

ORDINANCE NO.2002-12

AN ORDINANCE OF THE BOARD OF COUNTY COMMISSIONERS OF PALM BEACH COUNTY, FLORIDA, PERTAINING TO PUBLIC SCHOOL CONCURRENCY

PROVIDING FOR SHORT TITLE; PROVING FOR INTENT; PROVIDING FOR AUTHORITY; PROVIDING FOR DEFINITIONS; PROVIDING FOR APPLICABILITY; PROVIDING FOR STANDARD; PROVIDING FOR SCHOOL DISTRICT REVIEW OF RESIDENTIAL DEVELOPMENT APPROVALS; PROVIDING FOR DEVELOPMENT ORDER APPROVAL; PROVIDING FOR APPEALS; PROVIDING FOR REPEAL OF LAWS IN CONFLICT; PROVIDING FOR SEVERABILITY; PROVIDING FOR INCLUSION IN THE CODE OF LAWS AND ORDINANCES; AND PROVIDING FOR AN EFFECTIVE DATE.

WHEREAS, the Board of County Commissioners has determined that the safe, convenient, orderly and adequate provision of public school facilities is essential to the health, safety and general welfare of the citizens of Palm Beach County; and

WHEREAS, in order to provide adequate public school facilities in a timely manner and at appropriate locations, the COUNTY, the MUNICIPALITIES and SCHOOL DISTRICT have determined that it is necessary and appropriate for the entities to cooperate with each other to eliminate the current deficit of PERMANENT STUDENT STATIONS, and to provide capacity for projected new growth; and

WHEREAS, the COUNTY, the MUNICIPALITIES, and the SCHOOL DISTRICT recognize that adequate revenue sources must be available to provide for the needed increase in PERMANENT STUDENT STATIONS; and

WHEREAS, Article IX, Sections 1 and 4 of the Florida Constitution require a uniform system of free public schools on a county-wide basis, and provide that each county shall constitute a SCHOOL DISTRICT subject to supervision by the State Board of Education as provided by general law; and

WHEREAS, Sections 235.193 and 235.194, Florida Statutes, require the coordination of planning between school districts and local governments to ensure that the plans for the construction and opening of public educational facilities are coordinated in time and place with plans for RESIDENTIAL DEVELOPMENT; and

Adopted 4/16/02, Effective 4/26/02

WHEREAS, Section 163.3177(6)(h), Florida Statutes, requires the COUNTY and the MUNICIPALITIES to coordinate the adopted local comprehensive plans with each other and the plans of the SCHOOL DISTRICT; and

WHEREAS, Section 163.3180(13), Florida Statutes, authorizes the COUNTY and the MUNICIPALITIES to adopt a school concurrency program; and

WHEREAS, Section 163.3180(13)(g), Florida Statutes requires that prior to establishing a school concurrency program, the COUNTY and the MUNICIPALITIES and the SCHOOL BOARD adopt an interlocal agreement (hereafter referred to the AAGREEMENT@)for school concurrency to satisfy Section 163.3177(6)(h)1 and 2,Florida Statutes.

WHEREAS, the COUNTY, MUNICIPALITIES and the SCHOOL DISTRICT have entered into an AGREEMENT which satisfies Section 163.3180(13)(g), Florida Statutes; and

WHEREAS, the Local Government Comprehensive Planning and Land Development Regulation Act, as amended, Section 163.3161, et seq., Florida Statutes, requires each local government in the State of Florida to adopt a comprehensive plan to guide and control future DEVELOPMENT, and authorizes and requires the adoption of land development regulations; and

WHEREAS, the Local Government Comprehensive Planning and Land Development Regulation Act and Florida Administrative Code, Rule 9J-5, requires that when schools are adopted as a concurrency requirement that realistic, adequate and financially feasible, LEVELS OF SERVICE be set and that these LEVELS OF SERVICE be consistent with the land use, density, intensity, and location of DEVELOPMENT and the capital improvement element; and

WHEREAS, Section 163.3177(3)(a), Florida Statutes requires that a Comprehensive Plan contain a financially feasible capital improvements element designed to consider the need for and location of public facilities. This element must also outline principles for correcting existing public facility deficiencies which are necessary to implement the Comprehensive Plan; and

