

# New York State Department of Environmental Conservation

## Division of Environmental Remediation

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Joe Martens  
Commissioner

July 31, 2012

Mr. Salvatore Badalamenti  
United States Environmental Protection Agency  
Region 2  
Emergency and Remedial Response Division  
290 Broadway  
New York, New York 10007-1866

RE: Site Transfer Agreement - Haviland Complex and Haviland Road Site  
EPA ID No. NYD00314059, NYS ID No. 314059

Dear Mr. Badalamenti:

Enclosed is a final signed original of the Site Transfer Agreement for the Haviland Complex and Haviland Road Site a National Priorities List (NPL) site located in the Town of Hyde Park, Dutchess County. The purpose of this Site Transfer Agreement is to effect an orderly transfer of Site Management (Operation, Maintenance and Monitoring) responsibilities from the United States Environmental Protection Agency (EPA) to the New York State Department of Environmental Conservation (NYSDEC).

CERCLA requires a State to assure all further maintenance of a remedial action provided for the expected life of such action. CERCLA further defines when EPA's Fund-lead remedial action ends and the State-lead operation and maintenance (O&M) begins for ground or surface water restoration measures. The NCP states, "For Fund-financed remedial actions involving treatment or other measures to restore groundwater or surface water quality to a level that assures protection of human health or the environment, the operation of such treatment or other measures for a period of up to ten years after the remedy becomes operational and functional will be considered part of the remedial action." The NCP further states, "Activities required to maintain the effectiveness of such treatment or measures following the ten-year period, or after the remedial action is complete, whichever is earlier, shall be considered O&M." The State is responsible for O&M. The transfer is effective as of **July 20, 2012**.

This Agreement is the result of a cooperative effort between NYSDEC and EPA to describe the process of transferring Site Management responsibilities for this site from EPA to NYSDEC. The Site Management responsibilities at the Haviland Complex Site consists of monitoring the groundwater until such time as the remedial action objectives for groundwater are met. This Agreement also defines the responsibilities of EPA and NYSDEC after this transfer occurs.

The NYSDEC project manager for this site is David Gardner. Please refer any questions and provide any additional information concerning the site that EPA generates to his attention at 518-402-9814 or [drgardne@gw.dec.state.ny.us](mailto:drgardne@gw.dec.state.ny.us).

Sincerely,



Susan Edwards, P.E.  
Chief, Remedial Section D  
Remedial Bureau E  
Division of Environmental Remediation

Enclosure

cc: w/Enc.: D. Garbarini, USEPA, Region 2  
K. Willis, USEPA, Region 2  
R. Schick, NYSDEC  
M. Cruden, NYSDEC  
D. Gardner, NYSDEC  
E. Moore, NYSDEC, Region 3  
C. Bethoney, NYSDOH

## SITE TRANSFER AGREEMENT

Between the U.S. Environmental Protection Agency, Region II and  
the New York State Department of Environmental Conservation

on behalf of the State of New York

for the

Transfer of Fund-Lead Long Term Remedial Action Responsibilities

to State-Lead Operation and Maintenance

for the Haviland Complex Superfund Site

EPA ID. No. NYD00314059

### **I. Purpose**

The purpose of this Site Transfer Agreement (“Agreement”) is to memorialize the transfer of responsibilities from the United States Environmental Protection Agency’s Fund-lead remedial action to New York State’s State-lead operation and maintenance (“O&M”) of the remedy selected in a September 28, 1987 Record of Decision (“ROD”), as amended on August 1, 1997, for the Haviland Complex Superfund Site, Haviland Road, Hyde Park, Dutchess County, New York (the “Site”). The terms of this Agreement are applicable only to the unique circumstances of the Haviland Site.

### **II. Definitions**

A. “CERCLA” shall mean the Comprehensive Environmental Response, Compensation, and Liability Act of 1980, as amended, 42 U.S.C. §§ 9601–9675.

B. “Effective Date” shall mean the date this Agreement is signed by the Commissioner of the New York State Department of Environmental Conservation (or his delegatee).

