November 1, 2013

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RE: Application No.: NE-12-022, Transmittal No.: X254064, Comments on Draft PSD Permit and Proposed Air Quality Plan Approval for Footprint Power Salem Harbor Development LP

Dear Mr. Buttaro:

Conservation Law Foundation ("CLF") and the undersigned organizations and individuals hereby provide these comments on the draft Prevention of Significant Deterioration Permit, Proposed Air Quality Plan Approval and Proposed Section 61 Findings issued regarding the above-referenced project on September 9, 2013. These comments are intended to supplement the comments already submitted during the public hearing that was held on October 10, 2013. CLF also received additional information from the Department in response to a public records request on Monday, October 28, 2013, and additional information regarding the air dispersion modeling from Footprint Power Salem Harbor Development LP on Wednesday, October 30, 2013. CLF and the undersigned organizations and individuals may seek leave to provide supplemental comments based upon these materials after having the opportunity to fully review them.

I. The Permit and Application Do Not Properly Conduct BACT Analyses

CLF-1

MassDEP entered into an "Agreement for Delegation of the Federal Prevention of Prevention of Significant Deterioriation (PSD) Program by the United States Environmental Protection Agency, Region 1 to the Massachusetts Department of Environmental Protection" ("Delegation Agreement) on April 11, 2011. Exhibit 1. Under that Delegation Agreement, the MassDEP agreed to implement and enforce 40 C.F.R. 52.21 as of July 1, 2010 and with respect to PM2.5 increments, the amendments of October 20, 2010. Exhibit 1 at 1. In addition, the Delegation Agreement provides:

E. MassDEP will follow EPA policy, guidance, and determinations as applicable for implementing the federal PSD program, whether issued before or after the execution of this Delegation Agreement, including:

1. PSD policy, guidance, and determinations issued by EPA. EPA will provide MassDEP with copies of EPA policies, guidance, and determinations through the Region 7 NSR database and/or hard copies where appropriate and will collaborate with MassDEP as necessary regarding interpretations of EPA policies, guidance and determinations. Where no current EPA policy or guidance clearly covers a specific situation, MassDEP shall consult with the EPA, Region 1, Office of Ecosystem Protection, Air Planning Branch, Air Permits, Toxics and Indoor Air Unit if it has questions on the interpretation of the EPA regulations.
2. The requirement to identify and address, as appropriate, disproportionately high and adverse human health or environmental effects of federal programs, policies, and activities on minority and low-income populations, as set forth in *Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations*, Exec. Order 12,898, 59 Fed. Reg. 7,629 (Feb. 16, 1994).

F. MassDEP will at no time grant a waiver to the requirements of 40 CFR 52.21 or to the requirements of an issued PSD permit.

Major new sources and major modifications to existing major sources are required to apply BACT pursuant to the PSD regulations at 40 C.F.R. § 52.21(j)(2) and (3). BACT is defined as "an emissions limitation... based on the maximum degree of reduction for each pollutant subject to regulation under [the Clean Air] Act which would be emitted from any proposed major stationary source or major modification which the Administrator, on a case-by-case basis, taking into account energy, environmental, and economic impacts and other costs, determines is achievable for such source or modification through application of production processes or available methods, systems and techniques... for control of such pollutant." 40 C.F.R. § 52.21(b)(12); Clean Air Act (CAA) §169(3). In addition, BACT can be no less stringent than any applicable NSPS or MACT standard. Id.

Massachusetts has its own definition of BACT for the purposes of implementing its Comprehensive Plan Approval program under 310 CMR 7.02. Under that program, a source may propose an emission control limitation in lieu of an emission-unit-specific top-down BACT analysis, including reliance upon action issued by the Department, also known as "Top Case BACT.". See 310 CMR 7.02(8)(a)2.a. Based upon Footprint Power's application, it appears that Footprint Power relied upon the MassDEP "Top Case BACT Guidelines for Combustion Sources" to establish several of its proposed BACT limits for the PSD permit. See Salem Harbor Redevelopment Project, Comprehensive Plan Approval Application, at 5-1, 5-3, 5-4, 5-5; See also MassDEP Draft PSD Permit Fact Sheet, at 9.