WHEREAS, the Local Government Comprehensive Planning and Land Development Regulation Act, F.A.C., Rule 9J-5 and the 1989 Palm Beach County Comprehensive Plan require that no DEVELOPMENT ORDER be issued which results in a reduction in the LEVEL OF SERVICE below the ADOPTED LEVEL OF SERVICE and that public facilities be available concurrent with the impacts of the DEVELOPMENT Section 163.3177(10)(h) and 163.3202(2)(g), Florida Statutes; and

WHEREAS, the DEVELOPMENT resulting from the comprehensive planning land use decisions and DEVELOPMENT ORDERS of the COUNTY and MUNICIPALITIES add students to the school system which could preclude the SCHOOL BOARD, COUNTY and MUNICIPALITIES from achieving and maintaining the financially feasible ADOPTED LEVEL OF SERVICE in the Comprehensive Plans of Palm Beach County and the MUNICIPALITIES; and

WHEREAS, the Citizens Task Force, sitting as the Land development Regulation Commission, has determined that this ORDINANCE is consistent with the adopted Comprehensive Plan of Palm Beach County, as required by Section 163.3194 of Florida Statutes; and is in compliance with Florida Statutes Chapter 163, Part II and Rule 9J-5 F.A.C.

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

SECTION I. SHORT TITLE

This ORDINANCE shall be known as, and may be cited as, the Public School Concurrency Ordinance of Palm Beach County, Florida, hereinafter AORDINANCE-.

SECTION II. INTENT

The Board of County Commissioners of Palm Beach County hereby adopts the recitals set forth above as findings.

It is the intent of this ORDINANCE to implement the goals, objectives, policies and standards of the 1989 Palm Beach County Comprehensive Plan, as amended, and particularly, the Public School Facilities Element.

It is further the intent of this ORDINANCE to implement the Palm Beach County Interlocal Agreement with the MUNICIPALITIES of

Palm Beach County and the SCHOOL DISTRICT of Palm Beach County to Establish Public School Concurrency, Resolution R2000-0808, hereinafter AGREEMENT@,

It is further the intent of this ORDINANCE in implementing the AGREEMENT to have this ORDINANCE applicable to all MUNICIPALITIES which are a party to the AGREEMENT, if they have not adopted their own School Concurrency Ordinance in the timeframe set forth in the AGREEMENT.

SECTION III. AUTHORITY

The Board of County Commissioners of Palm Beach County has the authority to adopt this ORDINANCE pursuant to the Palm Beach County Charter; Florida Statutes Chapter 125, Florida Statutes Chapter 163, and the AGREEMENT.

SECTION IV. DEFINITIONS

A. For purposes of this ORDINANCE, except as specifically provided herein or unless the context clearly indicates otherwise, the terms defined in the Code of Laws and Ordinances of Palm Beach County, Florida, and the Palm Beach County Comprehensive Plan shall have the meaning therein. In the event of a conflict between the Code of Laws and Ordinances and the Palm Beach County Comprehensive Plan, the Palm Beach County Comprehensive Plan shall prevail. The capitalization of defined terms herein is for the reader's convenience only. Failure to capitalize shall not be construed as an intent not to use the term in its defined meaning.

B. The following terms shall have the meanings set forth below, unless the context clearly indicates otherwise.

AGREEMENT

AGREEMENT between the Palm Beach County Board of County Commissioners, the MUNICIPALITIES of Palm Beach County, and the Palm Beach County SCHOOL BOARD effective January 25, 2001.

APPLICANT

OWNER, APPROVED AGENT OR CONTRACT PURCHASER seeking a SITE SPECIFIC DEVELOPMENT ORDER or any amendment thereto.

BUILDING PERMIT

A DEVELOPMENT ORDER under Section 163.3164, Florida Statutes, issued under the Standard Building Code by the Building Division of Planning, Zoning and Building in the unincorporated area or similar department in a municipality authorizing the construction of a residential structure.

CAPACITY PROJECTS

New school construction or any project that adds necessary improvements to accommodate additional PERMANENT STUDENT STATIONS or CORE FACILITIES needed for the educational program of each TYPE OF SCHOOL based on the requirements of State Requirements for EDUCATIONAL FACILITIES (SREF).

CONSISTENCY

The condition of not being in conflict with and in furtherance of the goals, objectives and policies of the Comprehensive Plan Elements and this AGREEMENT.