C. “EPA” shall mean the United States Environmental Protection Agency and any successor departments or agencies of the United States.

D. “Long-Term Remedial Action” or “LTRA” shall mean the ten-year period after the date that EPA determines the Site remedy is Operational and Functional.

E. “NYSDEC” shall mean the New York State Department of Environmental Conservation and any successor departments or agencies of the State.

F. “Operational and Functional” shall mean the remedial systems have been built, operated, and adjusted for a sufficient period of time to determine that the system is functioning as designed.

G. "Operation and maintenance" or "O&M" shall mean the maintenance and monitoring required to be performed and funded by the State following the completion of the Remedial Action. NYSDEC refers to "O&M" as "Site Management."

H. "Remedial Action" shall mean those activities, other than operation and maintenance, undertaken for the purpose of implementing the remedy selected in EPA's ROD for the Site.

I. "Remedial Action Objectives" shall mean the specific goals for protecting human health and the environment set forth in EPA's ROD for the Site.

J. "ROD" shall mean the EPA Record of Decision relating to the Haviland Complex Superfund Site, originally signed on September 29, 1987, and amended on August 1, 1997, by the Regional Administrator, EPA, Region II, or his delegate, and all attachments thereto.

K. "Haviland Complex Site" or "Site" shall mean the Haviland Complex Superfund Site, which includes approximately 275 acres of property located on Haviland Road, Hyde Park, Dutchess County, New York, and all contamination emanating therefrom, as generally depicted on Figure 1 (Site Map), attached as **Appendix A**.

L. "State" shall mean the State of New York, including its agencies, departments and instrumentalities.

### **III. Background**

Section 104(c)(3) of CERCLA, 42 U.S.C. §9604(c)(3) requires a state to assure all future maintenance of a remedial action provided for the expected life of such action. Section 104(c)(6) of CERCLA, 42 U.S.C § 9604(c)(6), further defines when EPA's Fund-lead remedial action ends and the State-lead O&M begins for ground or surface water restoration measures.

Section 300.435(f)(3) of the National Oil and Hazardous Substances Pollution Contingency Plan ("NCP"), 40 CFR § 300.435(f)(3), states "[F]or Fund-financed remedial actions involving treatment or other measures to restore ground water or surface water quality to a level that assures protection of human health and the environment, the operation of such treatment or other measures for a period of up to 10 years after the remedy becomes operational and functional ("O&F") will be considered part of the remedial action." Section 300.435(f)(3) of the NCP further states, "Activities required to maintain the effectiveness of such treatment or measures following the ten-year period, or after the remedial action is complete, whichever is earlier, shall be considered O&M." The State is responsible for O&M. This document describes the respective tasks required of EPA and the State.

This Agreement is entered into in accordance with CERCLA and the NCP. Any deviation from the requirements of CERCLA and the NCP, which are either stated or implied by this agreement, shall be null and void. This document is also intended to be in accordance with EPA and NYSDEC Division of Environmental Remediation guidance documents.<sup>1</sup>

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<sup>1</sup> "Transfer of Long-Term Response Action (LTRA) Projects to States", OSWER Directive 9355.0-81FS-A, July 2003,

