

LOCAL PLANNING APPEAL TRIBUNAL

PROCEEDING COMMENCED UNDER subsection 17(40) of the *Planning Act*, R.S.O. 1990, c. P.13, as amended

Appellant: James Dick Construction Limited
Subject: Failure of the County of Wellington to announce a decision respecting Proposed Official Plan Amendment No. OP-2016-09
Municipality: County of Wellington
OMB Case No.: PL170688
OMB File No.: PL170688
OMB Case Name: James Dick Construction Limited v. Wellington (County)

PROCEEDING COMMENCED UNDER subsection 34(11) of the *Planning Act*, R.S.O. 1990, c. P.13, as amended

Applicant and Appellant: James Dick Construction Limited
Subject: Application to amend Zoning By-law No. 40/2016 - Refusal or neglect of Township of Guelph/Eramosa failed to make a decision
Existing Zoning: Agricultural Zone and Environmental Protection Zone
Proposed Zoning: Extractive Industrial Zone and Environmental Protection Zone
Purpose: To permit a mineral aggregate extraction operation
Property Address/Description: 8532 Highway 7
Municipality: Guelph Eramosa
Municipality File No.: ZBA 06/16
OMB Case No.: PL170688
OMB File No.: PL170472

PROCEEDING COMMENCED UNDER subsection 11(5) of the *Aggregate Resources Act*, R.S.O. 1990, c. A.8, as amended

Referred by: Minister of Natural Resources and Forestry
Objector: Shirley Allen
Objector: Ron & Debbie Brennen
Objector: John & Ann Brophy
Objector: Dennis & Laura Campbell; and others
Applicant: James Dick Construction Limited
Subject: Application for a Class A licence for the removal of aggregate
Property Address/Description : Part Lot 1, Concession 6
Municipality: Guelph Eramosa
OMB Case No.: PL170688
OMB File No.: MM150034

MOTION RECORD

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Objector: Dennis & Laura Campbell; and others
Applicant: James Dick Construction Limited
Subject: Application for a Class A licence for the removal of aggregate
Property Address/Description : Part Lot 1, Concession 6
Municipality: Guelph Eramosa
OMB Case No.: PL170688
OMB File No.: MM150034

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Objector: Shirley Allen
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Objector: Dennis & Laura Campbell; and others
Applicant: James Dick Construction Limited
Subject: Application for a Class A licence for the removal of aggregate
Property Address/Description : Part Lot 1, Concession 6
Municipality: Guelph Eramosa
OMB Case No.: PL170688
OMB File No.: MM150034

NOTICE OF MOTION

THE REGIONAL MUNICIPALITY OF HALTON AND THE TOWN OF HALTON HILLS (collectively, the “Halton Municipalities”) will make a motion to the Local Planning Appeal Tribunal (the “Tribunal”) prior to the commencement of the hearing of this matter, on the 21st day of May, 2019, at 10:00 a.m., or as soon after that time as the motion can be heard, at the Municipal Building, 8348 Wellington Road #124, RR#1, Rockwood, Guelph-Eramosa, Ontario, N0B 2K0.

THE MOTION IS FOR AN ORDER OF THE TRIBUNAL:

- (a) That the following witnesses not be permitted to testify in this matter, based on their failure to provide witness statements that comply with the Tribunal’s Rules of Practice and Procedure and the Procedural Order:
 - (i) Stan Denhoed (“Mr. Denhoed”), a hydrogeologist with Harden Environmental Services Ltd.;
 - (ii) Kim J. Nystrom (“Mr. Nystrom”), a transportation consultant with Cole Engineering Group Ltd. ; and,
 - (iii) Greg Scheifele (“Mr. Scheifele”), an ecologist/forester with GWS Ecological & Forestry Services Inc.;
- (b) That James Dick Construction Limited (“JDCL”) be prohibited from calling more than one land use planner to address any given issue;
- (c) That JDCL be prohibited from calling more than one blasting expert to address any given issue; and,
- (d) Such further and other relief as counsel for the Halton Municipalities may request and this Tribunal may permit.

