

2004 No. 171

HARBOURS, DOCKS, PIERS AND FERRIES

**The Highland Council (Inverie) Harbour Empowerment Order
2004**

Made - - - - - *1st April 2004*
Coming into force - - - - - *2nd April 2004*

ARRANGEMENT OF REGULATIONS

**PART I
PRELIMINARY**

1. Citation and commencement
2. Interpretation
3. Incorporation of the Highland Regional Council (Harbours) Order
4. Incorporation of the Lands and Railways Clauses Acts

**PART II
WORKS**

5. Power to carry out works
6. Power to deviate
7. Subsidiary works
8. Obstructing works
9. Works to be deemed part of harbour undertaking
10. Period for completion of works

**PART III
LAND**

11. Power to take lands
12. Power to acquire servitudes compulsorily in certain cases
13. Persons under disability may grant servitudes, etc.
14. Extinguishment of rights of way over lands acquired
15. Power to enter upon lands and buildings for searching and boring
16. Power of entry on lands compulsorily acquired
17. Disregard of recent improvements and interests
18. Compensation in respect of depreciation in value of interest in land subject to standard security
19. Set off of betterment against compensation

20. Agreements with owners of property
21. Power to reinstate owners of property
22. Period for compulsory purchase of lands
23. Power as to acquisition and use of additional lands
24. Power to retain, sell etc., lands
25. Correction of errors in deposited plans and book of reference
26. Application of the Act of 1997

**PART IV
MISCELLANEOUS AND GENERAL**

27. Service of notices
28. No double recovery
29. Crown rights

Schedule – Purchase of certain land

Whereas the Highland Council has applied in writing for a harbour empowerment order under section 16 of the Harbours Act 1964(a);

And whereas the Scottish Ministers(b) in pursuance of paragraph 5(b) of Schedule 3 to the said Act(c),determined that the application for this Harbour Empowerment Order is made in relation to a project which falls within Annex II to Council Directive 85/337/EEC(d) on the assessment of the effects of certain public and private projects on the environment and whose characteristics require that it should be made subject to an environmental assessment;

And whereas the Scottish Ministers have directed the applicant to supply them with the information referred to in Annex III to the Directive in accordance with that paragraph;

And whereas the Scottish Ministers have considered the information supplied under that paragraph;

Now, therefore, the Scottish Ministers, in exercise of the powers conferred by section 16 of the said Act (being the appropriate Ministers under section 16(1) of that Act for the purposes of making this order) and of all other powers enabling them in that behalf and being satisfied that the making of this order is desirable in the interests of securing the improvement, maintenance or management of the harbour in an efficient and economical manner, hereby make the following Order:

**PART I
PRELIMINARY**

Citation and commencement

1. This Order may be cited as the Highland Council (Inverie) Harbour Empowerment Order 2004 and shall come into force on 2nd April 2004.

(a) 1964 c.4 0; section 16 and Schedule 3 were amended by the Transport Act 1981 (c. 56) section 18 and Schedule 6, paragraphs 3, 14(2) and 14(3); and by the Transport and Works Act 1992 (c. 42), section 63 and Schedule 3.
(b) The functions of the Scottish Ministers were transferred to the Scottish Ministers by virtue of section 53 of the Scotland Act 1998 (c. 46).
(c) Schedule 3 was substituted by regulation 15(4) of the Harbour Works (Environmental Impact Assessment) Regulations 1999 (S.I. 1999/3445).
(d) O.J. No. L175, 5.7.85, p.40; Council Directive 85/337/EEC was amended by Council Directive 97/11/EC (O.J. No L73, 14.3.1997, p.5).

Interpretation

2.—(1) In this Order, except where the context otherwise requires—

“Act of 1991” means the Highland Regional Council (Harbours) Order Confirmation Act 1991(a);

“Act of 1997” means the Town and Country Planning (Scotland) Act 1997(b);

“annexed map” means the map annexed to this Order;

“building” includes a structure or any other erection;

“construct” includes make, build, erect, install, provide, execute, place, alter, maintain and renew and “construction” shall be construed accordingly;

“the Council” means the Highland Council;

“deposited plans” and “deposited sections” mean respectively the plans and sections which have been deposited in connection with this Order, two copies of which have been deposited with the Scottish Ministers at the Scottish Executive, one copy of which has been deposited at the offices of the Council;