## IV. Transfer Agreement

**A. Applicability.** This Site Transfer Agreement applies only to the Haviland Complex Site.

**B. Site History.** The Site is a Fund-financed National Priorities List (“NPL”) site. The Site first gained attention when a local resident called the Dutchess County Health Department and reported sudsy foam in their tap water. The Remedial Investigation determined that an upgradient dry cleaner and laundry in the Haviland Complex had a faulty septic system. In 1987, the EPA selected a remedy to provide an alternate water supply, remediate the source of contamination, and to extract and treat contaminated groundwater; which was documented in a Record of Decision (ROD). In 1990, the EPA cleaned out contaminated materials from the local septic disposal systems as the source control measure. EPA had been working with the Town of Hyde Park to arrive at a suitable plan for providing alternate water to the affected residents. However, the levels of contaminants in the aquifer, and therefore the affected residential wells, decreased to levels that were near or below state and federal drinking water standards (i.e., Maximum Contaminant Levels (MCLs)) and the existing point-of-use treatment systems provided full protection from exposure to the remaining contamination. All Site-related contamination was expected to be below MCLs within five years. As a result, EPA evaluated the data and presented a plan to the community in September 1996 which proposed that the groundwater treatment and alternate water supply portions of the remedy were no longer warranted to protect human health and the environment and the contamination is expected to naturally attenuate. The ROD was amended on August 1, 1997 to reflect this approach. EPA installed additional monitoring wells in February 1999. The Dutchess County Department of Health has installed a public water system into the area as part of a County-wide plan. The NYSDEC connected the affected homes to this system in Summer 2000. The Long Term Remedial Action was completed on July 31, 2007.

The groundwater is being monitored to ensure that the amended remedy is protective. Results of the last round of sampling, which was performed in November 2011, shows that the Site-related contamination has attenuated to levels very near or below MCLs.

**C. Funding and Performance of O&M.** On June 19, 1989, the State entered into a State Superfund Contract with EPA for the Haviland Complex Site (the “Site SSC”) which provided in paragraph H., Operation and Maintenance, that the State would provide all O&M for activities described therein. Pursuant to the Site SSC and this Site Transfer Agreement, the State shall be solely responsible for funding O&M activities, and ensuring performance of the O&M. Nothing herein shall supersede the provisions of the Site SSC and any amendments thereto.

**D. Site Inspections.** The State hereby agrees to provide EPA with 45 days advance notice of periodic inspections of the Site to be performed by the State after the Effective Date, in order to provide EPA an opportunity to participate in such inspections.

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EPA 540-F-01-021; and “*Operation and Maintenance in the Superfund Program*”, OSWER 9200.1-37FS, May 2001, EPA 540-F-01-004. See also “DER-10, *Technical Guidance for Site Investigation and Remediation*”: Chapter 6 *Site Management, Periodic Review and Closeout*.

**E. Transfer Schedule.** The State and EPA agree that the responsibilities for O&M of the remedy are transferred from EPA to the State. The State will commence O&M responsibilities on the Effective Date. A Transfer Schedule is included as **Appendix B**.

**F. Transfer of Records.** EPA will provide necessary Site-related documents, which are not already in the State's possession, to the State on or before the Effective Date. Records to be transferred in accordance with this paragraph are listed in **Appendix C**. These records will be provided in electronic and/or hard copy, as available.

**G. Progress Reports.** The State will submit Site reports of monitoring data to EPA on an annual basis beginning one year after the Effective Date. A suggested monitoring plan for the Site is set forth in **Appendix E**. However, if the sampling frequency is decreased, the reporting frequency may be adjusted commensurate with the sampling events. The reports will be submitted to EPA not later than 90 days after the last sampling event in the calendar year in which the monitoring is performed.

**H. Five-Year Review Reports.** EPA will continue to perform Five-Year Reviews at the Site, pursuant to Section 121(c) of CERCLA, 42 USC Section 9621(c), until such time that such reviews are no longer required. The last Five-Year Review was completed on September 27, 2007. EPA will notify the State at least nine (9) months prior to the due date for a Five-Year Review that a Five-Year Review will be performed. In coordination with EPA, the State will conduct the following activities at least six months prior to the due date for a Five-Year Review:

1. Review monitoring data for the Site;
2. Summarize Site Management experience;
3. Conduct a Site visit to review remedy implementation; and
4. Identify further response actions or corrective actions that should be conducted.

EPA will provide the State with an opportunity to comment on the draft Five-Year Review Report at least thirty (30) days before the Five-Year Review Report becomes final. EPA will provide the State with a copy of the Five-Year Review Report once it is finalized.

**I. Training.** EPA expects that no training of State personnel will be necessary since only groundwater sampling is to be performed at the Site. A joint EPA/State site visit will be performed prior to the Effective Date.