THE GROUNDS FOR THE MOTION ARE:

Overview

1. The hearing is scheduled to commence on May 21, 2019;

2. There is a Procedural Order in place which requires, among other things, that:
 - a. An expert witness shall prepare an expert witness statement (paragraph 10 of the Procedural Order);
 - b. An expert witness statement shall include a list of the issues the expert will address, together with his or her opinions on those issues, and the complete reasons for the opinions (see Attachment 1 to the Procedural Order); and,
 - c. The parties shall exchange expert witness statements on April 11, 2019 (paragraph 13 of the Procedural Order)(collectively referred to as the “Procedural Requirements”);
3. Paragraph 10 of the Procedural Order permits an expert to file his or her entire report in the place of a witness statement, as long as that report contains the required information. That paragraph goes on to state that the Tribunal may refuse to hear the expert’s testimony if the required information is not provided;
4. All of the parties agreed to be bound by the Procedural Requirements before they exchanged expert witness statements on April 11, 2019;
5. The Procedural Requirements are consistent with Rule 7.04(b) of the Tribunal’s Rules of Practice and Procedure, which mandates that expert witness statements **must** contain (i) the issues the expert will address, (ii) their opinions on these issues, (iii) the reasons that support their opinions, and (iv) their conclusions (the “Required Information”);

Insufficient Witness Statements

6. On April 11, 2019, JDCL delivered 17 expert witness statements. The expert witness statements prepared by JDCL’s hydrogeologist (Mr. Denhoed), traffic consultant (Mr. Nystrom), and ecologist (Mr. Scheifele) fail to provide the Required Information. Specifically:

- a. Mr. Denhoed's witness statement, dated April 2, 2019, does not contain the Required Information. None of the reports attached to his witness statement provides a statement regarding his current opinions on specific issues, let alone the reasons that support those opinions. The reports that have been provided do not address the current iteration of JDCL's application, nor do they provide a comprehensive analysis of the extensive amount of new data that has been gathered since 2016;
 - b. Mr. Nystrom's witness statement, dated March 8, 2019, does not contain any information about the issues that he will address; nor does it provide his opinion on those issues, the reasons that support his opinion or his conclusions. The reports that are referenced in his witness statement date back to 2013 and 2016, and portions of those reports appear to have been superseded. Those reports do not provide the Required Information; and,
 - c. Mr. Scheifele's witness statement, dated March 20, 2019, merely identifies a list of documents that he intends to address. No reference is made to the issues list, his conclusions on the issues or how he reached his opinions. His witness statement does not contain the Required Information;
7. Based on the witness statements provided, it is not possible to discern the opinions of Mr. Denhoed, Mr. Nystrom and Mr. Scheifele on key issues of concern to the Halton Municipalities in this proceeding. As a result, the Halton Municipalities have been unable to obtain reply witness statements from their experts in the relevant disciplines or to prepare effectively for the upcoming hearing;

Duplication of Planning Evidence

8. JDCL has served and filed expert witness statements from Rob Stovel ("Mr. Stovel"), Michael Wynia ("Mr. Wynia") and Ann Guiot ("Ms. Guiot"), all of whom are land use planners that deal with the various planning issues (collectively, the "Planners' Witness Statements");
9. There is significant duplication and overlap between the Planners' Witness Statements. The Affidavit of Aaria S. Rahim, sworn on May 6, 2019, details a number of instances where Mr. Stovel, Mr. Wynia and

Ms. Guiot have expressed identical or very similar opinions on the same issues;

Duplication of Blasting Evidence

10. The Witness Statement of Mr. Corkery adds nothing to this proceeding. It attaches a 2 page letter stating, essentially, that he agrees with the work undertaken by JDCL's other blasting expert, Mr. Cyr;

These Concerns were Raised in a Timely Manner

11. On April 18, 2019, counsel for the Halton Municipalities wrote to the Tribunal to express concerns with respect to the above-referenced witness statements; particularly their failure to comply with Rule 7.04(b) and the duplicative nature of the Planners' Witness Statements;
12. On May 1, 2019, the Tribunal directed that any challenge to the witness statements be made by way of a motion returnable at the outset of the hearing, to be dealt with as a preliminary matter;

Witnesses that have not complied with Rule 7.04(b) and the Procedural Order should not be permitted to testify

