



# Permitting of Solar Projects in Vermont

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# AGENDA

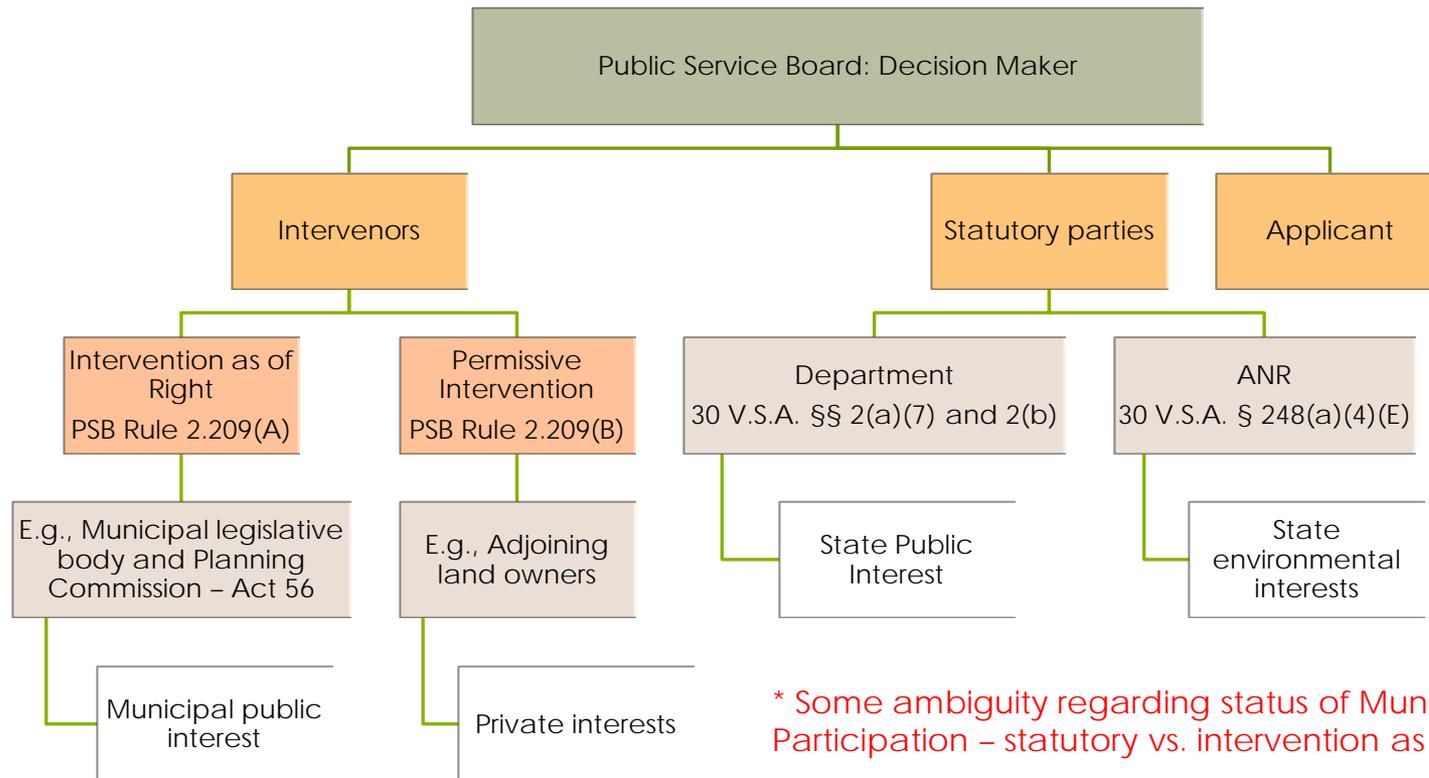
- 10 minute overview including:
  - Introduction: what is Section 248?
  - Section 248 Criteria generally.
  - Section 248 Processes – the full process, the expedited process, and everything in between.
- Opportunity for Questions