“enactment” means any enactment, whether public general or local, and includes an enactment in this Order and any order, byelaw, rule, regulation, scheme and other instrument having effect by virtue of an enactment;

“government department” includes any part of or any member of staff of the Scottish Administration which shall have the meaning defined in section 126(6) of the Scotland Act 1998(c);

“harbour” means the harbour at Inverie as described at Article 3(4);

“harbour undertaking” means harbour undertaking of the Council authorised by this Order;

“land” includes land covered by water, any interest in land and any servitude or right in or over land;

“the Land Compensation Act” means the Land Compensation (Scotland) Act 1963(d);

“the limits of deviation” means the limits so shown on the deposited plans;

“maintain” includes inspect, repair, adjust, alter, remove, reconstruct and replace and “maintenance” shall be construed accordingly;

“road” has the meaning given to it by section 151 of the Roads (Scotland) Act 1984(e);

“sheriff” means sheriff principal of the sheriffdom of Grampian, Highland and Islands and includes any sheriff of the Fort William sheriff court district;

“sheriff clerk” means sheriff clerk of the sheriffdom of Fort William district;

“tribunal” means Lands Tribunal for Scotland; and

“works” means works authorised by this Order, or as the case may require, any part thereof and includes any work constructed pursuant to Article 5 (Power to carry out works) and any work carried out pursuant to Article 7 (Subsidiary Works).

(2) All areas, directions, distances, lengths and widths as stated in any description of works, powers or lands other than Article 6 (Power to deviate) of this Order shall be construed as if the words “or thereabouts” were inserted after each such area, direction, distance, length and width and any reference in a description of works to a point shall be a reference to that point on the deposited plans.

(3) Any reference in this Order to a work identified by the number of such work shall be construed as a reference to the work of that number authorised by this Order.

(a) 1991 c. xii.

(b) 1997 c. 8.

(c) 1998 c. 46.

(d) 1963 c. 51.

(e) 1984 c. 54.

(4) Reference points specified in this Order shall be construed as references to Ordnance Survey National Grid reference points.

Incorporation of the Highland Regional Council (Harbours) Order

3.—(1) The Highland Regional Council (Harbours) Order (except sections 59, 62, 63 and 64) as confirmed by the Act of 1991, so far as applicable for the purposes and not inconsistent with the provisions of this Order, is hereby incorporated with and forms part of this Order subject to the modifications stated in paragraphs (2) and (3) below.

(2) In construing, for the purposes of this Order, the provisions of the Highland Regional Council (Harbours) Order as incorporated with this Order—

- (a) the expression “the Council” means the Highland Council;
- (b) the expression “harbour limits plans” means the location plan showing the limits of harbour jurisdiction at Inverie, two copies of which have been deposited with the Scottish Ministers at the Scottish Executive and one copy of which has been deposited at the offices of the Council; and
- (c) the expression “the undertaking” means the harbour undertaking of the Council at Inverie authorised by this Order.

(3) Section 3(4) of the Highland Regional Council (Harbours) Order shall have effect as if for the reference to section 634 of the Merchant Shipping Act 1894^(a) there were substituted a reference to section 193 of the Merchant Shipping Act 1995^(b).

(4) Schedule 1 of the Highland Regional Council (Harbours) Order shall have effect as if there were added the following provision—

“Inverie

All waters below the level of high water forming Inverie Bay commencing at a point NG 176318 800318; thence in a south-westerly direction for a distance of 310 metres to a point NG 176100 800100; thence in a south-easterly direction for a distance of 566 metres to a point NG 176500 799700; thence in a north-easterly direction for a distance of 322 metres to a point NG 176728 799928; on the level of high water.”

Incorporation of the Lands and Railways Clauses Acts

4.—(1) The Lands Clauses Acts (except sections 120 to 125 of the Lands Clauses Consolidation (Scotland) Act 1845)^(c), so far as they are applicable for the purposes of, and are not varied by or inconsistent with, the provisions of this Order, are incorporated with this Order.

(2) In construing, for the purposes of this Order, the provisions of the Lands Clauses Acts as incorporated with this Order—

- (a) this Order shall be deemed to be the special Act;
- (b) the Council shall be deemed to be the promoters of the undertaking or the company; and
- (c) the works shall be deemed to be the works or the undertaking.

