

Staff Report 03

LESSEE:

Cherryvale Holdings, LLC, a Louisiana limited liability company

APPLICANT:

GDP Group LLC, a Delaware limited liability company; Reynold J. DiLena

PROPOSED ACTION:

Consider Waiver of Rent, Penalty, and Interest; Acceptance of a Lease Quitclaim Deed for a General Lease – Recreational Use; and Issuance of a General Lease – Recreational Use

AREA, LAND TYPE, AND LOCATION:

Sovereign land located in Lake Tahoe, adjacent to 6229 and 6259 North Lake Boulevard, Carnelian Bay, Placer County.

AUTHORIZED USE:

Construction, use, and maintenance of a joint-use pier; removal of an existing deck and bulkhead not previously authorized by the Commission; and use and maintenance of two existing mooring buoys previously authorized by the Commission.

TERM:

10 years, beginning December 17, 2020.

CONSIDERATION:

\$1,422 per year, with an annual Consumer Price Index adjustment.

SPECIFIC LEASE PROVISIONS:

- Liability insurance in an amount no less than \$1,000,000 per occurrence.

- Lessee expressly acknowledges and agrees that issuance of a lease does not substitute for, or provide preference in, obtaining authorizations from the Tahoe Regional Planning Agency (TRPA) or any other regulatory agency for the improvements authorized by the Commission.
- Lessee shall not store any personal items or construct any improvements in the Public Trust easement which may impair the public uses of access, navigation, fishing, and lake-related recreation.
- The public will be allowed to pass and re-pass over the landward end of the pier with signs posted on each side of the pier to provide continuous shoreline access to the Public Trust easement below elevation 6228.75 feet, Lake Tahoe Datum.
- Within 60 days of completing the construction of authorized improvements, Lessee will provide Lessor with photographs and a set of as-built plans that will show where the improvements have been placed. Lessor shall then replace Exhibit A (Land Description) and Exhibit B (Site and Location Map) to the Lease as necessary to accurately reflect the final location of the authorized improvements. Once approved by Lessor's Executive Officer or designee and Lessee, the revised Exhibits shall replace the Exhibits incorporated in the Lease at the time of Lease execution. The replaced Exhibits shall be incorporated in the Lease as though fully set forth therein.

STAFF ANALYSIS AND RECOMMENDATION:

AUTHORITY:

Public Resources Code sections 6005, 6216, 6301, 6501.1, 6503, and 6503.5;
California Code of Regulations, title 2, sections 1911, subdivision (c), 2000, and 2003.

PUBLIC TRUST AND STATE'S BEST INTERESTS:

On April 26, 2013, the Commission authorized Lease No. PRC 8431, a General Lease – Recreational Use, for continued use and maintenance of two existing mooring buoys adjacent to 6259 North Lake Boulevard to David J. Ferrari ([Item C48, April 26, 2013](#)). This lease will expire on November 30, 2022.

On October 14, 2014, the Commission authorized Lease No. PRC 9154, a General Lease – Recreational Use, for continued use and maintenance of two existing mooring buoys adjacent to 6229 North Lake Boulevard to Cherryvale Holdings, LLC, a Louisiana limited liability company (Cherryvale) ([Item C18, October 14, 2014](#)). This lease will expire on October 13, 2024.

In 2019, Cherryvale and Ferrari submitted an application for a General Lease – Recreational Use for the construction, use, and maintenance of a joint-use pier; removal of an existing deck and bulkhead; and for four existing mooring buoys. On April 7, 2020, ownership of David J. Ferrari's parcel transferred after his death to Reynold J. DiLena. On November 9, 2020, staff learned that Cherryvale's ownership of 6229 North Lake Boulevard transferred to GDP Group, LLC, a Delaware limited liability company (GDP), on August 11, 2020. A new application was submitted for the proposed joint-use pier construction and removal of the deck and bulkhead. The application also requested to bring GDP's two mooring buoys under lease. DiLena has submitted an application requesting a separate lease for his two mooring buoys and existing freshwater intake lines not previously authorized by the Commission. This application will be scheduled for consideration at a Commission meeting in early 2021.

Cherryvale executed a lease quitclaim deed releasing all interest in Lease No. 9154, a General Lease – Recreational Use. Staff recommends acceptance of the lease quitclaim deed and issuance of a new lease.