CONCURRENCY SERVICE AREA (CSA)

The specific geographic unit within a SCHOOL DISTRICT in which school concurrency is applied and measured.

CONCURRENCY SERVICE AREA LEVEL OF SERVICE STANDARDS

The maximum acceptable percentage of school utilization as identified in AGREEMENT determined by dividing the total number of students for all schools of each TYPE OF SCHOOL in each CSA by the total number of PERMANENT STUDENT STATIONS for that TYPE OF SCHOOL in each CSA.

CORE FACILITIES

The media center, cafeteria, toilet facilities, and circulation space of an educational plant.

DEVELOPMENT ORDER

As defined in Section 163.3164(7) Florida Statutes.

EDUCATIONAL FACILITIES

The buildings and equipment, structures, and special educational use areas that are built, installed, or established to serve educational purposes only.

FINANCIALLY FEASIBLE FACILITIES PLAN

A plan which demonstrates the ability to finance capital improvements from existing revenue sources and funding mechanisms to correct deficiencies and meet future needs based on achieving and maintaining the ADOPTED LEVEL OF SERVICE for each year of the five (5) year planning period for all schools of each type in each CSA, and each individual school, and for the long range planning period.

FLORIDA INVENTORY OF SCHOOL HOUSES (FISH)

The report of the capacity of existing facilities. The FISH capacity is the number of students that may be housed in a facility (school) at any given time based on using a percentage of the number of existing satisfactory STUDENT STATIONS and a designated size for each program. In Palm Beach County, permanent capacity does not include the use of relocatables unless they meet the standards for long term use pursuant to Section 235.061 Florida Statutes.

LEVEL OF SERVICE (LOS)

The measure of the utilization, expressed as a percentage, which is the result of comparing the number of students enrolled in any school with the satisfactory STUDENT STATIONS (FISH capacity) at a given location or within a designated area (i.e., a CSA), e.g., a facility with 1000 students and a FISH capacity of 970, has a LOS of 103%. Also referred to as the utilization of a facility.

LOCAL GOVERNMENTS

Palm Beach County and the MUNICIPALITIES.

MAXIMUM UTILIZATION OF CAPACITY

Utilization of facilities to ensure the ADOPTED LOS for all schools of each type in each CSA and each individual school is not exceeded.

MUNICIPALITIES

All municipalities in Palm Beach County, except those that are exempt from participating in the school concurrency program, pursuant to Section 163.3180, Florida Statutes.

PERFORMANCE SECURITY

Sufficient funds over which the SCHOOL DISTRICT has control irrevocably committed by written instrument to secure complete performance of a contract or condition to a DEVELOPMENT ORDER or AGREEMENT in the form as approved by the SCHOOL DISTRICT Attorney of a:

- (A) Letter of Credit;
- (B) Escrow Agreement;
- (C) Surety Bond;
- (D) Cash Bond; or
- (E) Any-other method of comparable security as (A)-(D) approved by the SCHOOL DISTRICT Attorney

PERMANENT STUDENT STATION

The floor area in a public school facility required to house a student in an instructional program.

PROPOSED NEW RESIDENTIAL DEVELOPMENT

Any application for residential development or amendment to a previously approved residential development that increases the number of housing units. This shall include any request for any approval of the type that establishes a density of development and which approves a SITE SPECIFIC DEVELOPMENT ORDER on a specific

parcel of property.

RESIDENTIAL DEVELOPMENT

Any development that is comprised in whole, or part, of dwelling units; for permanent human habitation.

SCHOOL BOARD

The governing body of the SCHOOL DISTRICT, a body corporate pursuant to Section 230.21 Florida Statutes.

SCHOOL DISTRICT

The district for Palm Beach County created and existing pursuant to Section 4, Article IX of the State Constitution.

SCHOOL DISTRICT'S FIVE YEAR CAPITAL FACILITIES PLAN

The SCHOOL DISTRICT of Palm Beach County Five Year Work Plan and Capital Budget as authorized by Section 235.185 Florida Statutes.

SCHOOL DISTRICT'S SIX YEAR CAPITAL IMPROVEMENT SCHEDULE

A Table of expenditures and revenues detailing how the SCHOOL DISTRICT shall achieve and maintain the LOS for public school facilities.

