

5C3

Agenda Item #:

**PALM BEACH COUNTY  
BOARD OF COUNTY COMMISSIONERS  
AGENDA ITEM SUMMARY**

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<b>Meeting Date:</b>	<b>June 19, 2018</b>	<input type="checkbox"/> <b>Consent</b>	<input checked="" type="checkbox"/> <b>Regular</b>
		<input type="checkbox"/> <b>Ordinance</b>	<input type="checkbox"/> <b>Public Hearing</b>

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**Department:** **Facilities Development & Operations**

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**I. EXECUTIVE BRIEF**

**Motion and Title:** Staff recommends motion to:

**A) adopt** a Resolution finding that an extension of the Lease Agreement with T&D Cattle Company and Exotics, Inc. (T&D) for 22 years until 2053 is in the best interest of the County; and

**B) approve** a First Amendment to Lease Agreement (R2011-1108) of 195 farmable acres in the Ag Reserve.

**Summary:** On July 19, 2011, the Board approved a Lease Agreement with T&D to lease the Amestoy farm property for a term of 5 years with successive one (1) year extension periods through June 30, 2031, at an initial rate of \$500/gross acre. Rent is currently \$500/acre/year. T&D is operated by the Bowman family. T&D is concerned about incremental changes to the land use and zoning regulations for the Ag Reserve, and the potential impact of such changes on T&D's ability to continue farming and have requested the County extend their Lease in line with the proposed extension of the Bedner's lease. Extending the Lease will provide T&D the legal right to farm as long as it remains economically viable to do so. This First Amendment to the Lease Agreement provides T&D twenty-two (22) additional 1-year options, extending the term through June 30, 2053. The extension options will be automatically exercised each year unless T&D provides 90 days prior notice that it does not wish to exercise the then current option. Rent will be periodically adjusted to fair market value as determined by appraisal. The Resolution finds that the extension of the T&D Lease is in the best interests of the County based upon the following facts: 1) a major element of the Ag Reserve Acquisition Program was to ensure continued agricultural operations in the Ag Reserve; 2) continuity of farming operations assists in preserving agricultural operations in the Ag Reserve; 3) the extension of the T&D Lease will maintain continuity of existing farming operations; and 4) the County will receive fair market value rent as determined by appraisal during the extensions. **(PREM) District 5 (HJF)**

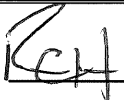
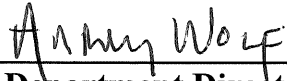
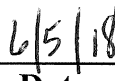

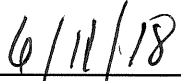
**Background and Policy Issues:** The County acquired the 215 acre Amestoy property in 2004 subject to a lease with Mecca Farms, Inc. Mecca Farms ceased farming operations after the enactment of new drainage regulations by the South Florida Water Management District. In order to comply with the new regulations, substantial improvements to the existing drainage irrigation system was required. Staff issued an RFP to lease the Amestoy property in June 2010. T&D proposed leasing the 195 acre parcel for approximately \$70,000 per year for 5 years, subject to a credit for the cost of the required drainage improvements, with 15 1-year lease extension options.

Continued on Page 3

**Attachments:**

1. Location Map
2. Resolution (with attachment)
3. First Amendment to Lease Agreement

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<b>Recommended By:</b>			
		<b>Department Director</b>	<b>Date</b>
<b>Approved By:</b>			
	<b>County Administrator</b>		<b>Date</b>

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II. FISCAL IMPACT ANALYSIS

A. Five Year Summary of Fiscal Impact:

Fiscal Years	2018	2019	2020	2021	2022
Capital Expenditures	_____	_____	_____	_____	_____
Operating Costs	_____	_____	_____	_____	_____
External Revenues	_____	_____	_____	_____	_____
Program Income (County)	_____	_____	_____	_____	_____
In-Kind Match (County)	_____	_____	_____	_____	_____
NET FISCAL IMPACT	=====	=====	=====	=====	=====
# ADDITIONAL FTE POSITIONS (Cumulative)	_____	_____	_____	_____	_____

Is Item Included in Current Budget: Yes \_\_\_\_\_ No \_\_\_\_\_

Budget Account No: Fund \_\_\_\_\_ Dept \_\_\_\_\_ Unit \_\_\_\_\_ Object \_\_\_\_\_  
Program \_\_\_\_\_

Does this item include the use of federal funds? Yes \_\_\_\_\_ No X

B. Recommended Sources of Funds/Summary of Fiscal Impact:

Fiscal Impact occurs beyond 2022. Rent is established by appraisal and may be adjusted periodically.