(3) Section 70 of the Railway Clauses Consolidation (Scotland) Act 1845^(d) is incorporated with this Order.

(a) 1894 c. 60.
(b) 1995 c. 21.
(c) 1845 c. 19.
(d) 1845 c. 33.

PART II WORKS

Power to carry out works

5.—(1) Subject to the provisions of this Order, the Council may, in the situations and lines and within the limits of deviation and according to the levels shown on the deposited plans and sections, carry out the following works in the parish of Glenelg, Highland, and on the foreshore and bed of the sea adjacent thereto together with all necessary and proper works and conveniences connected therewith or incidental thereto—

- Work No.1: An alignment and berthing structure of solid construction commencing at a point 176475,800175 and extending in a south-south-westerly direction for a distance of 95 metres to a point 176441,800086; thence in a north-westerly direction for a distance of 35 metres to terminate at a point 176414,800108.
- Work No.2: A slipway of solid construction 12 metres wide and associated access road commencing at a point 176482,800171 and extending in a south-south-westerly direction for a distance of 70 metres to a point at 176457,800105 and there terminating.
- Work No.3: The demolition of the existing pier commencing at a point 176667,800005 and extending in a west-south-westerly direction for a distance of 54 metres to a point 176620,799980; thence in a south-westerly direction for a distance of 17 metres to terminate at point 176628,799965.

(2) The Council may, within the limits of deviation, maintain, renew, reconstruct and alter temporarily or permanently the works.

Power to deviate

6. Subject to the provisions of this Order, in carrying out the works the Council may deviate laterally from the lines or situations thereof as shown on the deposited plans to any extent not exceeding the limits of deviation and may deviate vertically from the levels of the works as shown on the deposited sections to any extent not exceeding 3 metres upwards and to such extent downwards as may be found necessary or convenient.

Subsidiary works

7.—(1) Subject to the provisions of this Order, the Council may within the limits of deviation from time to time erect, construct, maintain and operate, whether temporarily or permanently, all such subsidiary or incidental works and conveniences as may be necessary or expedient for the purposes of or in connection with the construction, maintenance and use of the works.

(2) The works shall be deemed for all purposes to be within the parish of Glenelg, Highland.

Obstructing works

8. Any person who intentionally obstructs any person acting under the authority of the Council in setting out the lines of or in constructing the works, or who moves or removes any pole, stake, station point or bench mark established for the purpose of such setting out shall be liable on summary conviction to a fine not exceeding level 3 on the standard scale, and shall in addition be liable to repay to the Council as a debt any expenses incurred by them in making good any damages resulting from such obstruction, damage, moving or removal.

Works to be deemed part of harbour undertaking

9. The works shall be deemed for all purposes to be part of the harbour undertaking and all byelaws, rules and regulations of the Council for the time being in force relating to the harbour undertaking shall apply to the works and may be enforced by the Council accordingly.

Period for completion of works

10. If the works are not completed by 31st December 2013, the powers by this Order granted to the Council for constructing the works shall cease except as to so much thereof as is then substantially commenced.

PART III

LAND

Power to take lands

11. Subject to the provisions of this Order, the Council may compulsorily enter upon, take and use all or any of the lands and moorings shown on the annexed map and the deposited plans and described in the book of reference contained in the Schedule to this order, which they may require for the purposes of the works; including for the improvement and development of any lands fronting or abutting on or adjacent to the harbour or for the purposes of recoument, reinstatement or exchange or for any other purposes of this Order;

Power to acquire servitudes compulsorily in certain cases

12. Notwithstanding anything in this Order or in any Act wholly or partly incorporated herewith, the Council may, instead of acquiring any land that they are authorised to acquire compulsorily under this Order, purchase and acquire compulsorily such servitudes or rights over or in any such lands as they may require for the purpose of constructing and using or removing the works or for the purpose of obtaining access to the works, by creating as well as purchasing such servitudes or other rights already in existence, without the Council being obliged or compelled to purchase any greater interest in, under or over the same, and the provisions of the Lands Clauses Acts shall extend and apply to such servitudes and rights as if the same were lands within the meaning of those Acts.

Persons under disability may grant servitudes, etc.