SITE SPECIFIC DEVELOPMENT ORDER

A DEVELOPMENT ORDER issued by a Local Government which establishes the density, or maximum density, and which approves a specific plan of Development on a lot or lots pursuant to an application by or on behalf of an OWNER or CONTRACT PURCHASER, including applications initiated by a Local Government. It may apply to a lot or lots under single ownership or a group of lots under separate ownership. It shall apply to all parcels or lots in their entirety taken together of any subdivision. It includes site specific rezonings, special exceptions, conditional uses, special permits, master plan approvals, site plan approvals, plat

approvals, BUILDING PERMITS and any ADevelopment of Regional Impact@ as defined in Section 380.06, F.S. It may or may not authorize the actual commencement of development. Two (2) or more DEVELOPMENT ORDERSs which individually do not constitute a SITE SPECIFIC DEVELOPMENT ORDER shall be considered a SITE SPECIFIC DEVELOPMENT ORDER if when taken together they meet the definition of a SITE SPECIFIC DEVELOPMENT ORDER.

STUDENT GENERATION MULTIPLIER

As published by the SCHOOL DISTRICT of Palm Beach County, the number of students per household determined by type and size of residential unit.

STUDENT STATION

The net square footage requirements per student based upon the instructional program to be housed as defined by FISH.

TYPE OF SCHOOL

Schools in the same categories of education, i.e. elementary, middle or high school.

VALID DEVELOPMENT ORDER

A DEVELOPMENT ORDER which: was issued by a LOCAL GOVERNMENT: (1) in accordance with proper procedure and in compliance with state law, and the land development regulations and codes, administrative rules and procedures, and general policies of LOCAL GOVERNMENTS, and the requirements of all other agencies; (2) not by mistake; and (3) which has not expired, lapsed, or been abandoned, revoked, or canceled, by operation of law, or by the LOCAL GOVERNMENT or pursuant to the LOCAL GOVERNMENT land development or pursuant to the LOCAL GOVERNMENT land development regulations or codes, rules, or policies.

SECTION V. APPLICABILITY

A. Generally

1. Unless otherwise provided herein, this ORDINANCE shall

apply to all SITE SPECIFIC DEVELOPMENT ORDERS with any residential component and any amendment thereto, or any other official action of a LOCAL GOVERNMENT having the effect of permitting RESIDENTIAL DEVELOPMENT of land.

2. Applicability to Incorporated Areas

This ORDINANCE shall apply to any municipality which is a party to the AGREEMENT which has not adopted a School Concurrency Ordinance in accordance with and within the timeframes set forth in the AGREEMENT.

3. Amendments to SITE SPECIFIC DEVELOPMENT ORDER

Any application for an amendment to an existing SITE SPECIFIC DEVELOPMENT ORDER shall be subject to this ORDINANCE to the extent that the student generation is increased above what was previously approved.

B. Exemptions

1. Single family lots of record, existing as such at the time School Concurrency implementing ordinance is adopted.

2. Any RESIDENTIAL DEVELOPMENT that received final approval of a SITE SPECIFIC DEVELOPMENT ORDER prior to the implementation date of School Concurrency or is exempt from school concurrency under a LOCAL GOVERNMENT's concurrency regulations is considered vested for that which was previously approved and shall not be considered as PROPOSED NEW RESIDENTIAL DEVELOPMENT for purposes of School Concurrency.

3. Any new RESIDENTIAL DEVELOPMENT that has filed a complete application prior to the effective date of the School Concurrency Implementing Ordinance.

4. Any amendment to any previous approved RESIDENTIAL DEVELOPMENT which does not increase the density of the development.

5. Any RESIDENTIAL DEVELOPMENT which is restricted to elderly and meets the requirements under the Federal Fair Housing Act to be designated as an Adults only Community.

6. Any previous approved RESIDENTIAL DEVELOPMENT or any other previously approved DEVELOPMENT with a residential component located within any existing Transportation Concurrency Exception

Area, as defined in Section 163.3180(5), Florida Statutes.

SECTION VI. STANDARD

A. Generally

There is hereby established a School Concurrency Ordinance for all Public Schools within Palm Beach County. Except as specifically provided in this ORDINANCE, no DEVELOPMENT ORDER shall be issued which would violate this ORDINANCE.

