

## **CHAPTER 17.28 NATURAL RESOURCES OVERLAY ZONE (NRO)**

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## **17.28.010 PURPOSE**

The NRO zone is designed to protect identified significant natural resources in The City of Sweet Home. The intent of this zone is to ensure reasonable economic use of property while protecting valuable natural resources. Requirements in this Chapter apply only to that portion of a property located within the NRO zone.

#### HISTORY

*Repealed & Replaced by Ord. [1305](#) on 9/27/2022*

## **17.28.020 ESTABLISHMENT AND APPLICABILITY**

The NRO zone is an overlay zone is used and applied to any parcel having one of the following identified natural resources:

- A. Significant wetlands, as mapped in The City's Local Wetlands Inventory (LWI).
- B. Riparian corridors, as mapped in The City's Riparian Inventory.

#### HISTORY

*Repealed & Replaced by Ord. [1305](#) on 9/27/2022*

## **17.28.030 ACTIVITIES SUBJECT TO REVIEW**

In the NRO zone, the following actions are subject to review. These shall be processed as a Type I application and subject to the standards contained in this Chapter and applicable provisions of the underlying zone:

- A. New structural development.
- B. Exterior expansion of any building or structure.
- C. Increases in impervious surfaces or storage areas.
- D. Grading, excavation or fill.
- E. Removal of native vegetation.

#### HISTORY

*Repealed & Replaced by Ord. [1305](#) on 9/27/2022*

## **17.28.040 EXCEPTIONS IN THE RIPARIAN ZONE**

The following activities may be excepted from the requirements of this Chapter, if administrative review finds that they meet the standards listed in this Chapter.

- A. Drainage facilities, utilities, and irrigation pumps.
- B. Unimproved streets, roads, driveways, or paths.
- C. Water-related and water-dependent uses.
- D. Replacement of existing structures with structures in the same location that do not disturb additional riparian surface area.
- E. Removal of non-native vegetation and replacement with native plant species.
- F. Alteration of the area by placement of structures or impervious surfaces within the Riparian Zone upon demonstration that equal or better protection for identified resources will be ensured through restoration of riparian areas, enhanced buffer treatment or similar measures; providing that, the alterations not exceed 50% of the width of the riparian area, measured from the upland edge of the Zone.

HISTORY

Repealed & Replaced by Ord. [1305](#) on 9/27/2022

**17.28.050 AGENCY REVIEW**

Decisions made by The City of Sweet Home under this Chapter do not supersede the authority of the state or federal agencies which may regulate or have an interest in the activity in question.

- A. It is the responsibility of the landowner or applicant to ensure that any necessary state or federal permits or clearances are obtained.
- B. The City will notify the Division of State Lands for development permits and other land use decisions affecting inventoried wetlands.

HISTORY

Repealed & Replaced by Ord. [1305](#) on 9/27/2022

**17.28.060 GENERAL DEVELOPMENT STANDARDS**

- A. The City of Sweet Home has adopted safe harbor setback methodology for the identification of significant riparian corridors and significant wetlands. These resources are identified on the Local Wetlands Inventory and Riparian Inventory Maps. Property owners are responsible to have a qualified professional identify the wetlands boundary on the affected property.

Natural Area	Width of Vegetated Corridor, per side
South Santiam River	75'
Ames Creek and Wiley Creek	50'

- B. Setbacks for structures within a riparian corridor are measured from the top of bank, which is the line of ordinary high water in a two-year event.
- C. For an exception to be allowed, the applicant shall comply with the following requirements:
  - 1. Demonstrate that no other practicable access to the buildable area exists.
  - 2. Design roads, driveways, and paths to be the minimum width necessary while allowing for safe passage of vehicles and/or pedestrians.