13.—(1) Persons empowered by the Lands Clauses Acts to sell and convey or dispose of lands may, if they think fit, subject to the provisions of those Acts and of this Order, grant to the Council any servitude, right or privilege (not being a servitude, right or privilege of water in which persons other than the grantors have an interest) required for any of the purposes of this Order in, over or affecting any such lands.

(2) The provisions of the said Acts with respect to lands and feu duties or ground annuals so far as the same are applicable in this behalf shall extend and apply to such grants and to such servitudes, rights and privileges as aforesaid respectively.

Extinguishment of rights of way over lands acquired

14.—(1) All rights of way and rights of access over any lands which may under the powers of this Order be acquired compulsorily shall be extinguished as from the date of such acquisition whether compulsorily or by agreement, or on the entry on the land under Article 16 (Power of entry on lands compulsorily acquired) of this Order whichever is the sooner.

(2) The Council shall make compensation to all parties interested in respect of any such rights.

(3) Such compensation, in the case of difference, shall be determined in accordance with the provisions of the Land Compensation Act.

Power to enter upon lands and buildings for searching and boring

15.—(1) Subject to the provisions of this Order, the Council and their surveyors and officers, and any other person duly authorised in writing under the hand of the Head of Legal Services of the Council, may at all reasonable times in the day upon giving on the first occasion not less than seven days' and on subsequent occasions not less than three days' previous notice in writing to the occupier, enter upon and into the lands and buildings by this Order authorised to be taken or used or any of them, for the purpose of searching and boring in order to ascertain the nature of the subsoil or the presence of minerals therein.

(2) In the exercise of the powers conferred by this article, the Council shall cause as little detriment and inconvenience to any person as circumstances allow and shall make compensation to the owners and occupiers of any lands or the owners of any services adversely affected by the exercise of such powers, such compensation in case of difference to be determined by the tribunal in accordance with the provisions of the Land Compensation Act.

Power of entry on lands compulsorily acquired

16. Subject to the provisions of this Order, where the Council are by this Order authorised to purchase land compulsorily then at any time after notice to treat has been served, they may, after giving to the owner and occupier of the land not less than 14 days' notice in writing, enter on and take possession of the land or such part thereof as is specified in the notice without previous consent or compliance with the provisions of sections 83 to 88 of the Lands Clauses Consolidation (Scotland) Act 1845(a), but subject to payment of the like compensation for the land of which possession is taken and interest on the compensation awarded as would have been payable if those provisions had been complied with.

Disregard of recent improvements and interests

17. In determining a question with respect to compensation claimed in consequence of the compulsory purchase of land or of rights or servitudes in or over land under this Order, the tribunal shall not take into account—

- (a) any interest in land, or
- (b) any enhancement of the value of any interest in land, by reason of any building erected, works executed or improvement or alteration made (whether on the land purchased or on any other land with which the claimant is, or was at the time of the erection, executing or making of the building, works, improvement or alteration, directly or indirectly concerned),

if the tribunal is satisfied that the creation of the interest, the erection of the building, the execution of the works, or the making of the improvement or alteration, as the case may be, was not reasonably necessary and was undertaken with a view to obtaining compensation or increased compensation.

Compensation in respect of depreciation in value of interest in land subject to standard security

18.—(1) Where an interest in land is subject to a standard security—

- (a) any compensation which is payable under this Order in respect of the depreciation in value of that interest shall be calculated as if the interest were not subject to the standard security;

(a) 1845 c. 19.

- (b) a claim for the payment of any such compensation may be made by the heritable creditor under a standard security granted before the happening of the event giving rise to the compensation, but without prejudice to the making of a claim by any other person; and
- (c) any such compensation payable in respect of the interest in land subject to the standard security shall be paid to the heritable creditor or where there is more than one heritable creditor, to the first ranking heritable creditor, and shall in either case be treated by the heritable creditor as if it were received as proceeds of sale and applied in the order of priority specified in Section 27 of the Conveyancing and Feudal Reform (Scotland) Act 1970(a).

(2) In this article “standard security” includes a bond and disposition in security and any other real right in the nature of a security.

Set off of betterment against compensation

19. In determining the amount of compensation or purchase money payable to any person in respect of his interest in land acquired under this Order in a case where—

- (a) he has an interest in any other land contiguous with or adjacent to the land so acquired; and
- (b) the value of his interest in any such contiguous or adjacent land is enhanced by reason of the works authorised by this Order or any of them;

the amount of the enhancement in value shall be set off against the compensation or purchase money.