B. LEVEL OF SERVICE (LOS)

To ensure the capacity of schools is sufficient to support student growth at the ADOPTED LEVEL OF SERVICE for each year of the five-year planning period and through the long term planning period, for each CSA the AGREEMENT establishes the LOS as set forth below. The actual LOS for each TYPE OF SCHOOL in each CSA shall be established each year in each CSA by the first student count of the second semester.

1. TIERED LEVELS OF SERVICE shall be in force pursuant to the TIERED LEVEL OF SERVICE Table in the Public School Facilities Element until August 1, 2004. Individual schools of each type may exceed the TIERED LOS during the period in which TIERED LOS are in effect, provided that the CSA's TIERED LOS is not exceeded. However, each individual school's LOS which exceeds the TIERED LOS, during the time that the TIERED LOS is in effect, shall not exceed the utilization standards for that school type as shown in the Maximum Utilization Table of the Public School Facilities Element. During the time that the TIERED LEVEL OF SERVICE Standard is in effect, the SCHOOL DISTRICT shall initiate necessary program and/or boundary adjustments so that the TIERED LOS is not exceeded in each CSA.

2. After August 1, 2004, the following LEVEL OF SERVICE (LOS) standards shall be established for all schools of each type within each CSA and each individual school:

(a) 110 percent of capacity (utilization) as determined by the Florida Inventory of School Houses (FISH); or

(b) Up to 120% of FISH capacity (utilization/LOS)(test two), for individual schools subject to the

results of School Capacity Study (SCS) undertaken by TAG, in consultation with all LOCAL GOVERNMENTS having jurisdiction within the CSA and the SCHOOL DISTRICT, to determine if a particular school can operate in excess of 100% capacity. The SCS shall be required if a school in the first student count of the second semester reaches 108% or above of FISH capacity, once the LEVEL OF SERVICE above is achieved.

3. The School Capacity Study (SCS) shall determine if the growth rate within each CSA, causing a particular school to exceed 110% of capacity, is temporary or reflects an ongoing trend affecting the LOS for the Five Year Planning Period. At a minimum, the study shall consider:

- (a) Demographics in the school's CSA; and
- (b) Student population trends; and
- (c) Real estate trends, e.g. existing redevelopment and new redevelopment; and
- (d) Teacher/student ratios; and
- (e) Core facility capacity.

If the SCS concludes that the school can operate within the FISH guidelines and not exceed 120%, then that school shall be considered to be operating within the ADOPTED LOS and the CSA LEVEL OF SERVICE shall be amended and the LOCAL GOVERNMENT comprehensive plans shall be amended in the next round of amendments to reflect this additional capacity.

C. Concurrency Service Areas

School Concurrency shall be measured and applied on the basis of twenty-one (21) CSA's as described in the Public School Facilities Element.

The CSA's may be amended provided in the AGREEMENT.

D. Three Year Rule

In determining whether capacity is available, the SCHOOL DISTRICT shall consider any new capacity which will be in place or under actual construction in the 1st three years of the SCHOOL DISTRICT FIVE YEAR CAPITAL FACILITIES PROGRAM.

SECTION VII. SCHOOL DISTRICT REVIEW OF RESIDENTIAL

DEVELOPMENT PROPOSALS

A. Application

At the time of and in conjunction with the application for an adequate public facilities review in accordance with the PBC Unified Land Development Code, or in the case of a MUNICIPALITY, in accordance with its public facilities review process, the APPLICANT shall submit an application for a school concurrency determination.

1. The COUNTY or MUNICIPALITY shall review the application for completeness and submit the school concurrency application to the SCHOOL DISTRICT within ten (10) days of finding the application complete.

2. The School Concurrency application shall provide the following information: Location of the development, the build out time frame of the PROJECT, the number, type and size of all the residential units anticipated to be occupied each calendar year

3. The SCHOOL DISTRICT shall review the application in accordance with the provisions of Section __. of the AGREEMENT.

B. Letter of Determination of Concurrency

1. No DEVELOPMENT ORDER shall be approved unless a Letter of Determination of Concurrency has been issued by the SCHOOL DISTRICT finding the DEVELOPMENT in compliance.