3. Consider the need for future extensions of shared access, access easements or private streets to avoid subsequent encroachments into a significant natural resource.
4. During construction, no stockpiling of fill materials, parking or storage of equipment shall be allowed within a significant natural resource.
5. Erosion control measures, such as silt fences and biofilter bags, shall be used to reduce the likelihood of sediment and untreated stormwater entering a significant natural resource.
6. *Utilities and Drainage Facilities.* Public and private utilities or drainage facilities may be placed when it is shown that no other practicable alternative location exists. If a utility or drainage facility is allowed, the following standards shall apply:
  - a. Demonstrate that no other practicable access exists.
  - b. The corridor necessary to construct utilities shall be the minimum width practical to minimize intrusion into a significant natural resource.
  - c. Removal of trees and native vegetation shall be avoided unless absolutely necessary. Native vegetation shall be used to restore the vegetative character of the construction corridor.
  - d. The existing grade of the land shall be restored after construction.
  - e. No stockpiling of fill materials, parking or storage of equipment shall be allowed within a significant natural resource.
7. Structures or other non-conforming alterations existing fully or partially within a significant Natural Resource may be expanded provided the expansion occurs outside of a significant natural resource. Substantial improvement of a non-conforming structure in a significant natural resource shall require compliance with the standards of this Chapter.
8. Existing lawn within a significant natural resource may be maintained, but not expanded within the limits of a significant natural resource. Development activities shall not justify replacement of native vegetation, especially riparian vegetation, with lawn.

*D. Vegetation Removal and Replacement.*

1. Removal of non-native vegetation and replacement with native plant species is permitted.
2. The replacement vegetation shall at a minimum:
  - a. Cover the area from which vegetation was removed.
  - b. Maintain or exceed the density of the removed vegetation.
  - c. Maintain or improve the shade provided by the vegetation.

E. Trees in danger of falling and thereby posing a hazard to life or property may be removed, following consultation and approval from a licensed professional, and the Community Development Director or designee.

F. The control or removal of nuisance plants should primarily be by non-chemical means (e.g., hand-pulling).

1. If non-chemical means fail to adequately control nuisance plant populations, environmentally safe herbicides may be used.

2. No pre-emergent herbicides or auxin herbicides that pose a risk of contaminating water should be used.
3. Herbicide applications must be applied according to manufactured specifications.

## HISTORY

Repealed & Replaced by Ord. [1305](#) on 9/27/2022

**17.28.070 VARIANCES**

A variance to the provisions of this Chapter may be applied for to consider claims of map errors verified by DSL, and when necessary to allow reasonable economic use of the subject property. Permanent alteration of the significant natural resource by an action requiring a variance is subject to the mitigation procedures and criteria of this chapter. Variances shall be processed per provisions in Chapter 17.106.

## HISTORY

Repealed & Replaced by Ord. [1305](#) on 9/27/2022

**17.28.080 MITIGATION STANDARDS**

When impacts to any identified significant natural resource occur, mitigation will be required.

A. For impacts to wetlands, the following standards and criteria shall apply.

1. The applicant must obtain a fill and removal permit from the Oregon Division of State Lands and U.S. Army Corps of Engineers.
2. The applicant must provide an approved mitigation plan that complies with all Oregon Division of State Lands and U.S. Army Corps of Engineers wetland regulations.

B. For impacts to riparian corridors, the following standards and criteria shall apply:

1. A mitigation plan prepared by a qualified professional shall be submitted to The City. The mitigation plan shall meet the following criteria:
  - a. Mitigation for impacts to a non-wetlands riparian area shall require a minimum mitigation area ratio of one to one.
  - b. The mitigation plan shall document:
    - (1) The location of the impact.
    - (2) The existing conditions of the resource prior to impact.
    - (3) The location of the proposed mitigation area.
    - (4) A detailed planting plan of the proposed mitigation area with species and density.
    - (5) A narrative describing how the resource will be replaced.
2. Mitigation shall occur on-site and as close to the impact area as possible. If this is not feasible, mitigation shall occur within the same drainage basin as the impact.
3. All vegetation planted within the mitigation area shall be native to the region. Species to be planted in the mitigation area shall replace those impacted by the development activity.

4. Trees shall be planted at a density of not less than five per 1,000 square feet. Shrubs shall be planted at a density of not less than ten per 1,000 square feet.

