

Build America Buy America – An Overview and Technical Assistance Session

September 1, 2026



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Rising in Resilience***

U.S. Department of Housing and Urban Development (HUD) – Build America, Buy America (BABA) Act and Buy America Preference (BAP) Compliance Provided by Hobbs, Straus, Dean & Walker, LLP, Subcontractor to FirstPic.

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Panelists

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**HUD's Office of Native
American Programs**

Kristen Arnold

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Ed Clay Goodman

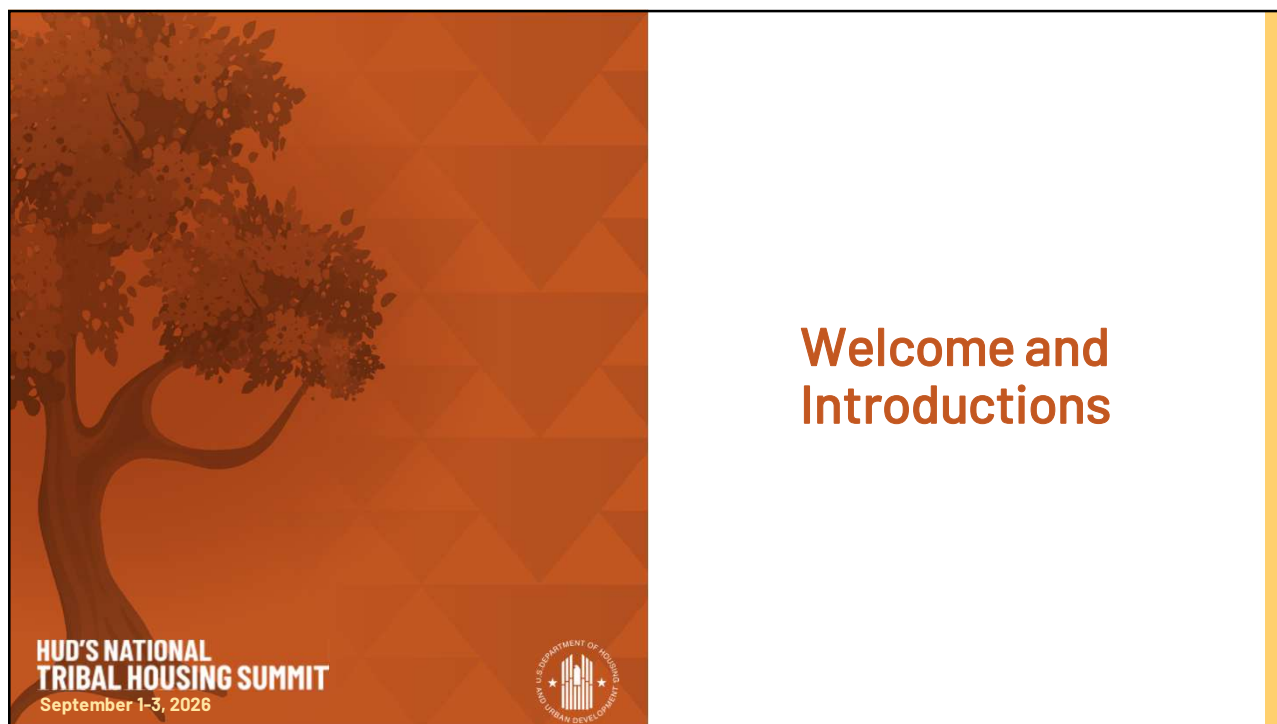
Cari L. Baermann

Agenda

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- Welcome and Introductions
- Housekeeping
- Background of BABA
- BABA Applicability
- BABA Waivers
- Case Study and Problem Solving
- Wrap-up





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BABA On-Call Technical Assistance

How do I request on-call technical assistance (TA)?

On-call TA is available at no cost to Tribes/Tribally Designated Housing Entities (TDHEs). To request TA, please email ONAPBABAon-callrequest@hud.gov and include the following information:

- Tribe/TDHE name
- Primary contact (name, phone number, and email)
- Project-specific information including:
 - Type of project
 - Funding sources and amounts
 - Specific questions to address

Please note: All requests for TA must be approved by ONAP prior to being referred to a TA provider.