2. Once the SCHOOL DISTRICT has reviewed the application it shall issue a Letter of Determination of Concurrency if the impacts of the proposed DEVELOPMENT's student growth does not cause the ADOPTED LOS to be exceeded.

3. If the DEVELOPMENT is not in compliance, the Letter of Determination of Concurrency shall detail why the DEVELOPMENT is not in compliance and shall offer the APPLICANT the opportunity to enter into a 90 day negotiation period.

4. During the 90 day negotiation period the APPLICANT shall meet with the SCHOOL DISTRICT in an effort to mitigate the impact from the DEVELOPMENT.

a. Mitigation shall be limited to those options which the SCHOOL DISTRICT recognizes and assumes the responsibility to operate and which will maintain the ADOPTED LOS standards for

the first five years from receipt of the SCHOOL DISTRICT's Letter of Determination of Concurrency.

b. The LOCAL GOVERNMENT with jurisdiction over the DEVELOPMENT shall have the opportunity to review the mitigation options.

5. If the SCHOOL BOARD and the DEVELOPER agree to mitigation, the Letter of Determination of Concurrency shall be issued, conditional upon: 1) the agreed mitigation measures; 2) an agreement between the SCHOOL DISTRICT and the DEVELOPER.

6. If mitigation is not agreed to, the Letter of Determination of Concurrency shall detail why mitigation proposals were rejected and detail why the DEVELOPMENT is not in compliance.

a. In this case, no DEVELOPMENT ORDER shall be issued.

7. A Letter of Determination for School Concurrency, finding the DEVELOPMENT in compliance, issued by the SCHOOL DISTRICT shall be valid for one year from the date of issuance unless extended by the SCHOOL DISTRICT. Once the LOCAL GOVERNMENT SITE SPECIFIC DEVELOPMENT ORDER is issued, the concurrency determination shall run with the DEVELOPMENT ORDER.

SECTION VIII. DEVELOPMENT ORDER APPROVAL

A. Conditions

If the Letter of Determination of Concurrency requires conditions or mitigation to be placed on the DEVELOPMENT, the DEVELOPMENT ORDER issued by the COUNTY or MUNICIPALITY shall incorporate conditions as set forth by the SCHOOL DISTRICT.

B. PHASING

If the Letter of Determination of Concurrency requires the DEVELOPMENT to be phased to school construction or other mitigation, the conditions of approval of the DEVELOPMENT ORDER shall reflect the phasing requirements by withholding subsequent DEVELOPER ORDERS for BUILDING PERMITS.

C. ASSURED CONSTRUCTION

In no case shall a DEVELOPMENT ORDER be issued unless provisions are made through conditions of approval or by agreement

between the DEVELOPER and the SCHOOL DISTRICT to provide Performance Security when required.

IX. APPEALS

Appeals of decisions of the SCHOOL DISTRICT on Letter of Determination of Concurrency shall be made to the SCHOOL DISTRICT in accordance with _____.

SECTION X. REPEAL OF LAWS IN CONFLICT:

All local laws and ordinances in conflict with any provisions of this ORDINANCE are hereby repealed to the extent of such conflict.

SECTION XI. SEVERABILITY:

If any section, paragraph, sentence, clause, phrase, or word of this ORDINANCE is for any reason held by the Court to be unconstitutional, inoperative, or void, such holding shall not affect the remainder of this ORDINANCE.

SECTION XII. INCLUSION IN THE CODE OF LAWS AND ORDINANCES:

The provisions of this ORDINANCE shall become and be made a part of the Code of Laws and Ordinances of Palm Beach County, Florida. The sections of this ORDINANCE may be renumbered or relettered to accomplish such, and the word "ordinance" may be changed to "section", "article", or other appropriate word.

SECTION XIII. EFFECTIVE DATE:

The provisions of this ORDINANCE shall become effective upon filing with the Department of State.

APPROVED and ADOPTED by the Board of County Commissioners of Palm Beach County, Florida, on this the _____ day of _____, 20__.

PALM BEACH COUNTY, FLORIDA, BY ITS BOARD OF COUNTY COMMISSIONERS

By: _____
Warren H. Newell, Chairman

APPROVED AS TO FORM AND LEGAL SUFFICIENCY

By: _____
County Attorney

EFFECTIVE DATE: Filed with the Department of State on the ____
____day of _____, 20____.

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