# What is Section 248?

- Requires energy, gas, telecom, and water developers to obtain a **Certificate of Public Good (CPG)** from the Public Service Board
- Board considers 10 statutory criteria, including environmental criteria from Act 250 plus issues like need, reliability, economic benefit, and the general public good
- Different pathways for different size and type of projects



# Parties in the § 248 Process



# The Public Interest

- Board: 30 V.S.A. § 248(a)(2) – Can't begin site preparation for or construction of an electric generation facility within the State "unless the Public Service Board first finds that the same will promote the general good of the State and issues a certificate to that effect."
- Department: 30 V.S.A. § 2(b): "the Department shall represent the interests of the people of the State, unless otherwise specified by law."
- Balancing exercise based on the applicable 248 criteria.

# The Public Interest

- Ideally, the public interest in 248 proceedings would look something like this:



# Section 248 Criteria Generally

- The Board considers 10 statutory criteria set out at Section 248(b), including:
  - most of the environmental criteria from Act 250 (248(b)(5)),
  - orderly development (248(b)(1)),
  - need (248(b)(2)),
  - system stability and reliability (248(b)(3)),
  - economic benefits (248(b)(4)).

# Some § 248 Criteria May Be Waived for Smaller Projects

- Net Metering:
  - 30 V.S.A. § 219a(c) gives the Board authority to enact rules or orders waiving § 248 criteria.
  - PSB Rule 5.108 sets out the criteria which are *not* conditionally waived: System stability and reliability; orderly development; environmental considerations; outstanding resource waters.
- Renewable Energy Plants up to 2.2 MW
  - 30 V.S.A. § 8007(b) gives the Board authority to enact rules or orders waiving § 248 criteria. See Order of 8/31/2010
  - Conditional waiver of need; water conservation; sufficiency of water and burden on existing water supply, educational services; compliance with Electric Energy Plan and Least Cost Integrated Resource Plan. Economic benefit conditionally waived for standard offer projects only.

# Orderly Development

- § 248(b)(1)
- Due consideration given to the recommendations of the municipal and regional planning commissions; municipal legislative bodies; and land conservation measures contained within the plan of an affected municipality.
- Challenges:
  - Time limitations for making recommendations.
  - Town plans often aspirational, not specific.
  - Not local zoning regulations and bylaws.

# Orderly Development

- Act 56 Section 26c inserted § 248(b)(1)(B)
- Requires solar facilities to comply with the screening requirements of a municipal bylaw adopted under 24 V.S.A. § 4414(15) or a municipal ordinance adopted under 24 V.S.A. § 2291(28), unless the Board finds that such compliance would prohibit or have the effect of prohibiting the installation of such a facility or have the effect of interfering with the facility's intended use.

# Aesthetics

- § 248(b)(5) and 10 V.S.A. § 6086(a)(8)
- Net Metering: PSB Rule 5.109
- "Will not have an undue adverse effect on the scenic or natural beauty of the area, aesthetics, historic sites or rare and irreplaceable natural areas."

# Aesthetics

- Board has adopted the Quechee analysis:
  - Adverse?
    - Key concept: Out of character with its surroundings.
  - Unduly adverse? Three factors:
    - Violates clear, written, community standard intended to preserve the aesthetics or scenic beauty of the area.
    - Generally available mitigating steps which a reasonable person would take to improve the harmony of the project with its surroundings.
    - Shocking and offensive to the average person.
  - Significantly informed by the overall societal benefits of the project.