Background

- Buy America Preference (BAP):
 - Each Federal agency (e.g., HUD) must ensure that none of the funds made available for a Federal award for an Infrastructure Project may be obligated unless all of the iron, steel, manufactured products, and construction materials incorporated into the project are produced in the US.
- BABA regulations: located at 2 CFR Part 184 and incorporated into 2 CFR Part 200
- The U.S. Office of Management & Budget (OMB) regulates and enforces BABA requirements, through its Made in America Office (MIOA)





BABA Applicability

A banner for the HUD's National Tribal Housing Summit. On the left, there is a stylized tree with orange and brown leaves against a background of a diamond pattern in shades of orange and brown. The text "HUD'S NATIONAL TRIBAL HOUSING SUMMIT" and "September 1-3, 2026" is written in white. The HUD logo is in the bottom right corner.

What is Federal Financial Assistance?

"Federal Financial Assistance" or "FFA" means assistance provided by the Federal government to a non-Federal recipient or subrecipient to receive or administer in the following forms (as well as others not listed here):

- Grants
- Cooperative Agreement
- Direct appropriations
- Food commodities
- Loans/loan guarantees
- Interest subsidies
- Insurance
- Non-cash contributions or donations of property (including donated surplus property)

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What is Not Federal Financial Assistance?

- Amounts received as reimbursement for services to individuals
- Tribal HUD-VASH
- Section 184 Indian Housing Loan Guarantee program
- Expenditures for assistance under the Robert T. Stafford Disaster Relief and Emergency Act or relating to a major disaster/emergency
- **LIHTC Investment funds**
- Program income
- **Non-program income**



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What is Not Federal Financial Assistance?

Pre- and post-disaster or emergency response expenditures

- IHBG-Coronavirus Aid Relief and Economic Security Act (CARES)
- IHBG-American Rescue Plan Act (ARP)
- ICDBG-CARES
- ICDBG-ARP
- ICDBG-Imminent Threat, for Presidentially declared disasters or emergencies
- NHHBG-ARP



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Partial Federal Financial Assistance Funding and Pass-Through Funding

Partial Federal Financial Assistance Funding: BABA requirements apply to the entire project, if at least one part of the project is funded by Federal Financial Assistance.

Pass-Through Funding: BABA requirements apply if the funding source includes Federal Financial Assistance, regardless of whether it is a sub-award from a non-Federal agency.



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Infrastructure Projects

Infrastructure Project: Any activity related to the construction, alteration, or repair of infrastructure.

- "Infrastructure" includes buildings, real property, roads, utilities, water systems, etc.
- Tribal Housing: BAP applies to projects involving the construction, maintenance, alteration, or repair of buildings that contain 5 or more units (multifamily housing projects).
 - **Single-family housing projects:** Buildings consisting of 1-4 dwelling units are considered "private" and not subject to the BAP.



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What is an Infrastructure Project?

Examples of HUD-funded activities that **MAY be subject to the BAP, if they serve a public use:**

- Construction of public facilities and improvements (e.g., water and sewer facilities, streets, sidewalks, neighborhood centers)
- Utility installation or improvements
- Water systems (drinking water and wastewater)
- Electrical transmission facilities and systems
- Special economic development activities
- Broadband infrastructure
- Transportation infrastructure



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What is Not an Infrastructure Project?

"HUD-funded eligible activities **not typically subject to the BAP**" include:

- Acquisition of real property
- Relocation and demolition
- Public services
- Shelter or public facility operating expenses
- Supportive services
- Short-term payments to prevent homelessness
- Administrative activities supporting disaster and emergency response
- Rental assistance
- Down payment and mortgage assistance



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What is Included in a Project?

Projects subject to the BAP include the construction, maintenance, alterations, or repairs of infrastructure.

- Projects cannot be artificially subdivided to avoid BABA requirements.
- HUD guidance states that a “project” includes “all integrally related activities, designed by the recipient to accomplish, in whole or in part, a specific objective.”



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Materials Subject to BABA

The BAP requirements apply to:

- Iron or Steel Products
- Construction Materials
- Manufactured Products (except for current waiver)



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Iron or Steel Products

"Iron or Steel Products" means articles, materials, or supplies that consist wholly or predominantly of iron or steel or a combination of both

- To be "produced in the United States" means that all manufacturing processes, from the initial melting stage through the application of coatings, occurred in the US.



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Construction Materials

"Construction materials" include articles, materials, or supplies that consist of only one of the items listed in subsection (a) below, except as provided in subsection (b) below.