**HISTORY**

*Repealed & Replaced by Ord. [1305](#) on 9/27/2022*

**17.28.09 PLAN AMENDMENT OPTION**

- A. Any owner of property affected by the NRO Zone may apply for a Zone amendment. The amendment must be based on a specific development proposal. The effect of the amendment would be to remove the NRO Zone from all or a portion of the property. The applicant shall demonstrate that such an amendment is justified by completing an Environmental, Social, Economic and Energy (ESEE) Consequences Analysis prepared in accordance with Oregon Administrative Rules. If the application is approved, then the ESEE analysis shall be incorporated by reference into the applicable Sweet Home Inventory and the Maps shall be amended.
- B. The ESEE analysis shall adhere to the following requirements.
  1. The ESEE analysis must demonstrate to the ultimate satisfaction of the Sweet Home City Council that the adverse economic consequences of not allowing the conflicting use are sufficient to justify the loss, or partial loss, of the resource.
  2. The ESEE analysis must demonstrate why the use cannot be located on land outside of the natural resource area.
  3. The ESEE analysis shall be prepared by a qualified professional experienced in the preparation of Goal 5 ESEE analyses, with review by DLCD.

**HISTORY**

*Repealed & Reenacted by Ord. [1305](#) on 9/27/2022*

## Chapter 18.85

### OVERLAY ZONE – NATURAL AREAS, PARKS AND FLOODPLAINS (OFPG)

Sections:

- 18.85.010 Purpose.**
- 18.85.020 Floodplain – Parks – Greenway overlay zone (OFPG).**
- 18.85.030 Safe harbor protection of wetland and riparian areas.**
- 18.85.040 Compensation for area losses due to setback requirements.**

#### 18.85.010 Purpose.

This chapter sets minimum standards applicable to new development in or adjacent to areas designated as floodplains, greenways, wetlands, and riparian areas. TMC [18.85.020](#) considers the floodway/parks/greenway overlay zone, as established in the Talent comprehensive plan, adopted in 1981. TMC [18.85.030](#) considers locally significant wetlands and riparian areas, as established on the local wetland/riparian inventory map and supporting documentation developed by Atlas Environmental in 1997-1998, and as adopted herein by reference or as later amended subject to the approval of both the city and the Oregon Division of State Lands. TMC [18.85.040](#) establishes policies and procedures allowing some compensation to property owners for constraints on development created by the implementation of these conservation standards. [Ord. 817 § 8-3H.210, 2006.]

#### 18.85.020 Floodplain – Parks – Greenway overlay zone (OFPG).

A. *Description and Purpose.*

1. *Parks and Greenways.* An adequate amount of parkland is necessary to meet recreational and open space needs and to promote the general welfare. Parklands include greenways along Bear and Wagner Creeks and other parks designated and described in the city comprehensive plan. It is the intent of this chapter to support the continued improvement and maintenance of the Bear Creek Greenway, to continue to develop the Wagner Creek Greenway, and to eventually connect the two for an integrated greenway system. Greenway development shall combine pedestrian access with natural features in a way that protects natural areas and wildlife habitat in and around the greenway. Development adjacent to parks shall be designed and constructed in a manner that is compatible with parks, greenways, natural areas and wildlife habitat.
2. *Floodplain.* The OFPG overlay zone may be laid over any other zoning district established by this title where the area is subject to inundation by flooding, as indicated on Federal Emergency Management Agency flood insurance rate map (FIRM) and floodway maps. That is, any area subject to a one percent chance of flooding in any given year, also referred to as the 100-year floodplain. Application of special development standards in floodplains is intended to minimize property loss, personal injury and health hazards.

3. *Aggregate Removal and Fill.* Goal Five of the State Land Use Planning Goals recognizes the importance of maintaining adequate supplies of aggregate materials for development and maintenance of infrastructure. The floodway/parks/greenway overlay zone allows aggregate removal and fill operations in the Bear Creek floodplain. Aggregate removal activities must be conducted, and mined areas must be reclaimed, in a manner that minimizes environmental impacts and protects public health, safety and welfare. Reclamation plans must be completed and approved prior to any removal of gravel. Reclamation plans shall be compatible with park and greenway plans.

B. *Permitted Uses.* Wherever the city has established the floodplain, parks and greenway overlay zone, as established by the comprehensive plan, the land uses permitted are the same uses that are permitted in the underlying zoning district. In addition, fill and aggregate removal operations are permitted within the floodplain of Bear Creek, subject to site development plan and reclamation plan review and a public hearing.