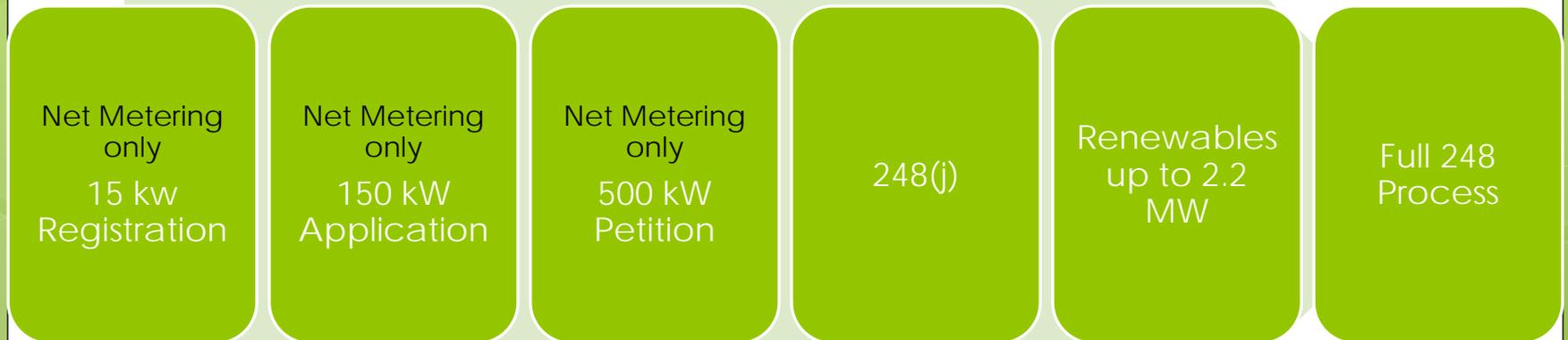
# System Stability and Reliability

- § 248(b)(3)
- “Will not adversely affect system stability and reliability.”
- Net Metering:
  - PSB Rule 5.100 Appendix A sets out requirements for systems up to 150 kW.
- Other projects:
  - PSB Rule 5.500 Interconnection Procedures
- Challenge: seeing a number of proposed projects that will create voltage flicker.

# Overview of the 248 Processes

Least Process

Most Process



# Net Metering Processes

- **Systems  $\leq$  15 kW solar:**

- Registration Form to PSB, PSD, and utility only.
- 10 day comment period. If no concerns raised, CPG is deemed issued on 11<sup>th</sup> day.
- Rule 5.110(A)

- **Systems  $\leq$  150 kW**

- Application Form to PSB, PSD, and utility. If facility is not on existing structure, then a copy must go to ANR, local planning commission, municipal legislative body, all adjoining land owners.
- 10 day comment period for facilities on existing structures; 30 days for ground mounted facilities.
- Subject to minimum set back requirements: 40 feet from municipal highway, 25 feet from property boundary. §248(s).
- Rule 5.110(B).

# Net Metering Processes

- **Systems up to 500 kW** (up to 5 MW in special cases).
  - 45 day pre-filing notice period to PSB, PSD, ANR, adjoining property owners, utility, municipal legislative bodies, municipal and regional planning commission.
  - File petition, including exhibits and testimony with copy to PSD, ANR, utility, and local and regional planning commission. Notice of filing to municipal legislative body and adjoining property owners.
  - 21 day comment period.
  - Subject to minimum set back requirements: 100 feet from municipal highway, 50 feet from property boundary. §248(s).
  - Rule 5.110(C).
- **Systems > 500 kW** subject to regular 248 processes