The BACT analysis required under 40 C.F.R. 52.21 does not allow for this type of BACT by proxy; instead, it has been held repeatedly to require a unit-specific, case-by-case analysis that establishes a BACT limit that is "tailor-made" for each source and each pollutant. See In re City of Palmdale (Palmdale Hybrid Power Project), PSD Appeal No. 11-07, EAB, 2012 WL 4320533 (E.P.A.) Sept. 17, 2012, citing In re Prairie State Generating Co., 13 E.A.D. 1, 12 (EAB 2006), aff'd sub. nom, Sierra Club v. U.S. EPA, 499 F.3d 653 (7th Cir. 2007); In re Three Mountain Power, LLC, 10 E.A.D. 39, 47 (EAB 2001); Knauf I, 8 E.A.D., at 128-29. Therefore, the applicant should be required to provide and MassDEP should conduct new BACT analyses for any and all of the pollutants for which the applicant relied upon MassDEP's Top Case BACT guidance to ensure that the requirements of the federal regulations are met, and MassDEP should include more detailed information consistent with the requirements of 40 C.F.R. 52.21 regarding its analysis and justification for the BACT emissions limits that were ultimately set. CLF-1

The establishment of BACT emission limits in the draft PSD permit in a manner which is inconsistent with 40 C.F.R. 52.21 constitutes an error of law by it relying upon the less stringent Massachusetts BACT standard and the MassDEP BACT guidance rather than implementing the legal requirements for BACT analysis set forth at 40 C.F.R. 52.21 as required by the Delegation Agreement. As discussed more fully below, this results in a Draft PSD permit with BACT limits that are invalid as a matter of law because they were not properly developed in accordance with the Delegation Agreement, the requirements of 40 C.F.R. 52.21, and the requirements of the Clean Air Act, 42 U.S.C. §7479(3).

II. Proposed gas turbine emission limits: 2 ppm NOx, 2 ppm CO, 1 ppm VOC (no duct firing), 1.7 ppm VOC (duct firing), 2 ppm NH3

The draft PSD permit establishes a CO limit of 2.0 ppmvd @ 15% O2 without conducting the proper BACT analysis, as described above. See Draft PSD Permit at Table 2, at 5. The draft PSD permit also establishes a VOC limit of 1.0 ppmvd @ 15% O2 without duct firing and 1.7 ppmvd @ 15% O2 with duct firing without conducting the proper BACT analysis as described above. See Draft PSD Permit at Table 2, at 6.

MassDEP clearly relied upon the Massachusetts Top Case BACT Guidelines in establishing the CO limit rather than implementing the federally required case-by-case BACT analysis. See MassDEP Draft PSD Fact Sheet at 12 ("Footprint proposes that the SHR Project will achieve CO emissions of 2.0 ppmvdc, which matches the top level of control for CO emissions as specified in the June 2011 MassDEP Top Case BACT Guidelines for combustion turbine combined cycle units firing natural gas."). Although the Fact Sheet also references two other recent projects, it does not indicate that a full BACT analysis was conducted. Thus, the CO BACT limit is invalid as a matter of law because it was derived in reliance upon the less stringent Massachusetts standards rather than in accordance with the federal regulations and laws governing BACT analysis. CLF-2

In addition, permit applications with lower CO and VOC limits are under review. See March 2013 Cove Point LNG export project air permit application, for example. The project includes two GE Frame 7EA gas turbines. The proposed Cove Point GE gas turbine CO limit is 1.5 ppm. The proposed gas turbine VOC limit is 0.7 ppm.

Table 1. Gas Turbine Emission Limits at Proposed Cove Point (MD) LNG Export Project.

Emissions Source	Pollutant	Control Technology	Emission Rate[1]
GE 7EA Turbines (2)	NO_x NO_2	Selective Catalytic Reduction (SCR)	2.5 ppmvd
	CO	Oxidation Catalyst	1.5 ppmvd
	VOC	Oxidation Catalyst	0.7 ppmvd

Reducing the gas turbine CO limit from 2.0 ppm to 1.5 ppm would reduce projected Footprint Power CO emissions by more than 20 tpy. Reducing the gas turbine VOC limit from either 1.0 ppm (no duct firing) or 1.7 ppm (duct firing) to 0.7 ppm, under either no duct firing or duct firing, would reduce projected Footprint Power VOC emissions by at least 8 tpy.