13. The expert witness statements submitted by Mr. Denhoed, Mr. Nystrom, and Mr. Scheifele do not comply with Rule 7.04(b) or the Procedural Order. Neither their witness statements, nor their reports, contain the Required Information;
14. Section 28 of the *Statutory Powers and Procedures Act* requires that there be substantial compliance with the Tribunal's Rules of Practice and Procedure. The witness statements and reports of Mr. Denhoed's, Mr. Nystrom's, and Mr. Scheifele's statements do not satisfy this threshold;
15. JDCL agreed to be bound by the Procedural Order prior to the exchange of the expert witness statements. There is no justification for its failure to

comply with the agreed upon Procedural Requirements or its failure to provide the Required Information;

16. The Halton Municipalities and other opposing parties have been prejudiced by JDCL's failure. The lack of disclosure by JDCL's experts has impeded the Halton Municipalities' ability to assess and reply to the expert evidence that JDCL intends to rely upon in response to the hydrogeological, transportation, and ecological issues that they have raised. Permitting JDCL to call Mr. Denhoed, Mr. Nystrom and Mr. Scheifele under these circumstances would substantially prejudice the Halton Municipalities and would result in procedural unfairness, particularly given that the Halton Municipalities have filed compliant expert witness statements that have disclosed the Halton Municipalities' case, as required.
17. The Halton Municipalities note that Mr. Denhoed has not filed any reply evidence, and that Mr. Scheifele has not replied to Halton's expert in his discipline;
18. The relief sought is necessary in order to prevent abuse of the Tribunal's processes and to cure the prejudice caused to the Halton Municipalities and the other opposing parties;

JDCL Ought not to be Permitted to Call Duplicative Planning or Blasting Evidence

19. The relief sought is necessary in order to ensure procedural fairness. Permitting JDCL to call more than one land use planner on the same issue would prejudice the opposing parties' rights to conduct effective cross-examination;
20. The same submission applies to JDCL's blasting evidence;

21. The relief sought will result in the most efficient use of the parties' and the Tribunal's time and resources and will protect against an unduly protracted hearing;

Statutory Provisions and Rules Relied Upon

22. Sections 31 and 32 of the *Local Planning Appeal Tribunal Act, 2017*, S.O. 2017, c. 23, Sched. 1;
23. Sections 15(3), 23(1) and 28 of the *Statutory Powers and Procedures Act*, R.S.O. 1990, c. S. 22;
24. The Tribunal's Rules of Practice and Procedure, and particularly Rule 7.04; and,
25. Such further and other grounds as counsel may advise and this Tribunal may permit.

THE FOLLOWING DOCUMENTARY EVIDENCE will be used at the hearing of the motion:

1. The Affidavit of Aaria Rahim, sworn on May 6, 2019, and the Exhibits attached thereto;
2. The contents of the Tribunal's file in these proceedings, including the Procedural Order, the witness statements filed by the parties, and the parties' correspondence with the Tribunal; and,
3. Such further and other material as counsel for the Halton Municipalities may advise and this Tribunal may permit.

MAY 6, 2019

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NOTICE OF MOTION

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AFFIDAVIT OF AARIA S. RAHIM

I, AARIA S. RAHIM, of the City of Toronto, in the Province of Ontario, MAKE OATH AND SAY:

1. I am an associate at Thomson, Rogers, the lawyers for the Regional Municipality of Halton and the Town of Halton Hills (together referred to as the "Halton Municipalities") in the within proceedings. As such, I have direct knowledge of the facts and matters hereinafter deposed, except as may be otherwise set out herein.

The Procedural Order

2. On May 2, 2019, the Local Planning Appeal Tribunal ("Tribunal") issued a Procedural Order for this matter.

3. I am advised by David Germain, counsel to Halton Municipalities and verily believe that a draft Procedural Order had been in circulation among the parties since late 2018 and that, except for the issues list and changing exchange dates, it was substantially similar to the final Procedural Order. I am further advised by Mr. Germain that all of the parties in this matter agreed to be bound by the draft Procedural Order before they exchanged expert witness statements.

