

1 I, MICHAEL G. STONER, under penalty of perjury under the laws of the State of
2 Washington, state the following:

3 **I. PROFESSIONAL BACKGROUND AND EXPERIENCE**

4 1. I am the Director of Environmental Programs for the Port of Bellingham (the
5 "Port") and have personal knowledge of the facts testified to herein. I have managed
6 environmental programs for the Port since 1995. My responsibilities at the Port include the
7 cleanup of historically contaminated sites, evaluation of environmental impacts for new
8 projects, management of pollution prevention, and environmental compliance and
9 awareness programs.

10 2. Prior to taking a position at the Port in 1995, I worked for the U.S.
11 Environmental Protection Agency as a manager in the federal Superfund Program, which
12 was responsible for the cleanup of waterfront sites in Seattle's Elliott Bay, Tacoma's
13 Commencement Bay, Eagle Harbor on Bainbridge Island, and other contaminated sites
14 throughout the Pacific Northwest.

15 **II. PORT PROPERTY OWNERSHIP AND LAND MANAGEMENT**

16 3. The Port owns waterfront properties within the Central Waterfront area,
17 located in Bellingham, Washington, between the I&J Waterway and the Whatcom
18 Waterway, as shown in Exhibit A. Some of the Port-owned land has been owned by the
19 Port since the 1940s, and other portions were acquired from Georgia-Pacific and from the
20 Chevron Corporation during transactions completed in 2005 and 2006.

21 4. The Port also owns property along the south side of the Whatcom Waterway
22 as shown in Exhibit A. Some of the Port-owned land in this area has been owned by the
23 Port since the 1920s, and additional lands were recently acquired from Georgia-Pacific in
24 2005.
25

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5. In addition to its owned lands, the Port manages aquatic lands at and adjacent to the Bellingham Shipping Terminal under a Port Management Agreement ("PMA") with the Washington State Department of Natural Resources. The PMA area is shown in Exhibit A.

III. SITE CLEANUP REGULATIONS, DECISION CRITERIA, AND GOALS

6. Since 1996, the Port and the City have participated in an interagency consortium known as the Bellingham Bay Demonstration Pilot ("Pilot"). The Pilot brought together a partnership of federal and state agencies, tribes, and local government known collectively as the "Pilot Work Group", to develop a cooperative approach to expedite source control, sediment cleanup, and associated habitat restoration in Bellingham Bay. The Pilot Work Group developed seven bayside Pilot goals that reflect the collective interest of the Pilot Team and the desired outcome of the project. These goals included:

- Human health and safety;
- Ecological health;
- Protection and restoration of ecosystems;
- Social and cultural uses;
- Resource management;
- Faster, better, cheaper approaches; and,
- Economic vitality.

The Pilot's goals have been used by the agencies in evaluating potential projects and guiding regulatory decisions for the establishment of cleanup requirements and the selection of remedial approaches. Five waterfront projects have been completed under the Pilot approach to date. The draft Supplemental Environmental Impact Statement for the Cleanup of the Whatcom Waterway Site, prepared concurrently with the Remedial

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1 Investigation/Feasibility Study ("RI/FS"), includes evaluation of cleanup options for the
2 Whatcom Waterway site against the seven Baywide Pilot goals, in addition to an analysis
3 of project environmental effects, impacts and mitigation, as required under Sediment
4 Management Standards ("SMS") and State Environmental Protection Act ("SEPA")
5 regulations.

6 7. The Washington State Department of Ecology ("Ecology") is the lead state
7 agency responsible for the enforcement of cleanups at multiple sites in and around the
8 Whatcom Waterway, subject to the Washington State Model Toxics Control Act ("MTCA")
9 and other applicable regulations.

10 8. The MTCA cleanup regulations establish a process for determining
11 minimum requirements for the remediation of a variety of contaminants in groundwater,
12 soils, marine sediments, surface water, air and industrial wastes, depending on land use
13 and potential exposure pathways, in order to provide long term protection of human health
14 and the environment. Under the regulations, alternative cleanup actions employing the use
15 of multiple cleanup technologies are developed and evaluated to inform Ecology's decision
16 on the selection of the most appropriate remedy for each site. Cleanup alternatives can
17 include engineering technologies, such as containment, treatment, removal and disposal,
18 as well as institutional controls to provide protective and permanent cleanup under the
19 MTCA. Where cleanup actions may potentially be performed using different cleanup
20 alternatives, MTCA regulations specify how to evaluate, rank, and select among the
21 various alternatives.

22 9. The regulations also require that the costs and benefits of each of the
23 project alternatives be balanced using a "disproportionate cost analysis." WAC 173-340-
24 360(3)(e). The criteria which are used in the disproportionate cost analysis are specified in
25 WAC 173-340-360(3)(f) and include the following:

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- (i) Protectiveness;
- (ii) Permanence;
- (iii) Costs;
- (iv) Long term effectiveness;
- (v) Short term risk management;
- (vi) Implementability; and,
- (vii) Considerations of public concerns.

Under the MTCA, a cleanup alternative is considered impracticable if, considering the above-listed criteria, the costs associated with the cleanup plan are disproportionate to its benefits. [The cost of an alternative is considered disproportionate if the incremental additional cost relative to a lower cost alternative exceeds the incremental environmental and public health benefits that would be achieved.] See WAC 173-340-360(e)(i). Where the quantitative and qualitative benefits of two alternatives are equivalent, Ecology is required to select the less costly alternative. See WAC 173-340-360(e)(ii)(c).