Footprint Power and MassDEP provide no explanation why the proposed VOC emission rate is increased during duct firing while the 2 ppm CO limit is not increased during duct firing. Both CO and VOC are "products of incomplete combustion," and would generally be expected to increase or decrease in tandem. No justification has been offered for increasing the VOC limit during duct firing while leaving the CO limit unchanged. CLF-3

Further, Table 2, Footnote 2 explains that the emissions rates are based on burning natural gas in any one combustion turbine at a maximum natural gas firing rate of 2,449 MMBtu/hr, HHV, at 90 F ambient temperature, 14.7 psia ambient pressure, and 60% ambient relative humidity (combustion turbine and duct burner combined). Thus, the limits provided for the unit with and without duct firing don't appear to provide a clear indication of the differences for each limitation with and without duct firing. We request that this information be included in the final permit. CLF-4

III. Gas turbine start-up and shutdown emissions

Both GE and Siemens market rapid response combined cycle gas turbine power plants. Footprint Power will utilize GE Frame 7FA gas turbines. The unfired heat input to the Siemens SGT6-5000F turbine, at 2,096 MMBtu/hr, is very similar to the 2,130 MMBtu/hr unfired heat input to the GE Frame 7FA to be used at Footprint Power.[1,2] The draft air permit allows up to 89 lb of NOx per startup event over a period of up to 45 minutes. The NOx emissions limit during normal operations is 18.1 lb/hr. Therefore NOx emissions during an hour that includes a startup would be:

89 lb + (0.25 hr/1 hr)(18.1 lb/hr) = 93.5 lb per startup hour.

[1] SCAQMD, El Segundo Power, LLC, Addendum to Determination of Compliance, February 29, 2008, p.1, attached as Exhibit 2.

[2] MassDEP, Footprint Power Salem Harbor Development LP Draft PSD Permit Fact Sheet, Table 2, footnote, p. 7.

In contrast, the Siemens rapid response combined cycle power plant emits up to 24 lb of NOx over an uncontrolled 12-minute startup. The remaining 48 minutes of the startup hour would be at the controlled normal operations NOx emission rate of 15.44 lb/hr per turbine. Therefore, according the SCAQMD, based on its review of the Siemens fast response turbine startup NOx emission rate, the maximum NOx emissions during a startup hour would be:

24 lb + (0.80hr)(15.44 lb/hr) = 36.4 lb/hr.

The draft PSD permit indicates that up to 206 startups will occur each year on each combustion turbine.[3] Therefore 11.8 tons per year of additional startup NOx emissions would be avoided by either (1) use of the Siemens rapid response turbine or (2) reducing the NOx startup limit for the GE turbine selected by Footprint Power to an equivalent level. CLF-5

2 turbines × (206 startup/hr per turbine/yr) × [(93.5 lb/hr – 36.4 lb/hr)/(2,000 lb/ton)] = 11.8 tpy

Moreover, although the MassDEP Draft Permit Fact Sheet indicates that the proposed startup and shutdown emissions limits represent BACT, it provides no basis for this conclusion. CLF-6 Again, MassDEP has failed to meet the requirements established by the Delegation Agreement, the federal regulations and the Clean Air Act regarding BACT analysis. Therefore, the MassDEP committed an error of law and the current BACT limits for startup and shutdown are invalid.

IV. Auxiliary boiler emission limits: 9 ppm NOx, 47 ppm CO, 11.8 ppm VOC

The auxiliary boiler is permitted to operate 6,570 hours/year. The auxiliary boiler will be permitted to operate on a base load, round-the-clock schedule. Yet the proposed emission limits are high and represent what would be expected for back-up combustion equipment. Footprint Power erroneously cites to the June 2011 MassDEP BACT guideline document as the basis for the auxiliary boiler limits. As noted above, use of the MassDEP guidance is contrary to the Delegation Agreement, the federal regulations, and the Clean Air Act. Therefore, the BACT emissions limit established for the auxiliary boilers was based upon an error of law and is invalid. CLF-7

In addition, the one BACT example used in the BACT guideline document is for a boiler greater than 50 MMBtu/hr heat input. Here is the relevant excerpt from the BACT guideline document (p. 5):