C. Departmental Fiscal Review: [Signature]

III. REVIEW COMMENTS

A. OFMB Fiscal and/or Contract Development Comments:

[Signature] 5/31/18  
OFMB  
AK 5/30 7/5/20

[Signature] 6/17/18  
Contract Development and Control  
6/17/18

B. Legal Sufficiency:

[Signature] 6/8/18  
Assistant County Attorney

C. Other Department Review:

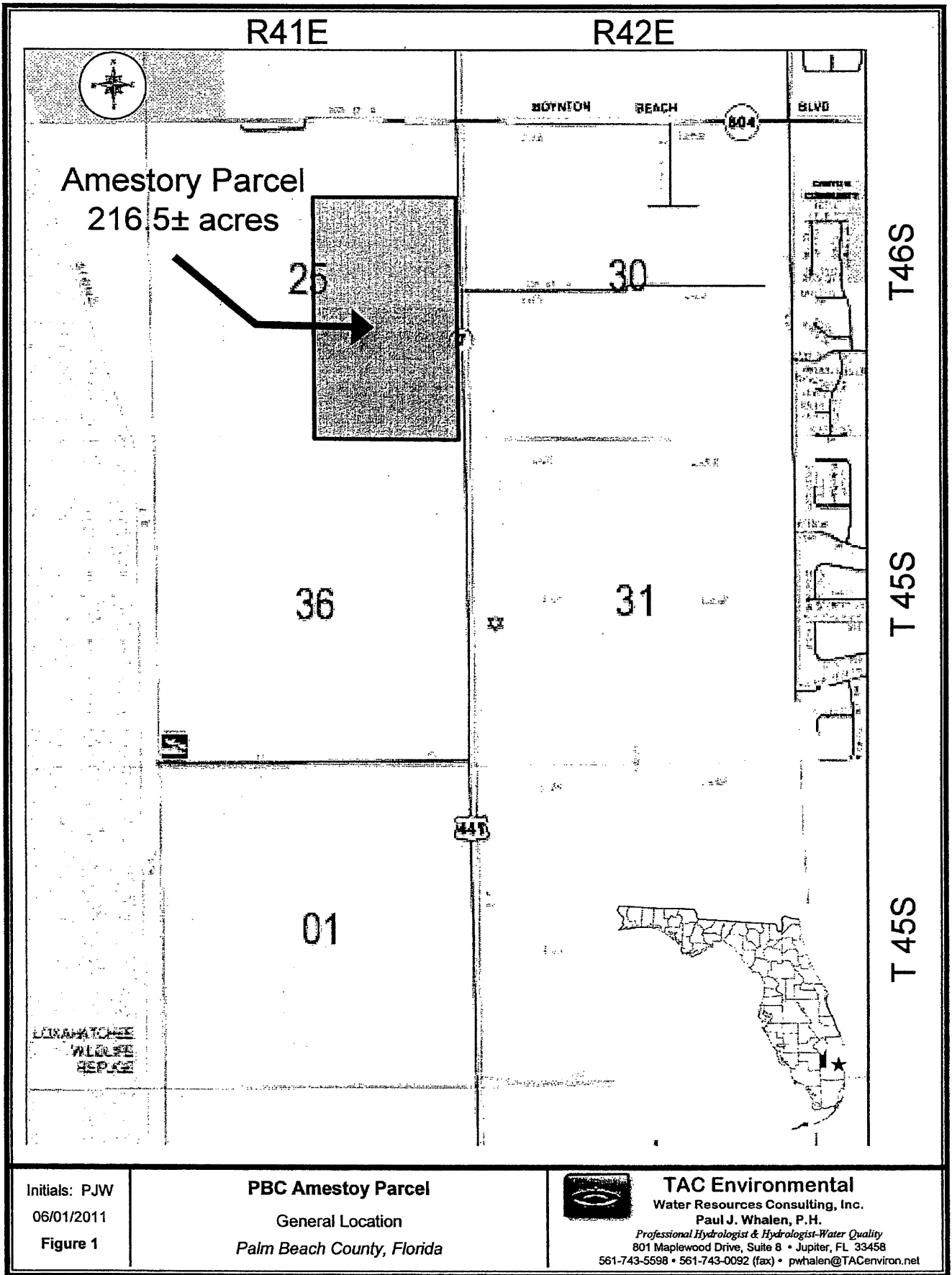
\_\_\_\_\_  
Department Director

This summary is not to be used as a basis for payment.