(a) Listed items:

- Non-ferrous metals
- Plastic and polymer-based products (including polyvinylchloride, composite building materials, and polymers used in fiber optic cables)
- Glass (including optic glass)
- Fiber optic cable (including drop cable)
- Optical fiber
- Lumber
- Engineered wood
- Drywall

(b) Excluded: Minor additions of articles, materials, supplies, or binding agents to a construction material do not change the categorization of the construction material



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Construction Materials (Cont'd)

- Minor additions of articles, materials, supplies, or binding agents to a Construction Material are still a Construction Material.
- An item that consists of two or more of the listed Construction Materials combined through a manufacturing process is a Manufactured Product, not a Construction Material.
- An item that include at least one of the listed Construction Materials combined through a manufacturing process with a material that is not listed is a Manufactured Product, not a Construction Material.
 - For example, a plastic-framed sliding window should be treated as a Manufactured Product while plate glass should be treated as a Construction Material.



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Section 7091(c) Materials Cement, Stone, and Gravel

- "Section 7091(c) Materials" include cement and cementitious materials; aggregates such as stone, sand, or gravel; or aggregate binding agents or additives.
 - Section 7091(c) Materials are **not** subject to the BABA – these materials are not considered manufactured products when they are used or combined at a work site (e.g. wet concrete or hot asphalt mix)
 - Section 7091(c) materials can be considered components of Manufactured Products if they are processed into a specific shape or form before being delivered to a work site.
 - Precast concrete is considered a Manufactured Product and is therefore subject to BABA.



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Manufactured Products

"Manufactured Products" means articles, materials, or supplies that have been:

- Processed into a specific form and shape; or
- Combined with other articles, materials, or supplies to create a product with different properties than the individual articles, materials, or supplies.
- The cost of the components of the Manufactured Product that are mined, produced, or manufactured in the United States must be greater than 55% of the total cost of all its components.



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BABA Waivers

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Original HUD Tribal Waiver

HUD Tribal Waiver(Expired)

- BAP requirements do not apply to funds obligated by HUD to Tribal Recipients prior to September 30, 2024.
- BAP requirements do apply to funds obligated by HUD to Tribal Recipients after October 1, 2024.
- For ONAP grants, a grant is “obligated” on the date the award grant agreement is signed by the Area ONAP Administrator.



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Muti-Agency Public Interest Waiver for Indian Tribes

On January 10, 2025, eight Federal agencies, including HUD and the Department of the Interior (DOI), issued a final [General Applicability Public Interest Waiver to Indian Tribes](#). This Tribal BABA Waiver:

- (1) **Exempts awards/subawards to Tribal Recipients of \$2.5 million or less, until January 9, 2030, from the Buy America Preference (BAP).**
- (2) The \$2.5 million threshold applies to award amounts, not project amounts.
- (3) This waiver also applies to subawards to Tribal Recipients that are \$2.5 million or less. For the waiver to apply, the total prime award must be less than \$2.5 million.



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Muti-Agency Public Interest Waiver for Indian Tribes

Exempts manufactured products from BAP requirements between January 10, 2025, and September 30, 2026, regardless of the Federal award amount.

- Tribal Recipients may use FFA funds to purchase manufactured products that are not made in the US.
- But only if the FFA funds were obligated on or before September 30, 2026.
- FFA funds can be used for non-US-made manufactured products throughout the lifespan of the FFA funds, even if expended after the waiver expires.



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Muti-Agency Public Interest Waiver for Indian Tribes

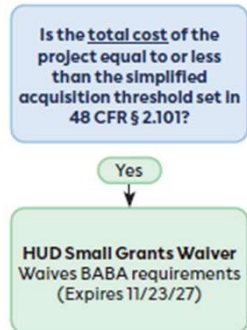
- The Tribal BABA Waiver applies to non-Tribal entities to the extent a project is co-funded with an award/subaward to Tribal Recipients.
- The Tribal BABA Waiver creates a limited timeframe during which the BAP requirements would apply to awards that are obligated after September 30, 2024, and before January 10, 2025.
 - However, the Tribal BABA Waiver states that “[f]or Federal Financial Assistance issued prior to the effective date of the final waiver, the waiver would apply to funds not yet expended.”
 - That appears to mean that the BAP would only apply to funds obligated between September 30, 2024, and January 10, 2025, if the funds were already expended.