> ***Case Study:*** *In the recent past, boiler manufacturers have developed "ultra-low NOx burners" (ULNBs) which can achieve an oxides of nitrogen emission rate of 9 parts per million (ppm4). Before the advent of ULNBs, BACT for NOx for boilers with capacity above approximately 50 million British thermal units per hour was achieved by the use of Selective Catalytic Reduction (SCR) to reduce NOx emissions to 5 ppm, accompanied by a 5 ppm ammonia (NH_3) slip. When analyzing the incremental cost of using SCR to reduce the 9 ppm NOx emission rate attained by ULNB to reach a 5 ppm NOx emission limit, it became readily apparent that requiring SCR with added NH_3 emissions would be economically infeasible, on a dollar-per-ton-of-pollutant-removed basis. Therefore, NOx BACT for this category of emission units is now 9 ppm, with no NH_3 emissions.*

[3] MassDEP Fact Sheet, Table 2, footnote 1, p. 7.

What the MassDEP provides in the BACT guideline document is a historical example, not a rigorous 2013 top-down BACT analysis for the Footprint Power auxiliary boiler. The 2011 example presumes that the best performance possible for an SCR on a boiler greater than 50 MMBtu/hr is 5 ppm NOx and 5 ppm ammonia slip. In contrast, the two gas turbines at Footprint Power have proposed NOx and ammonia limits of 2 ppm. There is no dispute that 2 ppm NOx and 2 ppm ammonia slip is achievable when located in the waste-heat boiler of a combined cycle unit. If SCR is available with 2 ppm NOx and 2 ppm ammonia slip limits for the auxiliary boiler, SCR would be BACT for the Footprint Power auxiliary boiler and consistent with the 2011 MassDEP BACT guideline document. Nonetheless, the MassDEP is still obligated by the Delegation Agreement and the federal regulations to conduct a case-by-case BACT analysis rather than simply relying upon its less stringent guidance document. CLF-8

The CO and VOC limits proposed in the draft air permit for the auxiliary boiler are high at 47 ppm and 11.8 ppm respectively. The draft air permit does not indicate that any case-by-case BACT analysis, as required by the Delegation Agreement and federal regulations, was conducted, nor does it even attempt to rely on the MassDEP BACT guideline document example to justify these high limits. Nor does the draft air permit acknowledge that the reason the proposed ultra-low burner can meet a 9 ppm NOx limit is by reducing the excess air to the burner to a minimum, which has the side effect of increasing products of incomplete combustion, CO and VOC, substantially. An oxidation catalyst on the auxiliary boiler would solve this CO and VOC emissions problem. Nor does the permit adequately explain the analysis for the NOx and VOC limits. CLF-9

As a result, the current BACT limit for CO for the auxiliary boiler is based upon an error of law and is invalid.

V. **Other Issues**

Particulate Matter

Currently the permit establishes parametric monitoring as the primary method for ensuring compliance with the PM/PM10/PM2.5. Footprint should be required to install PM CEMS which are commercially available and have been installed on at least one electric generating unit operating in the Commonwealth (Mt. Tom Station) and are being required for two other electric generating units in the Commonwealth (Brayton Point and Palmer Renewable Energy). Particulate matter is one of the most deadly pollutants emitted from power plants, and should be monitored continuously to ensure compliance. The permit should also distinguish between filterable and condensable limits for PM. CLF-10

With respect to the PM limits themselves, it appears that the BACT analysis required by the Delegation Agreement, the federal regulations and the Clean Air Act, as referenced above, was not implemented. MassDEP appears to have relied upon the top case BACT Guidance to establish that a rate of 0.0067 lbs/MMBtu and 0.0071 lbs/MMBtu would constitute BACT. See MassDEP Draft PSD Fact Sheet at 12-13. However, the most recent PSD permit issued by the EPA in Massachusetts determined that BACT was 0.004 lbs/MMBtu. Id. MassDEP failed to provide sufficient information for its conclusion that the PSD permit issued by Region 1 EPA for CLF-11

the Pioneer Valley Energy Center Project which included an emissions limit of 0.004 lbs/MMBtu would not be achievable and should not represent BACT for this facility. See MassDEP Draft PSD Permit Fact Sheet at 13. Rather than relying upon the MassDEP guidance and the performance of a facility that was constructed years ago, the MassDEP should have required a case-by-case, unit specific BACT analysis for PM as required by the federal regulations, the Delegation Agreement and the Clean Air Act. Failure to do so constitutes an error of law which renders the BACT limits for PM invalid.