**Background and Policy Issues (Cont'd):** In order to gain experience with the drainage characteristics of the property, Staff allowed T&D to farm approximately 117.5 acres of the Amestoy property from December 1, 2010, through June 30, 2011.

The commencement date of the Lease was established as October 1, 2011. T&D's current lease runs through 2031. Extending the Lease will provide T&D the legal right to farm as long as it remains economically viable to do so. As rent during the extension will continue to be subject to adjustment based upon appraisals, the County will always receive fair market rent.

Florida Statutes, Section 286.23, requires that a Disclosure of Beneficial Interest be obtained when a property held in a representative capacity is leased to the County, but does not require such Disclosure when the County leases property to a tenant. Since the Statute does not require the Disclosure and since this is an amendment to the Lease Agreement for which a Disclosure was already provided, Staff did not request a new Disclosure. Previous disclosures identified Theresa Bowman and Richard Bowman each holding a 50% beneficial interest in T&D.



LOCATION MAP

Attachment 1  
1 of 1

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Attachment 2  
Resolution w/ Attachment  
( 7 pages)

**RESOLUTION NO. \_\_\_\_\_**

**RESOLUTION OF THE BOARD OF COUNTY  
COMMISSIONERS OF PALM BEACH COUNTY,  
FLORIDA, AUTHORIZING AN EXTENSION OF THE  
LEASE WITH T&D CATTLE COMPANY AND EXOTICS,  
INC.; AND PROVIDING FOR AN EFFECTIVE DATE.**

**WHEREAS**, T&D Cattle Company and Exotics, Inc., a Florida corporation, (“Tenant”), pursuant to a lease agreement dated July 19, 2011, (R2011-1108), leases 195 acres from Palm Beach County in the Ag Reserve for the purpose of agricultural production; and

**WHEREAS**, Tenant has requested that County extend the term of the Lease for twenty-two (22) years by granting Tenant twenty-two (22) successive options to extend the term of the Lease, each for a period of one (1) year; and

**WHEREAS**, the Board of County Commissioners of Palm Beach County hereby finds that a major element of the Ag Reserve Acquisition Program was to ensure continued agricultural operations in the Ag Reserve; continuity of farming operations assists in preserving agricultural operations in the Ag Reserve; extension of the Lease maintains continuity of existing farming operations; and the County will receive fair market value rent as determined by appraisal during the extensions of the Lease, and it is therefore in the best interest of the County to extend the Lease to preserve agricultural production on the property.

**NOW, THEREFORE, BE IT RESOLVED BY THE BOARD OF COUNTY  
COMMISSIONERS OF PALM BEACH COUNTY, FLORIDA, that:**

**Section 1. Recitals**

The foregoing recitals are true and correct and incorporated herein by reference.

**Section 2. Authorization to Lease Real Property**

The Board of County Commissioners of Palm Beach County shall grant Tenant an additional twenty-two (22) successive options to extend the term of the Lease, each for a period of one (1) year, pursuant to the First Amendment to Lease attached hereto and

incorporated herein by reference, with rent during said extended terms being adjusted to Fair Market Value as determined by appraisal.

**Section 3. Conflict with Federal or State Law or County Charter**

Any statutory or Charter provisions in conflict with this Resolution shall prevail.

**Section 4. Effective Date**

The provisions of this Resolution shall be effective immediately upon adoption hereof.


The foregoing resolution was offered by Commissioner \_\_\_\_\_ who moved its adoption. The Motion was seconded by Commissioner \_\_\_\_\_, and upon being put to a vote, the vote was as follows:

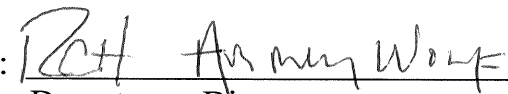
Commissioner Melissa McKinlay, Mayor  
Commissioner Mack Bernard, Vice Mayor  
Commissioner Hal R. Valeche  
Commissioner Paulette Burdick  
Commissioner Dave Kerner  
Commissioner Steven L. Abrams  
Commissioner Mary Lou Berger

The Mayor thereupon declared the resolution duly passed and adopted this \_\_\_\_ day of \_\_\_\_\_, 20\_\_.

