for local licensing.

C. Article 3, Section d, of the Regulations provides no person shall have any entitlement or vested right to licensing under these Local Regulations.

D. Section 12-43.3-303(1), C.R.S., provides that the local licensing authority may refuse to issue a license provided for in this section for good cause, subject to judicial review.

E. Section 12-43.3-303(1), C.R.S., provides that the local licensing authority may consider the facts and evidence adduced as a result of its investigation, as well as any other facts pertinent to the type of license for which application has been made, including any other pertinent matters affecting the qualifications of the applicant for the conduct of the type of business proposed.

F. Final Agency action, for purposes of appeal, shall be the date of adoption of this Resolution by the Local Licensing Authority/Board of County Commissioners.

Based on the findings of the Local Licensing Authority set forth above, good cause exists for APPROVAL of the Second Application for Modification, in part, to allow replacement of the "Quonset hut" greenhouse with a new greenhouse of approximately 5,040 square feet. Good Cause also exists for APPROVAL of the request to construct a 2,400 square foot processing building, which shall include construction of an OWTS (septic system) and restroom facilities.

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RESOLUTION NO. 12 2017
 RESOLUTION FOR SUPPLEMENTARY 2016 BUDGET

A RESOLUTION APPROPRIATING ADDITIONAL SUMS OF MONEY TO DEFRAY EXPENSES IN EXCESS OF AMOUNTS BUDGETED FOR AND APPROPRIATED BY FREMONT COUNTY, COLORADO, FOR THE BUDGET YEAR ENDING DECEMBER 31, 2016.

WHEREAS, various expenditures have occurred during the current budget year that were not planned or anticipated at the time of the adoption of the 2016 budget, and....

WHEREAS, unanticipated revenues and available Fund Balance Reserves, not assured at the time of the adoption of the 2016 budget, are the providing resource for the various additional expenditures, by Fund, as follows:

DEPARTMENT OF PUBLIC HEALTH	\$ 120,000
LODGING TAX FUND	\$ 50,000
CAPITAL EXPENDITURES FUND	\$ 2,400,000
PILT FUND	\$ 32,000
SELF FUNDED INSURANCE	\$ <u>740,000</u>
TOTAL	\$ <u>3,342,000</u>

NOW, THEREFORE BE IT RESOLVED, by the Fremont Board of County Commissioners that 2016 Appropriations for the following Funds are hereby increased from the Original adopted budget to the Supplemental budget as follows:

	TOTAL ORIGINAL BUDGET	TOTAL SUPPLEMENTAL BUDGET	INCREASE
DEPARTMENT OF PUBLIC HEALTH	\$ 650,392	\$ 770,392	\$ 120,000
LODGING TAX FUND	\$ 164,797	\$ 214,797	\$ 50,000
CAPITAL EXPENDITURE FUND	\$ 228,705	\$ 2,628,705	\$ 2,400,000
PILT FUND	\$ 1,025,000	\$ 1,057,000	\$ 32,000
SELF FUNDED INSURANCE	\$ 3,025,294	\$ 3,765,294	\$ <u>740,000</u>
TOTAL SUPPLEMENTAL APPROPRIATION			\$ <u>3,342,000</u>

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