C. *Standards.* All development, including construction, reconstruction, extension, conversion or alteration of any structure or land occurring in the OFPG zone shall comply with the following standards:

1. *Development within the 100-Year Floodplain.*

a. Development within the 100-year floodplain shall conform to the standards of this title and to those of Chapter [15.15](#) TMC, Flood Damage Prevention. At a minimum, development within the floodplain shall be consistent with development standards established for participation in the federal flood insurance program.

b. No new construction, including the placement of mobile homes, is allowed in any designated floodway or within the bed and banks of any stream, except for those uses, such as bridges, that are associated with greenway access or other public facilities. Any such use shall be subject to approval by the Oregon Department of Fish and Wildlife, Division of State Lands, and any other state or federal agency with a jurisdictional interest in the waters of the state.

2. *Yard Setbacks along Greenway Areas.* The greenway protected area is the 35-foot-wide strip of land extending the length of, and on both sides of, the designated floodway. Structural setbacks, as prescribed for the underlying zone, shall be measured from the outer edge of the 35-foot strip. Where a floodway line has not been mapped, the floodway shall be determined by a registered professional engineer at the property owner's expense prior to approval of development permits. Establishment of floodway boundary lines is further regulated by Chapter [15.15](#) TMC, Flood Damage Prevention. This setback provision is in addition to the wetland/riparian setbacks established in TMC [18.85.030](#). Where there is a conflict between the two setbacks, the stricter standard shall apply.

3. Notwithstanding the foregoing subsection [\(C\)\(2\)](#) of this section, a residential structure existing on September 7, 2020, which was destroyed or made uninhabitable by the Almeda Fire, may be reconstructed so long as: (1) the reconstruction is not more nonconforming to subsection [\(C\)\(2\)](#) of this section in comparison to the structure existing on September 7, 2020; (2) no new construction, replacement structure, or substantial improvement is placed in the regulatory floodway; and (3) all other applicable provisions of this code are



followed. The allowance for reconstruction granted by this subsection shall automatically expire if development permits for such reconstruction are not approved by September 1, 2022.

4. *Dedication of Park Land.* To ensure park and greenway lands are provided to meet future recreation and open space needs, as anticipated by the comprehensive plan and as set forth in the OFPG zone, the planning commission may require that land be dedicated to the public for parks or greenway purposes. TMC [18.85.040](#) addresses ways that projects may be designed to compensate property owners for the impacts of dedication and setback requirements.

5. *Site Development Plan Standards.* Site development plan approval on any property where the provisions of this chapter and section apply shall meet all of the development standards included in Chapter [18.150](#) TMC and the following:

- a. All structures, introduced vegetation, and access for vehicles, pedestrians and bicycles shall be designed to support and protect the greenway area as a public place and as wildlife habitat.
- b. All structures, introduced vegetation, and access for vehicles, pedestrians and bicycles shall be designed to provide maximum safety from flooding hazards.
- c. Any development proposed within the designated floodplain shall be designed, and the work site shall be managed, to prevent soil erosion and the deposition of any material into stream channels. Stabilization of soils through planting of vegetation or other techniques shall be used to prevent erosion during and after construction. A registered professional engineer or registered professional geologist shall prepare an erosion control plan to be included with the site grading and drainage plan that is required of all new development. The plan shall include illustrations and/or descriptions of any mitigating measures to be taken to comply with this requirement.

D. *Standards for Aggregate Removal Operations.*

1. *State Permits Required.* All surface mining and aggregate removal operations are required to have permits from the State Department of Geology and Mineral Industries and/or the Department of State Lands.

2. *Aggregate Site Development Standards.* In addition to the required state permits and sufficient information to show compliance with the standards in Chapter [18.150](#) TMC and subsection [\(C\)\(4\)](#) of this section, approval of an aggregate removal development plan is subject to all of the following:

- a. Proposal demonstrates that engineering methods to be used will minimize noise, dust and adverse effects on water quality, and will protect the integrity of stream banks, stream flows, fish and wildlife habitats, and visual quality.
- b. Proposal includes a land reclamation plan showing an end result that will:
  - i. Be compatible with park and greenway plans;
  - ii. Prevent erosion or sedimentation into streams or onto adjacent properties;