**J. EPA-Owned Property and Equipment.** The EPA-installed monitoring wells at the Site are considered real property which has a negligible independent value outside of the Haviland Complex Site and therefore, has no value to the United States. An inventory listing of the monitoring wells is provided in **Appendix D**. Attached as **Appendix F** is a determination by the EPA Region 2 Property Officer that all equipment and property has a negligible value outside of the Site, and therefore, has no value to the United States. There will be no requirement for transfer of funds to EPA upon demolition or dismantling of the Remedial Action.

**K. Community Involvement.** EPA will provide the State with its most recent mailing list for the Site.

**V. Change of Site Status**

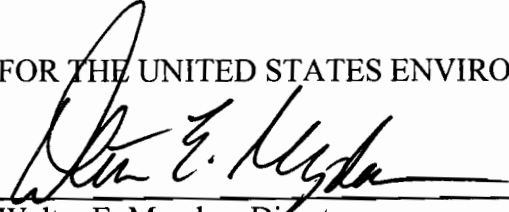
**A. Technical Impracticability Waiver.** Section 121(d)(4) of CERCLA, 42 U.S.C. §9621(d)(4) allows for a technical impracticability waiver. The State may apply for a Technical Impracticability Waiver in accordance with Section 121(d)(4), 40 CFR Section 300.430(f)(1)(ii)(C)(3), and EPA guidance. If EPA, in consultation with the State, determines that the Remedial Action Objectives cannot be met because they are technically impracticable from an engineering perspective, EPA may modify the ROD.

**B. Shutdown and Closure of Remedial Action and/or the Site.** The Remedial Action is considered complete when two consecutive rounds of annual sampling indicate that the remedy has fully achieved the Remedial Action Objectives identified by the ROD or any modification or amendment thereto.

**C. Deletion of Site from National Priorities List.** The Site will be deleted from the National Priorities List by EPA after Remedial Action Objectives have been achieved, and in accordance with 40 CFR Section 300.425(e) and EPA's guidance "Close Out Procedures for National Priorities List Site", OSWER Directive 9320.2-09A-P, January 2000, EPA/540/R-98-016.


In witness whereof, the parties hereto have executed this Site Transfer Agreement for the Haviland Complex Superfund Site in two (2) copies, each of which shall be deemed an original.

FOR THE UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

  
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Walter E. Mugdan, Director  
Emergency & Remedial Response Division