Staff sent an invoice, Invoice No. 50890, to Cherryvale for annual rent that was due October 14, 2020. Staff recommends voiding Invoice No. 50890 and waiving rent and any penalty and interest. Rent was paid up through October 13, 2020. If the Commission approves the proposed lease, the Applicant will pay \$132 in compensation for the unauthorized occupation of State land for the time period from October 14, 2020, through December 16, 2020, and will be responsible for future rent.

The proposed pier will be a joint-use pier located approximately 18 feet to the west of the existing deck and bulkhead near the common property line between 6229 and 6259 North Lake Boulevard. The existing deck and bulkhead were not previously authorized by the Commission because they are not located waterward of the low-water line and are, therefore, not on sovereign land under the Commission's leasing jurisdiction. They will be removed pursuant to conditions set within TRPA Permit No. ERSP 2018-0809. A condition of the proposed lease will require the Lessee to submit evidence of removal of the existing deck and bulkhead within two (2) years of the effective date of the lease prior to beginning construction of the new pier.

The proposed joint-use pier will be built on single pilings in a shoreline area strewn with pebbles and small boulders. Access to the Public Trust easement will be provided by stairs located on the landward end of the pier where the public will be allowed to pass and re-pass over the pier. Signs are required to be posted on each side of the pier identifying the designated public passageway.

Construction will occur after all required approvals are obtained. The Applicant will follow all construction methods and timeframes provided by TRPA, the Lahontan Regional Water Quality Control Board, the California Department of Fish and Wildlife, and the U.S. Army Corps of Engineers.

The Applicant owns the uplands adjoining the lease premises. The subject facilities are privately owned and maintained. The proposed joint-use pier and existing mooring buoys will be used for the docking and mooring of boats. Recreational boating is a water-dependent use that is generally consistent with the common law Public Trust Doctrine. The California Legislature has identified private recreational boating facilities as an authorized use of Public Trust land (Pub. Resources Code, § 6503.5).

Except for the proposed joint-use pier, the subject facilities have existed for many years at this location. The mooring buoys are located directly lakeward of the upland property and occupy a relatively small area of the lake. TRPA registered the mooring buoys under Permit No. 11179.

The proposed lease does not alienate the State's fee simple interest, or permanently impair public rights. The lease is limited to a 10-year term and does not grant the lessee exclusive rights to the lease premises and reserves an easement to the public for Public Trust-consistent uses. Upon termination of the lease, the lessee may be required to remove all improvements from State land and restore the lease premises to their original condition.

The proposed lease requires the lessee to insure the lease premises and indemnify the State for any liability incurred as a result of the lessee's activities thereon. The lease also requires the payment of annual rent to compensate the people of the State for the occupation of the public land involved.

For all the reasons above, staff believes the issuance of this lease will not substantially interfere with Public Trust needs at this location, at this time, and for the foreseeable term of the proposed lease; and is in the best interests of the State.

OTHER PERTINENT INFORMATION:

1. Approval or denial of the application is a discretionary action by the Commission. Each time the Commission approves or rejects a use of sovereign land, it exercises legislatively delegated authority and responsibility as trustee of the State's Public Trust lands as authorized by law. If the Commission denies the application, the Applicant may not construct the joint-use pier and may be required to remove the mooring buoys, and restore the premises to their original

condition. Upon expiration or prior termination of the lease, the lessee also has no right to a new lease or to renewal of any previous lease.

2. This action is consistent with Strategy 1.1 of the Commission's Strategic Plan to deliver the highest levels of public health and safety in the protection, preservation, and responsible economic use of the lands and resources under the Commission's jurisdiction, and Strategy 1.3 to promote, expand, and enhance appropriate public use and access to land along the State's inland and coastal waterways.
3. Acceptance of a quitclaim deed is not a project as defined by the California Environmental Quality Act (CEQA) because they are administrative actions that will not result in direct or indirect physical changes in the environment.

Authority: Public Resources Code section 21065 and California Code of Regulations, title 14, section 15378, subdivision (b)(5).

4. **Existing Mooring Buoys:** Staff recommends that the Commission find that this activity is exempt from the requirements of CEQA as a categorically exempt project. The project is exempt under Class 1, Existing Facilities; California Code of Regulations, title 2, section 2905, subdivision (a)(2).
5. **Joint-Use Pier Construction:** Staff recommends that the Commission find that this activity is exempt from the requirements of CEQA as a categorically exempt project. The project is exempt under Class 3, New Construction of Small Structures; California Code of Regulations, title 2, section 2905, subdivision (c)(2).
6. **Removal of Existing Deck and Bulkhead:** Staff recommends that the Commission find that this activity is exempt from the requirements of CEQA as a categorically exempt project. The project is exempt under Class 4, Minor Alterations to Land; California Code of Regulations, title 14, section 15304.