Sulfur Content of Fuel

The permit establishes a limit of 0.5 grains/100scf of natural gas for Units 1-3, but the permit does not appear to provide any particular method to ensure continuous monitoring, reporting and compliance with this limit. CLF-12

NO_2

We recently received additional information regarding the air dispersion modeling conducted to support the analysis of the potential impacts of the facility on ambient air quality. There appears to have been a significant change to the analysis with respect to NO_2. In one of the earlier scenarios, the cumulative impact of the facility along with the interactive sources appears to reach the 1-hour NAAQS for NO_2, 188 $\mu g/m^3$. See June 2013 revision with modeling for cumulative impacts at Table 6-11 shows that NO_2 reaches 188 which is the NAAQS for NO_2. They also appear to have changed the tons per year from 150 to 148.8.

However, the final Table 2 of the Proposed Plan Approval shows a maximum impact of 166. See Proposed Plan Approval at 14. MassDEP should require the applicant to explain the basis for the revisions to the analysis and expected potential to emit that changed the final analysis of the cumulative impacts of the facility. CLF-13

Greenhouse Gas BACT

The draft/proposed permits establish a BACT limit for greenhouse gas emissions, however, it is unclear whether the project will achieve the same levels of efficiency and the heat rate limits of recently permitted projects. MassDEP should review the greenhouse gas emissions limits set for the Newark Energy Center in New Jersey as well as the other facilities referenced in a recent letter from Steven Riva, EPA Region 2 to the NJ DEP. See Letter from Steven Riva, Chief, Permitting Section, Air Programs Branch to Francis Steitz, Acting Asst Director, NJ DEP, Re: Newark Energy Center Project, Comments on PSD and NSR Preconstruction Permit Application (April 17, 2012). In that letter, Mr. Riva explained that: CLF-14

> To minimize the GHG emissions, Newark Energy Center proposes as BACT to operate the turbines in combined-cycle mode at a heat rate limit of 6,005 Btu/kW-hr to achieve the thermal efficiency of 58.4% (LHV) with no duct firing. In comparison, the Russell Energy Project in California proposed to achieve a 56.4% efficiency and the Cricket Valley Project in New York proposed to achieve 57.4% efficiency.

Although the permit establishes a lb/MWh limit and higher heating value limits, it should also translate these limits into a thermal efficiency a requirement. CLF-15

The permit references additional greenhouse gas emissions from nitrous oxide and methane, but it does not appear to account for the methane and nitrous oxide emissions in determining compliance with the emission limit for total GHGs. The emission factors from Table C-2 of 40 C.F.R. part 98 and global warming potentials from Table A-1 of 40 C.F.R. part 98 should be used, along with the measured heat input to the combustion turbines. CLF-16

Alternative Site Evaluation

Based upon the proposed/draft permits, MassDEP appears to have taken the project proponent's claims at face value regarding the alternative site analysis required under the Nonattainment New Source Review program. For example, MassDEP accepted the CRA analysis of the potential greenhouse gas emissions impacts of the facility without examining the underlying assumptions and recognizing that some of these assumptions (such as the heavy and arbitrary discount to the mandated energy savings goals from the Department of Public Utilities approved energy efficiency programs), an incomplete analysis of proposed transmission upgrades, a failure to include the Commonwealth's goals for installation of wind and solar capacity, and a flawed analysis of expected retirements of generating facilities in the region. See Proposed Plan Approval at 10. MassDEP should have conducted a more thorough analysis of the claims and studies provided by the project proponent rather than simply accepting these analyses as accurate and complete. CLF-17

Air Modeling and Dispersion Analysis

We have not had an opportunity to complete our analysis of the recently provided air dispersion modeling and underlying assumptions, but at this stage we would request that the MassDEP provide a more detailed explanation regarding why preconstruction monitoring as provided for through the PSD regulations was not undertaken, why the monitors from Lynn and Harrison Avenue were considered appropriate for estimating the impacts of this facility, and, as noted above, what changes in the emissions inventory caused the reduction of the maximum predicted 1-hour NO_2 concentration to be reduced from 188 ($\mu g/m^3$) (the NAAQS) to 166 ($\mu g/m^3$). Given how little difference there is between the predicted 1-hour concentration and the standard, small changes in emissions can be very important to a compliance demonstration. CLF-18