4. In keeping with that agreement and the Procedural Order, the parties exchanged expert witness statements on April 11, 2019.

5. At that time, the Halton Municipalities provided JDCL with expert witness statements that set out the opinions, supporting reasons, and

conclusions upon which the Halton Municipalities rely for the purposes of the hearing.

Duplication of Planning Evidence

6. On April 11, 2019, JDCL submitted expert witness statements from Rob Stovel (“Mr. Stovel”), Michael Wynia (“Mr. Wynia”) and Ann Guiot (“Ms. Guiot”), all of whom are land use planners (collectively, the “Planners’ Witness Statements”).

7. I am advised by Denitza Koev (“Ms. Koev”), the associate assisting Mr. Germain, that she has reviewed the Planners’ Witness Statements and has identified a number of instances where Mr. Stovel, Mr. Wynia and/or Ms. Guiot have expressed identical or similar opinions on the same issue. Now shown to me is a comparison chart, titled “Duplicative (JDCL) Planning Opinions” prepared by Ms. Koev, which tracks overlap and duplication in the Planners’ Witness Statements. That chart is attached hereto as **Exhibit “A”**.

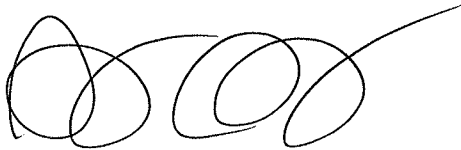
8. Based on my review of Ms. Koev’s comparison chart, the Planners’ Witness Statements:

- (a) Overlap on 16 of the 60 issues in the Issues List, most of which are identified as Planning Issues; and,
- (b) Express virtually identical opinions on those issues.

9. On April 18, 2019, Mr. Germain wrote to the Tribunal to express concerns with the witness statements filed by JDCL, particularly their failure to comply with Rule 7.04(b) and the duplicative nature of the Planners’ Witness Statements. Attached hereto as **Exhibit “B”** is a copy of that correspondence.

10. This Affidavit is sworn by me in support of a motion brought by the Halton Municipalities and is not made for any improper purpose nor for delay.

SWORN before me at
the City of Toronto, on
May 6, 2019.



COMMISSIONER FOR
TAKING AFFIDAVITS

DAVID GERMAIN

LSO# S25301

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AARIA S. RAHIM

THIS IS EXHIBIT " A " REFERRED

TO IN THE AFFIDAVIT OF

ARIA RAMIM

SWORN BEFORE ME ON THE 5th

DAY OF MAY, 2019


A COMMISSIONER FOR TAKING AFFIDAVITS

Examples of duplication:
45 - Good planning, in public interest?
46 - Is the proposal consistent with the PPS?

Stovel
It is my opinion that the proposed mineral aggregate operation represents good planning in the public interest. [p. 5 of WS]

DUPLICATIVE (JDCL) PLANNING OPINIONS

Wynia
It is my opinion that the proposed quarry operation represents good planning and is in the public interest. [p. 5 of WS]

Guiot
Does not deal with this issue.

Deals with PPS policies at p. 6 and Tab 7B of 2019 WS, and in Updated Planning Justification Report, dated March 27, 2019. Pages 6 - 26 of WS deal with this issue. Opinions expressed are virtually identical to Stovel's on each of the PPS policies. Only deals with Section 2.5 of the PPS (specifically, 2.5.3.1 - Stovel does not deal with this Section; Wynia does)

Sections 1.1.1, 1.1.4 "The proposed Hidden Quarry is consistent with these policies by providing for use of a provincially significant mineral aggregate resource, while protecting key natural features and allowing for eventual rehabilitation of the site for an ecological end use." [Section 1.1.4 - Tab 7B, p.1]

"The proposed Hidden Quarry is consistent with these objectives by providing for use of a provincially significant mineral aggregate resource while protecting key natural features and allowing for the eventual rehabilitation of the site for an ecological end use." [p.7-8 of WS] Does not deal with this section.

The above statement is repeated at p.26 of the Updated Planning Justification Report and the following statement is added: "The extensive studies completed by the proponent show that the operation of the mineral aggregate operation, as set out on the Site Plan, will not result in a negative social impact on the nearby communities or adjacent land uses."