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Small Grants Waiver

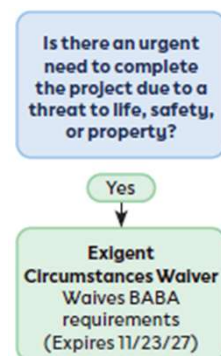
- **Small Grants Waiver:** Waives BAP requirements for Infrastructure projects for which the total cost (including HUD funding and funding from any other source) is equal to or less than the current Simplified Acquisition Threshold (currently \$250,000).
- This threshold is set in the Federal Acquisition Regulations (FAR) at 48 CFR part 2.



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Exigent Circumstances Waiver

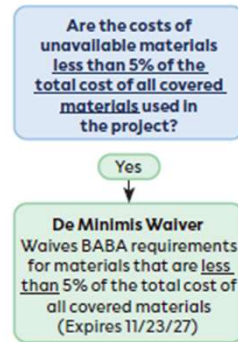
Exigent Circumstances: Waives BAP requirements for "circumstances where undertaking the BAP-covered infrastructure project without delay is necessary to protect life, safety or provide necessary security to residents or community members, or to prevent the destruction of property."



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De Minimis Waiver

- **De Minimis Waiver:** Waives BAP requirements for a “De Minimis” portion of an infrastructure project, which is a cumulative total of no more than 5% of the total cost of the Iron or Steel Products, Manufactured Products, and Construction Materials, up to a maximum of \$1 million.
- This waiver can be applied even in the absence of documented unavailability or high cost.



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Requesting a Project-Specific Waiver

- **General applicability (no need to apply for waiver)**
 - Multi-Agency Tribal BABA Waiver
 - HUD Waivers :
 - HUD Tribal Waiver (Expired)
 - Small grants waiver
 - De minimis waiver
 - Exigent circumstances
- **Project-Specific Waivers:** A Tribal Recipient may request a project-specific waiver.
 - Public Interest Waiver
 - Non-Availability of Materials Waiver (includes Unique Tribal Conditions)
 - Unreasonable Cost Waiver



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Requesting a Project-Specific Waiver

Tribal Recipients can apply for a **non-availability waiver** based on **unique tribal conditions** that restrict the availability of the American-made products:

- **Short construction season/extreme weather or environmental conditions.**
- **Shipping restrictions.**
- **Lack of vendors.**
- **Lack of contractors.**
- **Compliance with Indian preference or tribal preference** contracting requirements prevent compliance with the BAP, demonstrated by lack of qualifying bids received.
- **Due to conditions beyond the control of the Tribal Recipient**, BAP-compliant material is not readily available.



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FAQ: HUD Contacts for Waivers

Q: Who should I contact with questions about applying for a waiver?

A: Tribal Recipients should work with HUD regional points of contact (POCs) throughout the waiver request process.

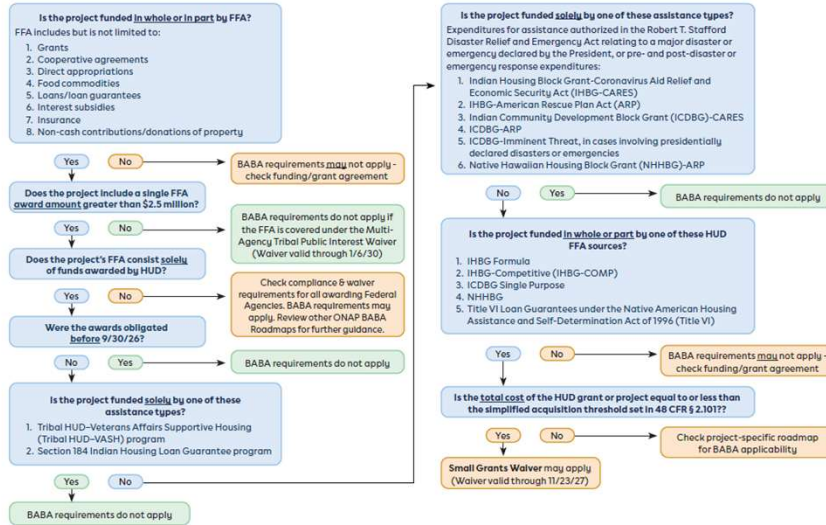
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Determining BABA Applicability

Important: BABA requirements apply to the entire project, if at least one part of the project is funded by Federal Financial Assistance (FFA)