Also, the modeling analysis is defective due to its use of Logan Airport meterological data. The specific geographic, wind, and other feature differences as between Logan airport and the site that render it inappropriate for use in the modeling. In addition, it was improper to choose the rural *determination rather than the urban given the densely populated areas surrounding the site.* We are particularly concerned about the statements in both the Air Dispersion Modeling Protocol of August 2012 and the Proposed Plan Approval that, on the basis of land use within a 3 km radius around the site "rural dispersion coefficients were used in the dispersion modeling." We understand that the dispersion coefficients for use in AERMOD are not to be determined by a rural/urban designation but are to be determined by the values of the CLF-19 CLF-20

surface roughness length, surface albedo and surface Bowen Ratio as calculated by the application of AERSURFACE to the area within a 1 km radius of the anemometer used for wind speeds and directions in AERMOD .

Recordkeeping/Reporting Requirements

Table 10 of the Proposed Plan Approval requires the Permittee to maintain monthly records to demonstrate compliance with the facility-wide emission limits specified in Table 7. We recommend requiring that those monthly records be submitted to MassDEP on a quarterly basis in addition to the semi-annual reporting requirement contained in Table 11. CLF-21

GWSA Compliance

As we stated at the public hearing, there is no evidence in the record to support MassDEP's proposed Section 61 finding that this project is consistent with the GWSA requirements. The only analysis that MassDEP apparently relies upon to reach its conclusion was the analysis presented by Charles River Associates, which only covered the period through 2025, and was riddled with flawed assumptions as referenced above. There is no indication that the applicant presented any information regarding the greenhouse gas emissions impacts from the project through 2050. In addition, MassDEP has a special obligation to ensure compliance with the requirements of the GWSA because it was required to promulgate regulations establishing declining annual aggregate emissions limits for sources and categories of sources by no later than January 1, 2012 to go into effect by January 1, 2013 through December 31, 2020. G.L. c. 21N, § 3d; St. 2008, c. 298, § 16. MassDEP's failure to promulgate these rules does not excuse sources and categories of sources of greenhouse gas emissions from being required to meet the mandates of the GWSA.

Process and Venue for Appeals

The Draft Prevention of Significant Deterioration Fact Sheet (the "Fact Sheet") misstates the law regarding appeals of air permits. CLF-22 MassDEP's procedures and activities in reviewing and rendering a determination on an application for an air permit are governed, in the first instance, by its enabling authority as enacted by the General Court of the Commonwealth of Massachusetts. A recent MassDEP Commissioner's decision clarified that the filing of an application for an air quality permit which seeks "the Department's determination of its right to construct and operate a facility" commences an "adjudicatory proceeding" as the term is defined in Massachussetts G.L. c. 30A, §1 for purposes of appealing any such decision. See, In the Matter of Palmer Renewable Energy, LLC, Final Decision dated September 11, 2012; OADR Docket No. 2011-021 & -022. As codified in G.L. c. 111, § 142B and c. 30A, § 14 appeals of agency determinations, as would be rendered by MassDEP in the instant proceeding, "shall be instituted in the Superior Court…."

The Fact Sheet (at page 34), however, provides that interested parties seeking to appeal MassDEP's final permitting decision "may submit a petition for review of the Permit to MassDEP's Wilmington Office, which is consistent with appeal requirements specified in 40 C.F.R. 124.19." Under 40 C.F.R. 124.19, the venue for appeals of PSD permitting decisions is

the USEPA Environmental Appeals Board (EAB). Even a cursory review of the process under 40 CFR §124.19 makes it clear that appeals to the EAB are not and would not be consistent with the foregoing codified Massachusetts law governing appeals of air permitting decisions rendered by MassDEP.

The procedures and venue for appeals of MassDEP air permitting decisions, as provided in the Fact Sheet, are ultra vires, and any such permitting action by MassDEP based on the process and venue provided in the Fact Sheet would be inconsistent with Massachusetts law. In its Final Permit Decision, MassDEP needs to clarify the venue and procedure for appeals of its final PSD Permit Decision in a manner which conforms to its codified enabling authority.

Respectfully submitted,

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