Agreements with owners of property

20. Subject to the provisions of this Order, and in connection with the powers granted to them thereby, the Council may enter into agreements with any owners of property or other persons interested in lands, houses or property with respect to the purchase by the Council of any such lands, houses or property or any rights or servitudes in, over or affecting the same for such consideration, being a sum of money in gross or a grant of land or partly money and partly land, as may be agreed upon between the Council and such owners or other persons.

Power to reinstate owners of property

21. The Council may enter into agreements with the owners of, or other persons interested in, any land which may be acquired under the provisions of this Order, or which may be in the neighbourhood of any of the works, with respect to the reinstatement of such owners or other persons and with respect to the exchange of lands for that purpose and the Council may pay or receive money for equality of exchange.

Period for compulsory purchase of lands

22.—(1) The powers of the Council under Article 11 (Power to take lands) of this Order for the compulsory purchase of lands for the purposes of this Order shall cease on 31st December 2009.

(2) The powers of the Council for the compulsory acquisition of such lands and servitudes shall, for the purposes of this article, be deemed to have been exercised if before 31st December 2009 notice to treat has been served or a general vesting declaration has been made in respect of those lands and servitudes.

(a) 1970 c. 35.

Power as to acquisition and use of additional lands

23.—(1) In addition to the lands which the Council are authorised to acquire by Article 11 (Power to take lands) of this Order the Council may acquire, by agreement, any lands required for the purposes of the works.

(2) The Council may be authorised by the Scottish Ministers to purchase compulsorily any lands for the purposes mentioned in paragraph (1) of this article and the Acquisition of Land (Authorisation Procedure) (Scotland) Act 1947(a) shall apply in relation to any such compulsory purchase as if this article had been contained in a public general Act in force immediately before the commencement of that Act.

(3) The Council may use any lands acquired by them in pursuance of the provisions of paragraphs (1) or (2) of this article, or any other land vested in them, for such purposes and for the purposes of Article 7 (Subsidiary works) of this Order.

Power to retain, sell etc., lands

24. Notwithstanding anything to the contrary contained in the Lands Clauses Consolidation (Scotland) Act 1845(b), the Council may retain, hold and use for such time as they think fit or may from time to time sell, feu, lease, excamb or otherwise dispose of any lands vested in or belonging to them for the purpose of the works or that may be acquired under the provisions of this Order and that on such terms, conditions, reservations and restrictions as regards its use (not inconsistent with any condition, restriction or obligation binding on the Council and their successors in title) as to the Council may seem fit.

Correction of errors in deposited plans and book of reference

25.—(1) If the annexed map, deposited plans, or the book of reference contained in the Schedule to this Order, are inaccurate in their description of any land, or in their statement or description of the ownership or occupation of any land, the Council, after giving not less than 10 days' notice to the owner, lessee or occupier of the land in question, may apply to the sheriff for the correction thereof.

(2) If on any such application it appears to the sheriff that the misstatement or wrong description arose from mistake or inadvertence, he shall certify the fact accordingly and shall in his certificate state in what respect any matter is misstated or wrongly described.

(3) The certificate shall be deposited with the Scottish Ministers at the Scottish Executive and a copy thereof in the offices of the Council, and with the sheriff clerk and thereupon the annexed map, deposited plans and the book of reference contained in the Schedule to this Order shall be deemed to be corrected according to the certificate and it shall be lawful for the Council to take the land or, as the case may be, a right over the land and execute the works in accordance with the certificate.

(4) A person with whom a copy of a certificate is deposited under this article shall keep it with the other documents to which it relates.

Application of the Act of 1997

26.—(1) Section 195 of, and Schedule 15 to, the Act of 1997 shall apply as if this Order were a compulsory purchase order.

(2) In its application by virtue of paragraph (1) above, Schedule 15 to the Act of 1997 shall have effect with the following modifications.

(3) For paragraph 2 there shall be substituted—

(a) 1947 c. 42.

(b) 1845 c. 19.

“2.—(1) Before making a general vesting declaration with respect to any land which is subject to a compulsory purchase order, the acquiring authority shall include the particulars specified in sub-paragraph (2) below in a notice which is—

- (a) served on every person with a relevant interest in the land with respect to which the declaration is to be made (other than a heritable creditor who is not in possession), and
- (b) published in the Edinburgh Gazette, and a local newspaper circulating in the locality.