- iii. Prevent alteration of stream beds or established floodplains; and
  - iv. That includes stabilization and revegetation of soils and stream banks.
- c. No alterations or effects will be made to the land of adjacent properties that are not included as subject properties in the application.
- E. *Compliance.* Any required dedication, approvals, improvements, standards and/or setbacks must be complied with in a final, approved plan, or provisions made to ensure complete compliance, before any construction or other development permit may be issued.
- F. *Precise Location of Parks and Greenways.* Where parks shown on the OFPG overlay map do not follow property lines, the site represents a general location. The precise location of the greenway line shall be established in the course of preparing an application for, and review of, a development project. Where a floodway line has not been mapped, the floodway shall be determined by a registered professional engineer at the property owner's expense prior to approval of development permits.
- G. *Variations.* Design modification and density compensation for the impacts of these regulations are described in TMC [18.85.040](#). If the TMC [18.85.040](#) provisions are not sufficient to preserve a property right, a variance from the requirements of this section may be granted subject to the variance procedure established in Chapter [18.160](#) TMC. [Ord. 968 § 2, 2021; Ord. 817 § 8-3H.220, 2006.]

### **18.85.030 Safe harbor protection of wetland and riparian areas.**

Safe harbor protection of resources is based upon minimum standards of protection established in OAR [660-23](#) that implement Goal Five of the State Land Use Planning Goals. The purpose of this section is to protect locally significant wetlands and riparian areas, as established on the local wetland/riparian inventory map and supporting documentation adopted herein by reference.

- A. *Description and Purpose.* Safe harbor protections are intended to provide a buffer between locally significant bodies of water and any type of development for the following purposes:
1. The city recognizes the visual benefits of preserving the streams and wetlands in the city.
  2. The city recognizes the environmental benefits of preserving streams and wetlands, including preservation of wildlife habitat and fisheries habitat, improved water quality, and hydrologic control functions.
  3. The city is required by state and federal law to improve the quality of surface waters discharged into streams. Healthy, functioning wetlands and riparian zones are critical parts of surface water quality control.
  4. The city is mandated under Goal Five of the State Land Use Planning Goals to develop and adopt a program to protect and conserve locally significant bodies of water.

B. *Mitigation as an Alternative to the Standards in This Section.* Property owners who wish to develop land that includes wetlands and riparian areas must either comply with the minimum standards in this section, or develop a mitigation plan and implement it under the supervision of the Oregon Division of State Lands (DSL). Where a mitigation project is proposed in lieu of the standards in this chapter, the developer shall submit, with the site development plan application, written verification from DSL that they have reviewed the mitigation plan and that the Division finds it to be sufficient to satisfy state requirements for wetland mitigation. The applicant shall complete the approved mitigation project or guarantee its completion by a bond issued by a bonding company authorized to do business in Oregon, a certified letter of credit or other guarantee acceptable to the city manager prior to issuance of construction permits by the city. Wetlands created or enlarged as mitigation projects shall be added to the wetland and riparian area inventory, and are subject to the regulations in this section.

C. *Designation of Wetland and Riparian Setback Areas.* Wetland and riparian areas that are regulated by this chapter are those locally significant wetlands and riparian areas included on the Talent Wetlands Inventory Map adopted in 1998, and any subsequent amendments to that inventory map approved by the Division of State Lands. Note that the inventory map includes only areas approximately one-half acre and larger. Wetlands less than one-half acre are also subject to state and federal law, and it is the responsibility of the property owner to comply with any applicable regulations.

The boundaries of the wetland/riparian setback area shall be determined using standard setback distances as follows:

1. Along all streams the riparian/wetland setback shall be 50 feet from the top of the bank.
2. For all locally significant wetlands, as determined by the city using the methodology in OAR [141-86-300](#) to [141-86-350](#), the riparian/wetland setback shall be 50 feet from the upland edge of the wetland.
3. This setback provision is in addition to the floodplain/parks/greenway setback established above. Where there is a conflict between the two setbacks, the stricter standard shall apply.

D. *Regulations within Setback Areas.*

1. Vegetation shall not be removed or disturbed in a setback area except for the following:
  - a. Replacement of nonnative vegetation with native plants.
  - b. Removal of vegetation necessary for approved development of water-related or water-dependent uses.
  - c. Removal of a hazard tree. The hazard must be verified by a designee of the city manager and shall include a written report from an independent and certified licensed arborist, not affiliated with the tree(s) removal, that states such tree(s) is a hazardous tree and poses immediate danger to life or property.