Authority: Public Resources Code section 21084 and California Code of Regulations, title 14, section 15300 and California Code of Regulations, title 2, section 2905.

APPROVALS OBTAINED:

Tahoe Regional Planning Agency
California Department of Fish and Wildlife
U.S. Army Corps of Engineers

EXHIBITS:

- A. Land Description
- B. Site and Location Map

RECOMMENDED ACTION:

It is recommended that the Commission:

CEQA FINDING:

Existing Mooring Buoys: Find that the activity is exempt from the requirements of CEQA pursuant to California Code of Regulations, title 14, section 15061 as a categorically exempt project, Class 1, Existing Facilities; California Code of Regulations, title 2, section 2905, subdivision (a)(2).

Joint-Use Pier Construction: Find that the activity is exempt from the requirements of CEQA pursuant to California Code of Regulations, title 14, section 15061 as a categorically exempt project, Class 3, New Construction of Small Structures; California Code of Regulations, title 2, section 2905, subdivision (c)(2).

Removal of Existing Deck and Bulkhead: Find that the activity is exempt from the requirements of CEQA pursuant to California Code of Regulations, title 14, section 15061 as a categorically exempt project, Class 4, Minor Alterations to Land; California Code of Regulations, title 14, section 15304.

PUBLIC TRUST AND STATE'S BEST INTERESTS:

Find that the proposed lease will not substantially impair the public rights to navigation and fishing or substantially interfere with the Public Trust needs and values at this location, at this time, and for the foreseeable term of the lease; is consistent with the Public Trust Doctrine; and is in the best interests of the State.

AUTHORIZATION:

1. Waive rent, penalty, and interest due for the period of October 14, 2020, through December 16, 2020, and void annual rent invoice number 50890 issued to Cherryvale Holdings, LLC, a Louisiana limited liability company.
2. Authorize acceptance of compensation from the Applicant in the amount of \$132 for the unauthorized occupation of State land for the period beginning October 14, 2020, through December 16, 2020.

3. Authorize acceptance of a lease quitclaim deed, effective December 16, 2020, for Lease No. PRC 9154, a General Lease – Recreational Use, issued to Cherryvale Holdings, LLC, a Louisiana limited liability company.
4. Authorize issuance of a General Lease – Recreational Use to the Applicant beginning December 17, 2020, for a term of 10 years, for the construction use and maintenance of a joint-use pier; removal of an existing deck and bulkhead not previously authorized by the Commission; and use and maintenance of two existing mooring buoys previously authorized by the Commission, as described on Exhibit A and shown on Exhibit B (for reference purposes only) attached and by this reference made a part hereof; annual rent in the amount of \$1,422 with an annual Consumer Price Index adjustment; and liability insurance in an amount no less than \$1,000,000 per occurrence.

EXHIBIT A

LEASE 9154

LAND DESCRIPTION

Three (3) parcels of submerged land situate in the bed of Lake Tahoe, lying adjacent to fractional Section 14, Township 16 North, Range 17 East, MDM., as shown on Official Government Township Plat approved November 10, 1865, County of Placer, State of California, and more particularly described as follows:

PARCEL 1 – PIER

All those lands underlying a proposed joint-use pier with two catwalks and ramps lying adjacent to that parcel described in Grant Deed recorded August 11, 2020 as Document Number 2020-0084439-00 and PARCEL 2 described in Grant Deed recorded April 7, 2020 as Document Number 2020-0030735-00 in Official Records of said County.

TOGETHER WITH any applicable Impact Area(s).

EXCEPTING THEREFROM any portion lying landward of elevation 6223 feet LTD on the shoreline of said Lake Tahoe.

PARCELS 2 & 3 – BUOYS

All those lands underlying two (2) circular parcels of land, each being 50 feet in diameter, underlying two (2) existing buoys lying adjacent to that parcel described in Grant Deed recorded August 11, 2020 as Document Number 2020-0084439-00 Official Records of said County.

Accompanying plat is hereby made part of this description.

END OF DESCRIPTION

This description is based on Applicant provided design plans for a proposed pier, together with any and all appurtenances pertaining thereto, to be built at a later date within the Lease time frame. This description is to be updated once final as-built plans are submitted.

Prepared November 18, 2020 by the California
State Lands Commission Boundary Unit.