PALM BEACH COUNTY, a political  
subdivision of the State of Florida  
  
BOARD OF COUNTY COMMISSIONERS  
  
SHARON R. BOCK  
CLERK & COMPTROLLER

By: \_\_\_\_\_  
Deputy Clerk

APPROVED AS TO FORM AND  
LEGAL SUFFICIENCY  
  
By:  \_\_\_\_\_  
Assistant County Attorney

APPROVED AS TO TERMS  
AND CONDITIONS  
  
By:  \_\_\_\_\_  
Department Director

Attachment 3  
First Amendment to Lease Agreement  
(5 pages each)



## **FIRST AMENDMENT TO LEASE AGREEMENT**

**THIS FIRST AMENDMENT TO LEASE AGREEMENT** (R2011-1108) (the “First Amendment”) entered into as of \_\_\_\_\_ by and between **PALM BEACH COUNTY**, a political subdivision of the State of Florida, by and through its Board of County Commissioners hereinafter referred to as “County” and **T&D CATTLE COMPANY AND EXOTICS, INC.**, a Florida corporation, (EIN: #65-0346011) hereinafter referred to as “Tenant”.

### **WITNESSETH**

**WHEREAS**, County and Tenant entered into a Lease Agreement dated July 19, 2011, (R2011-1108) (the “Lease”), pursuant to which Tenant leases approximately 195 acres (the “Premises”) as defined in the Lease; and

**WHEREAS**, the Lease term was originally set to expire on June 30, 2016, subject to extensions; and

**WHEREAS**, Tenant has exercised its option to extend the Lease through June 30, 2018; and

**WHEREAS**, Tenant is concerned about incremental changes to the land use and zoning regulations for the Ag Reserve and the potential impact of such changes on the Tenant’s ability to continue farming these lands consistent with the objectives for the AGR District and has requested an additional twenty-two (22) year extension to the Lease term; and

**WHEREAS**, the parties wish to modify this Lease on the terms and conditions set forth herein.

**NOW, THEREFORE**, for and in consideration of the mutual covenants and agreements contained herein, as well as other good and valuable considerations, the receipt of which is hereby acknowledged by both parties, County and Tenant agree as follows:

- 1 The foregoing recitals are true and correct and incorporated herein by reference.
2. Section 1.02 Length of Term and Commencement Date, is hereby amended as follows:

The words “...be extended beyond June 30, 2031.” in the last sentence are revised to state “...be extended beyond June 30, 2053.” and the following sentence is added “In the event Tenant provides notice of its election not to exercise an option, the Lease shall terminate and the parties shall be relieved of all further obligation hereunder accruing hereunder subsequent to the date of such termination.”.

All the rest and remainder of Section 1.02 is unchanged and remains in full force and effect.

3. Section 4.05 Non-Discrimination is hereby deleted in its entirety and replaced with the following:

**Section 4.05 Non-Discrimination.**

Tenant shall assure and certify that it will comply with the Title VI of the Civil Rights Act of 1964, as amended, and Palm Beach County Resolution No. R92-13, and shall not discriminate against any individual on the basis of their race, color, national origin, religion, ancestry, sex, age, marital status, familial status, sexual orientation, gender identity or expression, disability, or genetic information with respect to any activity occurring on the Premises or conducted pursuant to this Lease.

4. Section 7.01 Insurance is hereby modified to add the following:

Tenant shall cause any contractor or subcontractor performing work within the Premises on behalf of Tenant to, at all times during the performance of such work, maintain in full force and effect insurance of the same type and amount as Tenant required herein.

5. Section 7.09 Certificate(s) of Insurance is hereby deleted in its entirety and replaced with the following:

**Section 7.09 Certificate(s) of Insurance.**

Immediately following Tenant's execution of this Lease, Tenant will deliver to Insurance Tracking Services, Inc. (ITS), County's authorized insurance consultant, a certificate of insurance with respect to each required policy to be provided by the Tenant under this Section. The required certificates must be signed by the authorized representative of the Insurance Company shown on the certificate.