"The various studies submitted by the applicant demonstrate that the operation of the quarry, as set out in the Site Plans, will not result in a negative social impact on the nearby communities or adjacent land uses." [p. 10 of WS]

Section 2.1 "Proposal is consistent with these policies. Extensive environmental work and analysis completed by GWS and hydrogeologists addressed these policies. The application was reviewed by government agencies and all provincial agencies are satisfied. Through the Progressive and Final Rehabilitation, the connectivity of the site will be maintained and an overall net positive impact on the natural environment will result." [Tab 7B, p.3]

"The applicant has prepared natural environmental and hydrological and hydrogeological studies which demonstrate that extraction can occur without negative impact to significant natural heritage features. These students have been subject to agency and peer review. [p. 15]

"Through properly planned extraction and the implementation of the Progressive and Final Rehabilitation Plans, the proposed Hidden Quarry should result in an overall net positive impact on the natural environment." [p. 17]

Section 2.5.4.1 "There is a substantial volume of aggregate located below the water table that would make rehabilitation to an agricultural condition unfeasible." [Tab 7B, p.3] Does not deal with this section.

"There is a substantial quantity of mineral aggregate resources below the water table warranting extraction and the depth of planned extraction would make agricultural rehabilitation unfeasible." [p.23]

47 - Conformity with County OP	Analysis set out at Tab 7D to WS and p.35 of Updated Planning Jusitification report.	Deals with the same OP Sections as Stovel; focuses on Section 6.6.5, 6.6.8 and 6.6.9, which are all dealt with by Stovel in his materials.	Does not deal with this issue.
48 - Conformity with Galt Morain Policy Area	Addressed in WS and p.36 of Unpdated Planning Report.	Restates the policy and does not provide a planning opion.	Does not deal with this issue.
49 - Conformity with Hatlon OP	Conformity not required.	Same as Stovel.	Does not deal with this issue.
49 - Conformity with Milton OP	Conformity not required.	Same as Stovel.	Does not deal with this issue.
49 - Conformity with Grand River Protection Area	Says Denhoed will address.	Plan does not apply. No conformity issue.	Does not deal with this issue.
49 - Conformity with GRPA Assessment Report	Says Denhoed will address.	Document does not establish policy. No conformity required.	Does not deal with this issue.
50 - Regard for Planning Act s.2 matters	Dealt with at Tab 7C.	Duplicative of Stovel's work in Tab 7C.	Does not deal with this issue.
51 - Regard for AGA s.12 matters	Addressed at Tab 7A of Stovel WS.	Does not deal with this issue.	Dealt with at p.33-37 of WS - Does not provide any special or additional analysis when compared to Stovel's analysis at Tab 7A.
52 - Conformity with Greenbelt Plan	Greenbelt does not apply.	Same as Stovel.	Does not deal with this issue.
54 - Land use compatability / mitigation measures	At p.9 of his WS, Stovel opines that: - The proposed operation will not result in unacceptable impacts with respect to land use compatability, based on the fact that there are no outstanding objections from provincial ministries and agencies; - The operation will be adequately screened from adjacent land uses; -There will be no significant negative economic impacts; -There are no other land use goals or objectives that will be impacted unacceptably; -The necessary mitigation measures, monitoring and enforcement measures are implemented on the Siet Plans and through other documents such as the License, Prescribed Conditions, OPA, ZBA and Road Agreement.	Same as Stovel at p. 35: "It is my opinion that the proposed quarry will not result in any unacceptable impacts and that the application should be approved on the basis of the mitigation and monitoring proposed."	Same as Stovel at p.38: "In my opinion, all the mitigation measures and monitoring requirements have been included on the Site Plan, which provides the best enforcement control."
55 - Will potential impacts be mitigated/minimized?	March 5, 2019 Site Plans are satisfactory.	Same as Stovel.	Same as Stovel.
56 - Appropriate form and conditions, on approval.	Set out at p.10 of the WS.	Same as Stovel.	Same as Stovel.
Other Issues Dealt With (By Issue #)			
41	Dealt with at p.5 of WS.	Does not deal with this issue.	Dealt with at p.27 of WS. Similar to Stovel.
57	Dealt with at p.10-11 of WS.	Does not deal with this issue.	Similar to Stovel.
58	Addressed at p.11 of WS.	Does not deal with this issue.	Dealt with at p. 41-42 of WS. Similar to Stovel.
59	Addressed at p.11 of WS.	Does not deal with this issue.	Dealt with at p.43 of WS. Similar to Stovel.
60	Addressed at p.11 of WS.	Does not deal with this issue.	Addressed at p.43 of WS. Similar to Stovel.