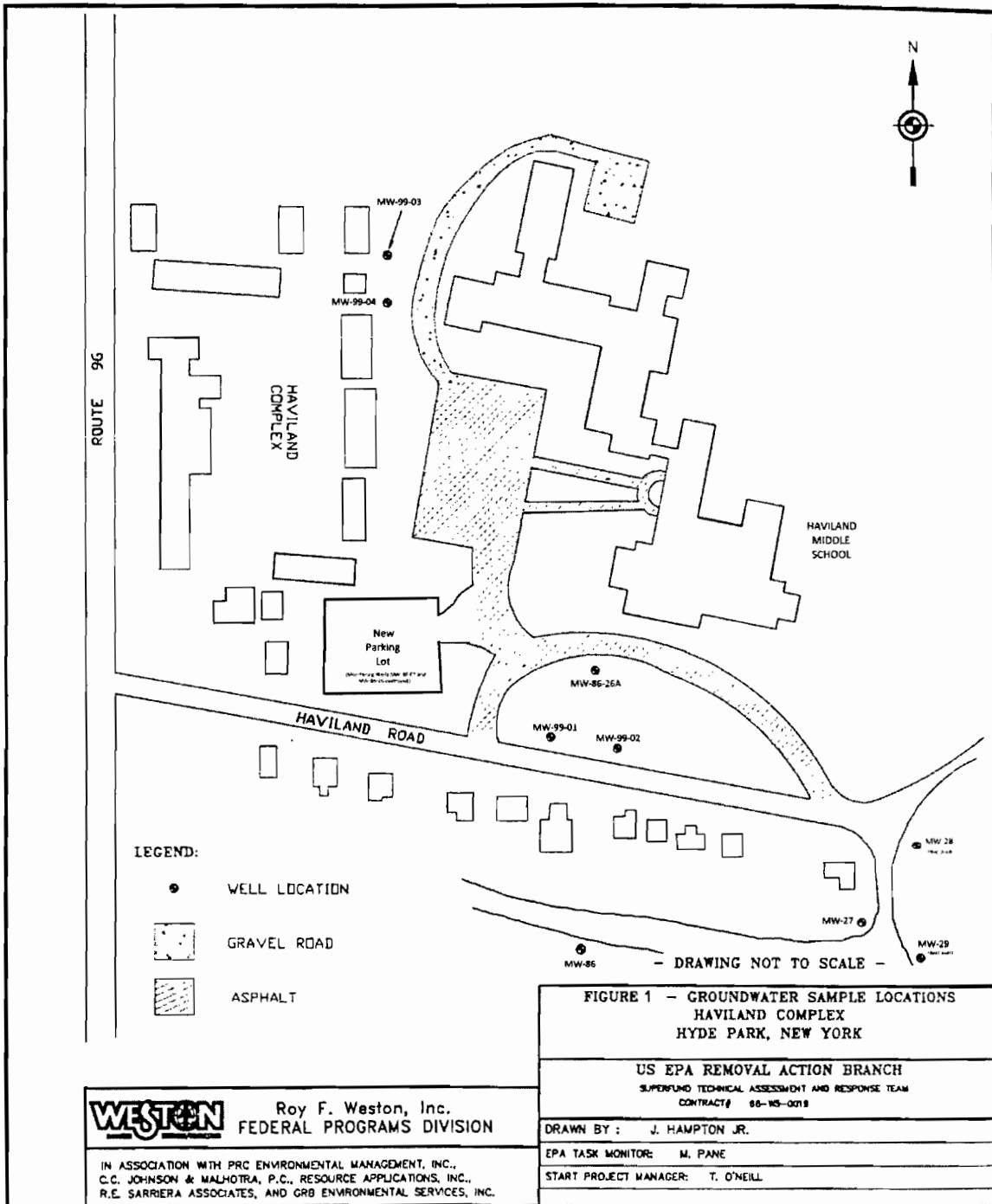
  
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FOR THE STATE OF NEW YORK

  
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Joseph Martens, Commissioner  
New York State Department of Environmental Conservation

  
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DATE

# Appendix A Site Map





**Appendix B**  
**Transfer Schedule for EPA's LTRA to New York State O&M**  
**at the Haviland Complex Superfund Site**

<b>Transfer Schedule EPA ID Number: NYD00314059 Haviland Complex Site, Hyde Park, NY</b>	
<b>Task</b>	<b>Actual Date(s) / Status</b>
EPA Determines O&F Date: <u>08/01/97</u>	Completed
State Reviews its Site Management Contract	To Be Performed
EPA Develops and Provides Equipment Disposition List for State Tracking	Completed
Transfer Agreement Signed by EPA and New York State DEC	To Be Performed
State Assumes Management of Site	Upon Effective Date
DEC Prepares Monitoring Reports Annually After the Effective Date	To be Performed
EPA Completes Next Five-Year Review	By 6/30/2012
EPA Transfers Equipment and Property to State	Upon Effective Date

**Appendix C:**  
**List of Site-Related Records**

1. Groundwater Sampling Data and associated reports (including monitoring well construction and boring log information if available)
2. Community Relations mailing list
3. Haviland Complex Site Fact Sheet
4. Haviland Complex Site 1990 Record of Decision
5. Haviland Complex Site 1997 Record of Decision Amendment

**Appendix D - Equipment To Be Transferred to State**

**Haviland Complex Site - Inventory**

ITEM DESCRIPTION	
4-inch diameter stainless-steel monitoring wells	4
2-inch diameter stainless-steel monitoring wells	3
2-inch diameter PVC monitoring wells	2