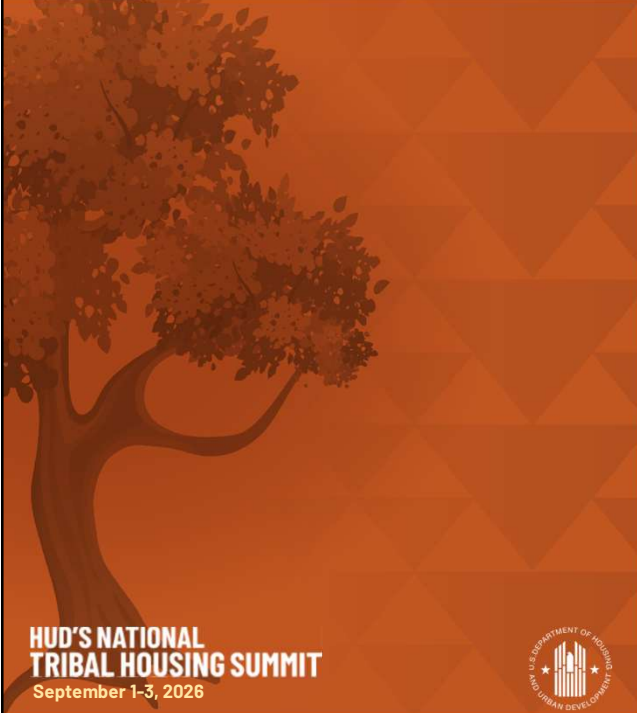
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BABA Procedures and Compliance Documentation

- Tribal Recipients should create procedures regarding BABA compliance to be updated to reflect current guidance and waivers.
- A Tribal Recipient should obtain, create, and maintain thorough documentation to demonstrate BABA compliance.
 - If the Tribal Recipient determines that the project qualifies for an existing general applicability or project-specific BABA waiver, the Tribal Recipient should maintain documentation demonstrating how the project qualifies for the waiver.
- Retain documentation for at least 3 years, or for a longer as specified in the federal funding award.



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Scenario for Discussion and Problem-Solving

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Scenario for Discussion and Problem-Solving

Project Design

- A TDHE designs a 25-unit apartment complex, which will include a community gathering space. The total project amount is \$11 million. The TDHE plans the project to be funded with the following sources of funding:
 - Low-Income Housing Tax Credits (LIHTC)
 - Funding received from the Tribe
 - Program income from the TDHE's Indian Housing Block Grant funds
- In 2025, the TDHE hires an architect/engineer firm to design the project. The TDHE begins designing and ordering some construction materials for the project in January 2026.

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Scenario for Discussion and Problem-Solving

New Funding Added

- In July 2026, the TDHE receives a \$2.6 million IHBG Competitive Grant Program award and adds it to the project. They contribute only \$2.1 million to the project.
- In August 2026, the TDHE receives a \$2.8 million 2026 U.S. Department of Energy (DOE) grant award for a "Solar Panel Upgrade Project," which involves installation of solar panels on the apartment complex as well as on five existing single-family homes to help upgrade the energy grid for that housing area. The TDHE adds the DOE funding to the LIHTC project.



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Scenario for Discussion and Problem-Solving

Materials

- In January 2026, before adding Federal funds to the project, the TDHE had already ordered and paid for steel beams for the project. These steel beams are sitting on the project site.
- The TDHE orders gravel and wet cement, to be mixed on the project site, but the contractor mixes them on its own site due to space limitation. That site is a few miles away. The contractor then brings the combined product over and pours it into the project site.
- The TDHE wants to install fiber optic cable, the total cost of which is \$50,000 (assume the total cost of all project infrastructure is \$10 million). The TDHE's contractor is unable to find fiber optic cable made in the US.



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Scenario for Discussion and Problem-Solving

Materials

- The TDHE wants to install 30 thermostats. The TDHE's contractor is unable to find American-made products of sufficient quality.
- The TDHE wants to install engineered-wood flooring in the community gathering space. However, all of the vendors in the TDHE's area only sell foreign-made engineered wood. The TDHE has contacted numerous vendors in other areas, but all of the vendors either refuse to ship the American-made engineered wood to the TDHE's remote location, or they refuse to respond to the inquiries.



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Scenario for Discussion and Problem-Solving

Contractor

- One of the subcontractors ordered lumber that does not comply with the BAP. The TDHE caught the non-compliance before the lumber was installed.
- One of the subcontractors ordered drywall that does not comply with the BAP. The TDHE caught the non-compliance after the drywall was installed.



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Closing



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