Re: Hidden Quarry JDCL Witness Statements

David N. Germain to: Nazma.Ramjaun@Ontario.ca

18/04/2019 09:35 AM

Cc: "Barnett, Chris", David White, "Eileen Costello (ecostello@airdberlis.com)", "Peter Pickfield (pickfield@garrodpickfield.ca) (pickfield@garrodpickfield.ca)",

From: David N. Germain/Thomson Rogers
To: "Nazma.Ramjaun@Ontario.ca" <Nazma.Ramjaun@Ontario.ca>
Cc: "Barnett, Chris" <CBarnett@osler.com>, David White <David.White@devrylaw.ca>, "Eileen Costello (ecostello@airdberlis.com)" <ecostello@airdberlis.com>, "Peter Pickfield (pickfield@garrodpickfield.ca) (pickfield@garrodpickfield.ca)" <pickfield@garrodpickfield.ca>

Ms. Ramjaun

Having undertaken a preliminary review of the witness statements provided below on behalf of JDCL, I have a number of concerns that I feel must be raised with the Tribunal at this point. I have spoken to Mr. Barnett and understand that he shares these concerns. Therefore, we request that the Tribunal schedule a teleconference with Vice-Chair Schiller, who has been active in the case management of this file, as soon as possible.

The issues of concern are as follows:

1) Several of the witness statements filed on behalf of JDCL fail to comply with the Tribunal's rules, in particular rule 7.04(b), which provides that witness statements must contain "the issues the expert will address, their opinions on these issues, the reasons that support their opinions and their conclusions;".

The most egregious example appears to be the witness statement of JDCL's hydrogeologist Mr. Denhoed, which simply states that Mr. Denhoed will "Review how issues in the consolidated issues list pertinent to the discipline of hydrogeology have been addressed in the following documents." What follows is a document book containing hundreds of pages of historic reports, correspondence and a significant amount of raw data (for example Tab 12) for which no analysis is provided. It appears that the most recent comprehensive report prepared by Mr. Denhoed dates from 2012. It is not clear which portions of this report have been superseded and which still reflect Mr. Denhoed's opinions. On the basis of the witness statement provided, it is not possible to discern Mr. Denhoed's current opinions, nor how he reached those opinions. This is prejudicial to the parties opposite and precludes effective attempts to narrow the issues or produce reply witness statements.

The same concerns pertain to other witness statements, including Mr. Nystrom (traffic), Mr. Scheifele (natural heritage) and others.

2) The opinions expressed by JDCL's 3 planning witnesses appear to be highly duplicative;

3) On April 11, JDCL did not provided a list setting out the order in which its witnesses will be called; and

4) It appears that none of JDCL's witnesses address the version of the issues list that resulted from JDCL's motion and the Tribunal's recent decision. Effectively, JDCL brought a motion, forcing the parties opposite to incur costs responding, and then ignored the outcome of that motion. Halton Hills and Halton Region submit that this course of conduct should entail cost consequences.

David N. Germain

Thomson, Rogers
390 Bay Street, Suite 3100
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TO IN THE AFFIDAVIT OF

AARIA RAMIM

SWORN BEFORE ME ON THE 6TH

DAY OF MAY, 2019

[Signature]

A COMMISSIONER FOR TAKING AFFIDAVITS

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Leigh Mugford

Please use the dropbox link below : <https://www....>

04/11/2019 03:51:02 PM

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Date: 04/11/2019 03:51 PM
Subject: Hidden Quarry JDCL Witness Statements

Please use the dropbox link below :

https://www.dropbox.com/sh/a20qh0tt01wspw3/AABasi6by6oAbCtrnzN7Q_10a?dl=0

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