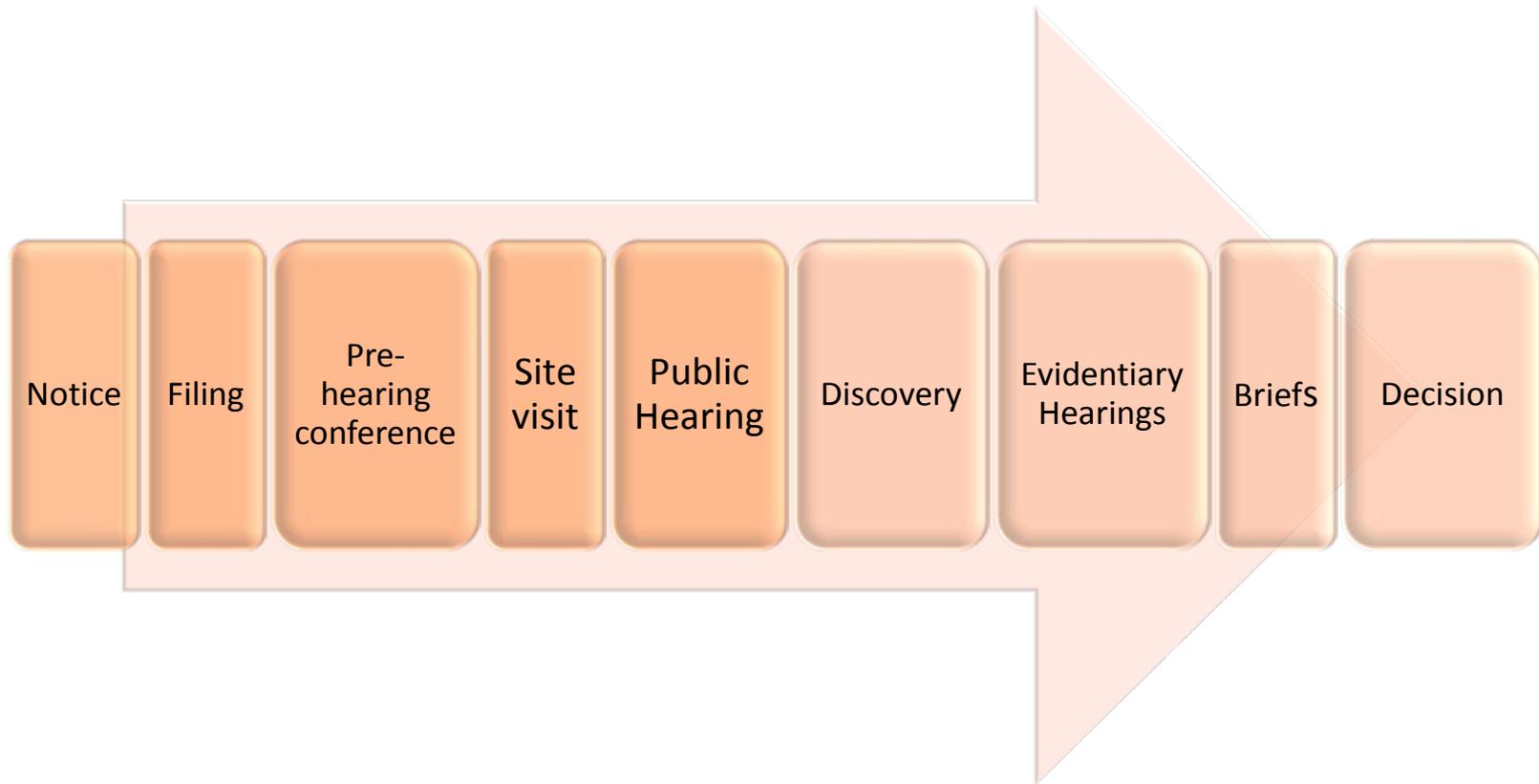
## § 248(j) Projects of Limited Size and Scope

- Expedited review of certain projects of limited size & scope that do not raise significant issues w/r/t § 248 criteria
- Board may issue Order without holding public or evidentiary hearings, but Board will first issue notice of the proposed project and CPG to a number of state agencies and to the municipal and regional planning commissions and municipal legislative body (entities listed at § 248(a)(4)(C)).
- 28 day comment period from date of Board's notice.