## **APPENDIX E**

### **LONG-TERM MONITORING PLAN FOR THE HAVILAND COMPLEX SITE**

- A. Groundwater Sampling and Analysis is to be conducted annually at the Haviland site. The monitoring wells to be sampled include MW-99-01, MW-99-02, MW-99-03, MW-99-04, MW-86-26, and MW-86-24A (see Appendix A).
- B. The analysis of the groundwater sample should include full scan Volatile Organic and Semi-Volatile Organic Compounds in order to observe the Contaminants of Concern for the Haviland Site.
- C. The aforementioned wells are to be sampled in accordance with the USEPA Region 2 Division of Environmental Science & Assessment Monitoring & Assessment Branch Standard Operating Procedures for Field Activities or the NYSDEC equivalent.
- D. Trends of the contamination levels observed in these wells are to be tabulated for analysis. These results will be used to determine whether Natural Attenuation, the remedy selected in the 1997 ROD Amendment, has remediated the Site conditions.

**APPENDIX F**

**GOVERNMENT PROPERTY TRANSMITTAL MEMO**

**FINDINGS AND DETERMINATION  
DISPOSITION OF U.S. GOVERNMENT PROPERTY  
AT THE HAVILAND COMPLEX SITE  
EPA ID No. NYD00202284**

**Findings:**

The site requires additional monitoring. EPA shall continue to perform five year reviews at the site pursuant to section 121(c) of CERCLA, 42 U.S.C. 9621(c) until such time as reviews are deemed to be no longer necessary. The monitoring program is designed to monitor the pollutants at the site. All of the equipment is permanently installed and is necessary to continue to monitor the site contamination. Removal the monitoring wells would moreover jeopardize the ability of EPA and the State of New York to monitor the site and identify further response or corrective actions that may be necessary.

Upon completion of the cleanup, the monitoring wells in use at the site, some which were installed in 1986, (25 years ago), the value of equipment is determined to be below salvage value. The duration of the remediation effort in this case is by itself a sufficient period of time for the depreciation of the equipment to have reached salvage value by age alone.

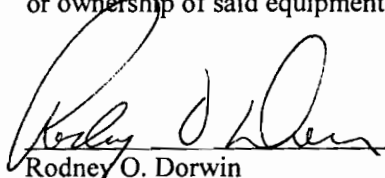
Transferring ownership of the equipment to New York State will serve the best interests of both the federal and state governments as it will provide the means to allow the State to carry out the ongoing monitoring of the site and will effectively allow EPA to avoid significant costs of maintaining the equipment as well as the future costs associated with the dismantling and disposal of the property in question.

**Determination:**

The substantial government investment at the Haviland Complex site is integral to monitoring the site and determining what if any additional action may be necessary to remediate the site in the future. The equipment is therefore currently fulfilling the intent of CERCLA legislation to clean up contaminated sites and protect public health. It is therefore determined that removal of the equipment would be considered to be contrary to the interest of the government as such action would jeopardize the ultimate remediation effort at the site. Effectively the government cannot reasonably expect to realize any significant reimbursement for the monitoring wells without violating the congressional intent in authorizing the CERCLA law.

Under the terms of the agreement between New York State and EPA when the clean up and monitoring of the site has been completed, the monitoring wells shall be properly decommissioned at the expense of the State of New York, who has agreed to bear all costs associated with the dismantling and disposal of the equipment.

Since it is my determination that the government property at the Haviland Complex site has a negligible independent value outside the specific remediation of the site and that the State of New York will be required to bear all expenses for the operation of the equipment for the remainder of the remediation effort, as well as all costs incurred for the future disposal of the equipment, I find it is in the best interests of the government to transfer the title or ownership of said equipment to the State of New York.



Rodney O. Dorwin  
Region 2 Property Officer  
Chief, Facilities and Administrative Management Branch

4/24/12  
Date

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