If it is determined a tree(s) is a hazard tree, the city manager or his designee may require up to two replacement trees for each hazardous tree to be removed. Such replacement trees shall be planted

within 180 days of removal and shall be of a similar size and canopy, at maturity, as the hazardous tree(s).

d. Mowing of weeds at the end of the growing season to prevent a fire hazard. Clippings of native vegetation should be left in place to promote soil health and reseeding, or used as mulch in bare areas.

2. There shall be no permanent alteration to the setback area by grading, filling, impervious surfaces or structures, except for the following uses, which shall be designed to minimize intrusion into the riparian or wetland area. Any permanent alteration within a setback area is subject to planning approval.

a. Paths;

b. Drainage facilities, utilities and irrigation pumps;

c. Water-related and water-dependent uses; and

d. Replacement or repair of existing structures that does not create any further encroachment into the setback area and that does not disturb any additional wetland or riparian area.

E. *Determination of Streambank Location.* The stream bank is defined as either the top of the bank or the ordinary high water line, whichever is higher. Determination of the stream bank location shall be by the Talent city planner or other designated city employee. In the case of a locally significant wetland, the bank shall be defined as the upland edge of the wetland.

F. *Changing Conditions or Map Error.* Location of a stream bank or upland line may be modified in response to new information. The Division of State Lands may provide technical support including site visits for individual property owners. Commercial developers and developers of large projects, such as subdivisions, may provide studies prepared at their expense to challenge a bank, upland or setback determination. Any such study shall be based upon a methodology consistent with the requirements of OAR [660-23](#). A modification of the wetland inventory map may only be made upon written approval of the Division of State Lands.

G. *Variances.* A variance from the requirements of this section may be granted subject to the variance procedure established in Chapter [18.160](#) TMC. [Ord. 857 § 1, 2010; Ord. 817 § 8-3H.230, 2006.]

### **18.85.040 Compensation for area losses due to setback requirements.**

To minimize adverse impacts on property owners from implementation of the conservation measures required by this chapter, some flexibility in design and density standards may be allowed, as follows:

A. *Residential Development.*

1. Where residential development is proposed and wetland, riparian, and/or floodway/parks/greenway setback area(s) are dedicated for public use, the planning commission may allow a developed density equal to the number of total dwelling units that would have been allowed on the whole tract without the conservation

dedication, as long as structural setbacks, off-street parking and other residential development standards can be met.

2. When conserved density cannot otherwise be accommodated on land outside the dedicated setback area, the lots outside the OFPG zone may be developed at 75 percent of the minimum lot size of the applicable zoning district (e.g., in the RS-5 district 8,000 square feet becomes 6,000 square feet), but only to the extent that permitted density is preserved and it does not create a condition that may be harmful to public health, safety and welfare. This extends the “lot size averaging” principle in TMC [17.15.030\(C\)](#).

3. Where implementation of the required setback area might otherwise prohibit reasonable use of land zoned for residential uses, the planning commission may allow the setback area, dedicated to public use or otherwise, to be applied to the area required for landscaping, recreation area and/or open space, as required in the underlying zoning district and Chapters [18.105](#) and [18.110](#) TMC.

**B. *Commercial, Industrial, or Institutional Development.***

1. Where application of the conservation setback might otherwise prohibit reasonable use of land zoned for commercial, industrial or institutional uses, the planning commission may allow a dedicated greenway area to be applied to the area required for landscaping and/or open space, as required in the underlying zoning district and Chapters [18.105](#) and [18.110](#) TMC.

2. For a multi-unit development for commercial, industrial or institutional uses, when the conservation setback area is dedicated to public use, the planning commission may negotiate special standards for development. Examples of design elements that may be negotiable include setbacks and parking areas. Any such consideration shall include prevention of any condition that might be harmful to public health, safety and welfare. [Ord. 847 § 4 (Exh. B), 2008; Ord. 817 § 8-3H.240, 2006.]

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**The Talent Municipal Code is current through Ordinance 979, passed May 17, 2023.**

Disclaimer: The city recorder’s office has the official version of the Talent Municipal Code. Users should contact the city recorder’s office for ordinances passed subsequent to the ordinance cited above.

[City Website: www.cityoftalent.org](http://www.cityoftalent.org)

[City Telephone: \(541\) 535-1566](tel:(541)535-1566)

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