NO SCALE

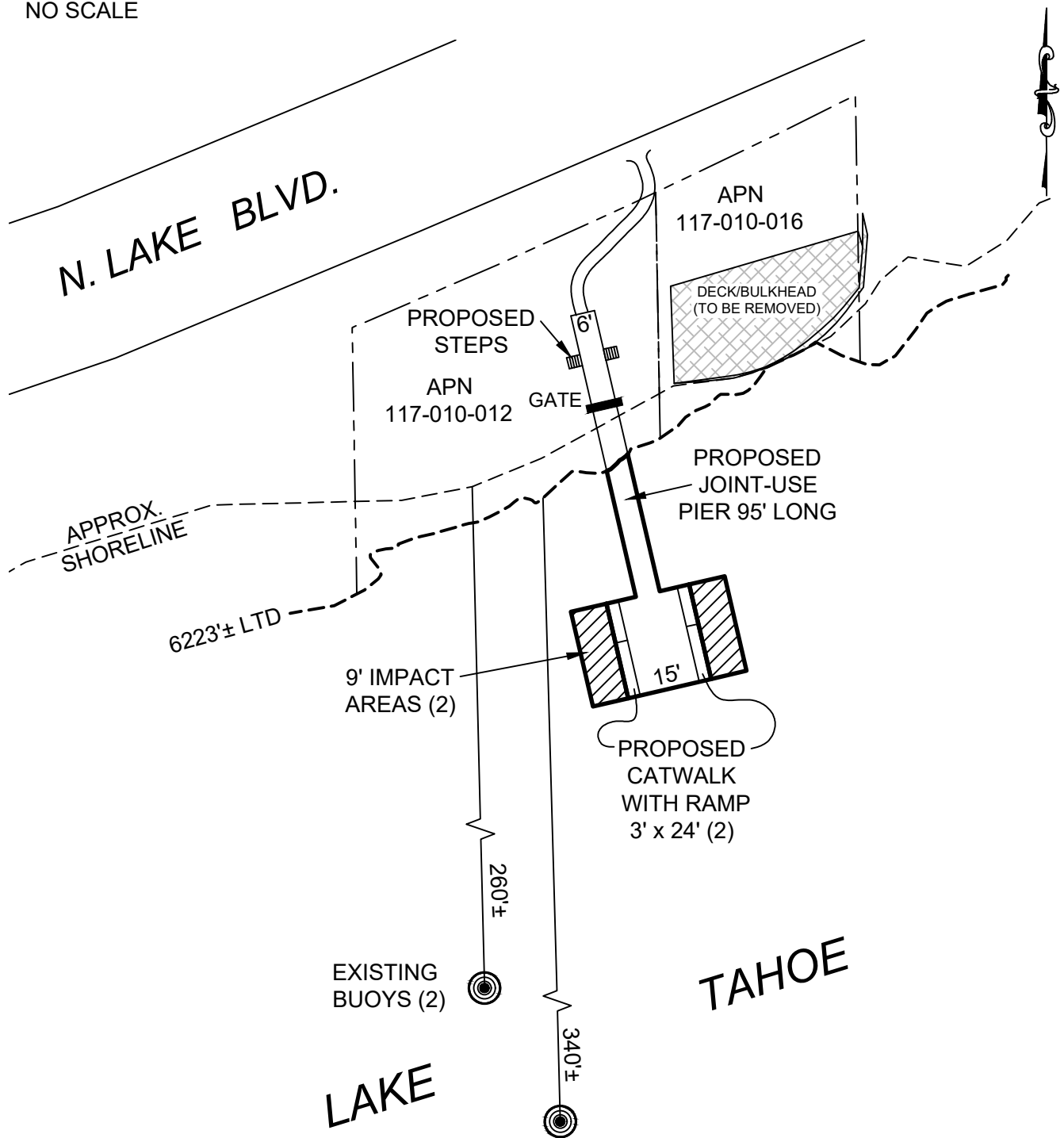


EXHIBIT A

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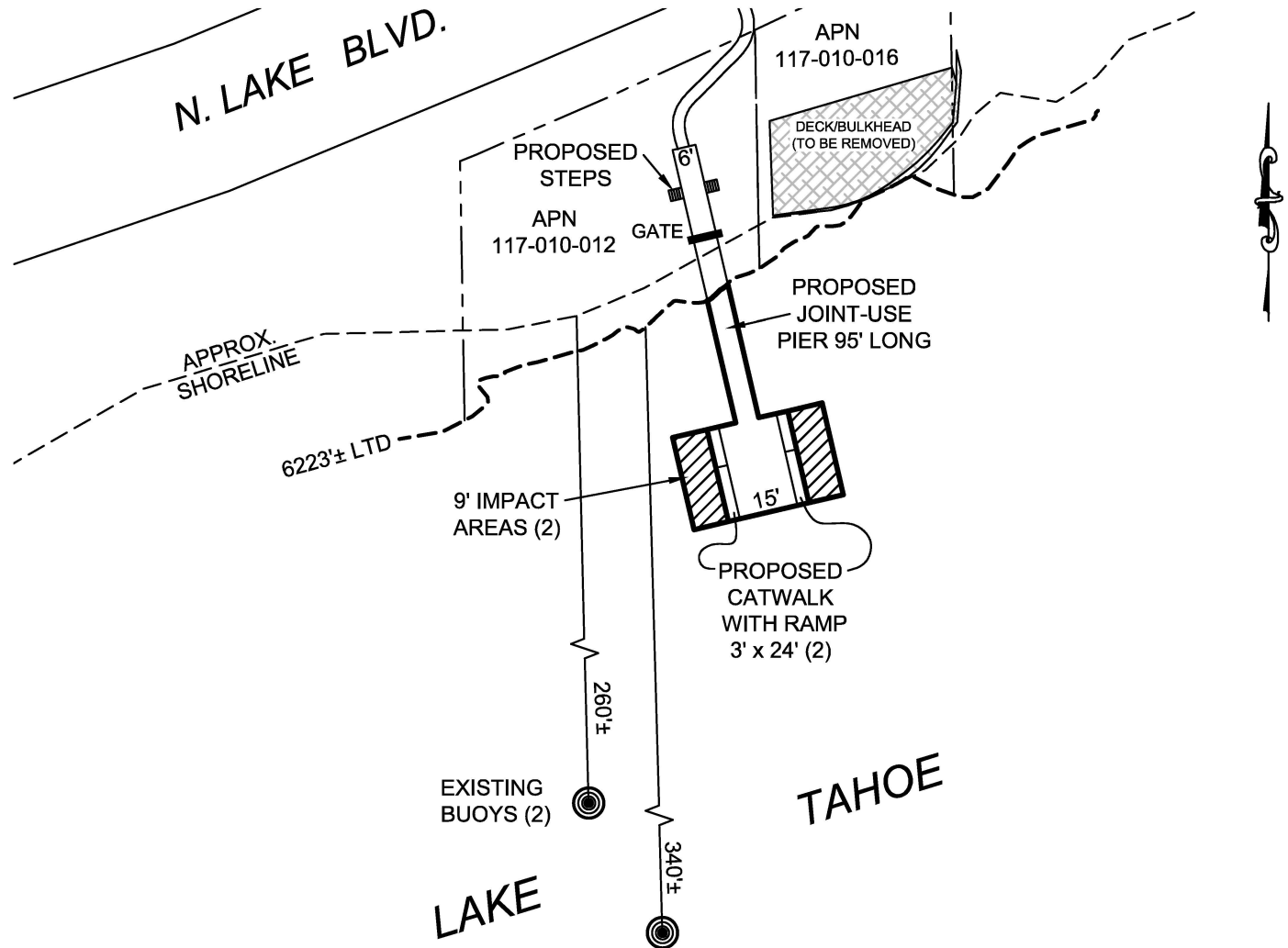
LAND DESCRIPTION PLAT
LEASE 9154, GDP GROUP LLC AND DILENA
PLACER COUNTY

CALIFORNIA STATE
LANDS COMMISSION



NO SCALE

SITE



6229 & 6259 NORTH LAKE BLVD., TAHOE VISTA

NO SCALE

LOCATION

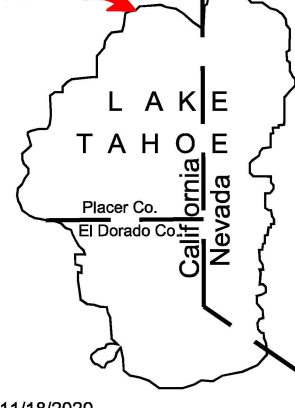


This Exhibit is solely for purposes of generally defining the lease premises, is based on unverified information provided by the Lessee or other parties and is not intended to be, nor shall it be construed as, a waiver or limitation of any State interest in the subject or any other property.

Exhibit B

LEASE 9154
GDP GROUP LLC
AND DILENA
APNs 117-010-012, -016
GENERAL LEASE -
RECREATIONAL USE
PLACER COUNTY

SITE



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