Submit certificates of insurance to:

Palm Beach County  
c/o Insurance Tracking Services, Inc. (ITS)  
P.O. Box 20270  
Long Beach, CA 90801  
Email: [pbcc@instracking.com](mailto:pbcc@instracking.com) or Facsimile: (562) 435-2999

Subsequently, Tenant shall, during the term of the Lease, and prior to each renewal thereof, provide such evidence to ITS at [pbcc@instracking.com](mailto:pbcc@instracking.com) or fax (562) 435-2999, which is Palm Beach County's insurance management system. Such Certificate(s) of Insurance shall include a minimum thirty (30) day endeavor to notify due to cancellation or non-renewal of coverage. The Certificate(s) of Insurance should reference in the "CERTIFICATE HOLDER" box (ACORD FORM): Palm Beach County BOCC, Property & Real Estate Management, Attention Director, 2633 Vista Parkway, West Palm Beach, FL 33411-5605.

6. Section 14.19 Palm Beach County Office of the Inspector General is hereby deleted and replaced with the following:

**Section 14.19 Palm Beach County Office of the Inspector General Audit Requirements.**

Palm Beach County has established the Office of the Inspector General in Palm Beach County Code, Section 2-421 - 2-440, as may be amended. The Inspector General is authorized with the power to review past, present and proposed County contracts, transactions, accounts and records. The Inspector General's authority includes, but is not limited to, the power to audit, investigate, monitor, and inspect the activities of entities contracting with the County, or anyone acting on their behalf, in order to ensure compliance with contract requirements and to detect corruption and fraud. Failure to cooperate with the Inspector General or interfering with or impeding any investigation shall be a violation of Palm Beach County Code, Section 2-421 - 2-440, and punished pursuant to Section 125.69, Florida Statutes, in the same manner as a second degree misdemeanor.

7. The following Section is hereby added to the Lease:

**Section 14.21 No Third Party Beneficiary.**

No provision of this Lease is intended to, or shall be construed to, create any third party beneficiary or to provide any rights to any person or entity not a party to this Lease, including but not limited to any citizens of Palm Beach County or employees of County or Tenant.

8. Except as modified by this First Amendment, the Lease remains unmodified and in full force and effect in accordance with the terms thereof.

9. This First Amendment is expressly contingent upon the approval of the Palm Beach County Board of County Commissioners and shall become effective only when signed by all parties and approved by the Palm Beach County Board of County Commissioners.

REMAINDER OF PAGE INTENTIONALLY LEFT BLANK

**IN WITNESS WHEREOF**, the parties have set their hands and seals to this First Amendment as of the date written above.

Signed, sealed and delivered  
in the presence of:

**ATTEST:**  
**SHARON R. BOCK,**  
**Clerk and Clerk & Comptroller**

**COUNTY:**  
**PALM BEACH COUNTY**, a political  
subdivision of the State of Florida

By: \_\_\_\_\_  
Deputy Clerk

By: \_\_\_\_\_  
Melissa McKinlay, Mayor

WITNESSES:

\_\_\_\_\_  
Witness Signature

\_\_\_\_\_  
Print Name

\_\_\_\_\_  
Witness Signature

\_\_\_\_\_  
Print Name

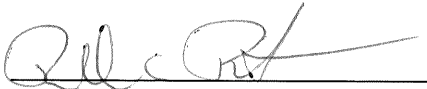
**APPROVED AS TO FORM AND  
LEGAL SUFFICIENCY:**

By:   
Assistant County Attorney

**APPROVED AS TO TERMS  
AND CONDITIONS:**

By:   
Department Director

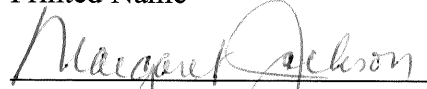
WITNESS:



Witness



Printed Name



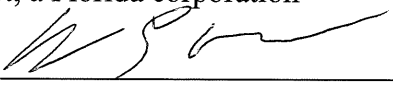
Witness



Printed Name

TENANT:

**T&D CATTLE COMPANY AND EXOTICS,  
INC.**, a Florida corporation

By: 

Richard Bowman, President

Seal

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