# Renewable Energy Projects Up To 2.2 MW

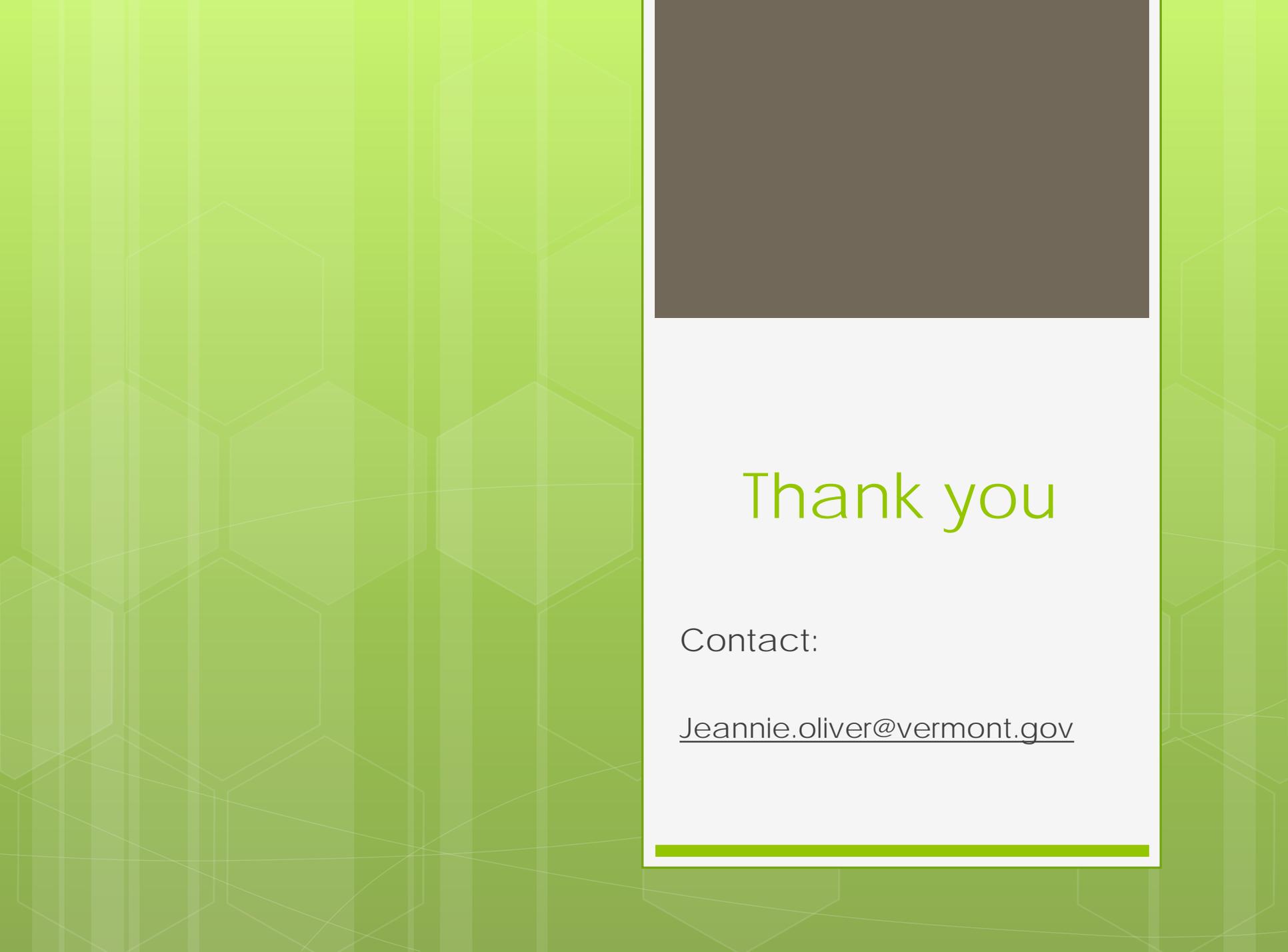
- § 8007(b) Order of 8/31/2010
- Petitioners can request that the notice and hearing requirements of § 248 be modified on a case-by-case basis. Petitioner has burden of demonstrating why modification is necessary and appropriate.
- If no modification granted, then same process as full 248 review.

# The Full 248 Review



# The Full 248 Review: Notice

- Process governed by § 248 and PSB Rule 5.400.
- 45 Day pre-filing notice to municipal and regional planning commissions and municipal legislative bodies.
- Copy of application to a number of state agencies and to the municipal and regional planning commissions and municipal legislative body.



Thank you

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