(2) The particulars to be included in the notice are—

- (a) such a statement of the effect of paragraphs 1 to 8 as may be prescribed, and
- (b) a notification to the effect that every person who, if a general vesting declaration were made in respect of all the land comprised in the order in respect of which notice to treat has not been given, would be entitled to claim compensation in respect of any such land is invited to give information to the authority making the declaration in the prescribed form with respect to his name and address and the land in question.

(3) For the purposes of this paragraph, a person has a relevant interest in land if he is the owner, lessee or occupier (except tenants for a month or any period less than month) of the land.”

(4) In sub-paragraph (1) of paragraph 3, after “publication” there shall be inserted “in the Edinburgh Gazette”.

(5) References to the Lands Clauses Act shall be construed as references to that Act as incorporated with this Order by Article 4 (Incorporation of the Lands and Railways Clauses Acts) of this Order.

PART IV

MISCELLANEOUS AND GENERAL

Service of notices

27.—(1) A notice or other document required or authorised to be served for the purposes of this Order may be served by post.

(2) Where the person on whom a notice or other document to be served for the purposes of this Order is a body corporate, the notice or document is duly served if it is served on the secretary or clerk of that body.

(3) For the purposes of section 7 of the Interpretation Act 1978(a) as it applies for the purposes of this article, the proper address of any person in relation to the service on him of a notice or document under paragraph (1) above is, if he has given an address for service, that address, and otherwise—

- (a) in the case of the secretary or clerk of a body corporate, the registered or principal office of that body; and
- (b) in any other case, his last known address at the time of service.

(4) Where for the purposes of this Order a notice or other document is required or authorised to be served on a person as having any interest in, or as the occupier of, land and his name or address cannot be ascertained after reasonable enquiry, the notice may be served by—

- (a) addressing it to him by name or by the description of “owner”, or as the case may be “occupier”, of the land (describing it); and
- (b) either leaving it in the hands of a person who is or appears to be resident or employed on the land or leaving it conspicuously affixed to some building or object on or near the land.

(a) 1978 c.30.

(5) This article shall not be taken to exclude the employment of any method of service not expressly provided for by it.

No double recovery

28. Compensation shall not be payable in respect of the same matter both under this Order and under any other enactment, any contract or rule of law.

Crown rights

29.—(1) Nothing in this Order affects prejudicially any estate, right, power, privilege, authority or exemption of the Crown and in particular and without prejudice to the generality of the foregoing, nothing in this Order authorises the Council or any licensee to take, use, enter upon or in any manner interfere with any land or interests in land or any rights of whatsoever description (including any portion of the shore or bed of the sea or any river, channel, creek, bay or estuary)—

- (a) belonging to Her Majesty in right of Her Crown and under the management of the Crown Estates Commissioners, without the consent in writing of those commissioners; or
- (b) belonging to a government department or held in trust for Her Majesty for the purposes of a government department, without the consent in writing of that government department.

(2) A consent under paragraph (1) above may be given unconditionally or subject to terms and conditions.

St Andrew's House,
Edinburgh
1st April 2004

DAVID M HART
Authorised to sign by the Scottish Ministers

SCHEDULE

Article 11

PURCHASE OF CERTAIN LANDS

Description of land to be compulsorily acquired

<i>Plot No. on annexed maps</i>	<i>Extent and Description of Land</i>	<i>Owners, Lessees or Occupiers</i>
1	Area of rough ground, existing road and school access	Knoydart Foundation Land Management Group Knoydart Mallaig PH41 4PL
2	Moorings	The Crown Estate 6 Bell's Brae Edinburgh EH4 3BJ Inverie Moorings Association Inverie Knoydart by Mallaig Inverness-shire Available for general public use.

EXPLANATORY NOTE

(This note is not part of the Regulations)

This Order creates a harbour at Inverie and empowers the Highland Council to construct and maintain a slipway and other harbour facilities at Inverie and compulsorily or by agreement to acquire land and rights in land.

2004 No. 171

HARBOURS, DOCKS, PIERS AND FERRIES

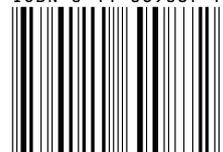
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2004

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