10. The MTCA requires Ecology to release for public and government comment a draft RI/FS, which establishes appropriate cleanup levels for contaminants of concern and affected environmental media and sets forth a range of cleanup alternatives that meet the MTCA criteria. A draft update to the RI/FS for the Whatcom Waterway Site (which includes the ASB, the Log Pond areas, and the Port's PMA Parcel) is currently scheduled for release by Ecology on or about September 21, 2006. The sixty (60) day comment period will commence in late September and conclude by the end of November.

11. The City's comment on the draft RI/FS will carry significant weight given its stature as a representative of the local community and its important role as a regulator of the property for a variety of permits under shoreline, building, and land use regulations.

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1 The City's comment is also particularly important here for the additional reason that it owns
2 a portion of the property subject to the MTCA action.

3 12. While the current draft RI/FS for the Whatcom Waterway Site has not yet
4 been released for comment, the development of cleanup levels and remedial action
5 alternatives for a number of state-listed Bellingham Bay sites, including the Whatcom
6 Waterway Site, has already been subject to robust public participation and comment,
7 involving over 100 public meetings covering contaminated site cleanup on the Bellingham
8 Bay waterfront, including Port Commission meetings, City Council meetings, and agency
9 meetings (Bellingham Bay Demonstration Pilot).

10 13. Environmental remediation of sediment sites such as the Whatcom
11 Waterway Site are also subject to Sediment Management Standards ("SMS"). SMS
12 standards largely mirror those of the MTCA, including the establishment of cleanup levels
13 and an analysis of the cost-effectiveness of the cleanup alternatives. However, the SMS
14 requires an additional environmental impact analysis under the State Environmental Policy
15 Act ("SEPA") and requires consideration of the net environmental effects of the cleanup
16 alternative. See WAC 173-204-560(4)(f)-(k) and WAC 173-204-580(2)-(4).

17 14. Under the MTCA regulations, the land use occurring at a site affects the
18 cleanup levels that apply. MTCA and SMS regulations establish protective cleanup levels
19 for contaminants of concern that vary according to environmental media (groundwater, soil,
20 surface water, marine sediments, air) and potential exposure pathways. For example, in
21 marine sediments, the cleanup levels are established at values that prevent adverse
22 effects to aquatic resources and that ensure protection of human populations that consume
23 seafood. In soils, the regulations recognize that different land uses result in different
24 human health and environmental exposures, and cleanup levels are established
25 proportionate to those exposures. Cleanup levels for soils are less stringent for industrial

DECLARATION OF
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1 land uses, which have lower exposure risks for users of the property. MTCA cleanup
2 levels for soils at properties where land use is not restricted are appropriately more
3 stringent, due to the different exposure assumptions applicable to those land uses. Since
4 2000, the Bellingham Waterfront has undergone a series of dramatic land use changes.
5 The Port and City co-sponsored a community visioning effort known as the "Waterfront
6 Futures Group" and entered into a Port-City Interlocal Agreement for the completion of land
7 use planning activities for the New Whatcom Special Development Area ("New Whatcom
8 Interlocal"). A copy of the New Whatcom Interlocal is attached to the Spens Decl. as
9 Exhibit A. The land use planning process anticipates the transition from industrial to
10 mixed-use development and zoning for the former Georgia-Pacific properties south of the
11 Whatcom Waterway. As specified in the New Whatcom Interlocal, the Port and City
12 agreed that if an acceptable New Whatcom Development Plan could not be developed,
13 these properties would remain industrial for the next twenty (20) years. Thus, depending
14 on the outcome of the ongoing land use planning process, the MTCA cleanup levels
15 applicable for the former Georgia-Pacific properties south of the Whatcom Waterway may
16 be based on either industrial or unrestricted use with significant differences in remedy
17 selection by Ecology.

18 IV. PORT LEADERSHIP OF CLEANUP SITES

19 15. Ecology has designated several geographic areas in and around the
20 Whatcom Waterway as state-listed contaminated "sites" subject to the RI/FS process.
21 These sites include, among others, the Whatcom Waterway Site, the Central Waterfront
22 Site, the Chlor-Alkali Site, and the Cornwall Avenue Landfill Site, as shown in Exhibit B.
23 While others have also been designated by Ecology as potentially liable persons ("PLPs")
24 for each of these sites, the Port is, in fact, the entity that is directly working with Ecology to
25 accomplish the remediation. [The Port is both the co-manager with Ecology for the

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1 Bellingham Bay Demonstration Pilot and the designation of the geographic boundaries of
2 sites by Ecology is not based upon property ownership, but rather is based upon a
3 determination of where particular contaminants of concern have come to reside]. Fact
4 sheets prepared by the Department of Ecology and summarizing issues at each of the
5 sites listed above are included as shown in Exhibit C.

6 16. In addition, the Port has assumed lead responsibility for the investigation
7 and cleanup of releases in the area identified as the "Pulp and Tissue Mill Site" on Exhibit
8 B. Based on the presence of contamination at that property and Georgia- Pacific's
9 completion of a release report, Ecology is expected to list that property as a contaminated
10 site subject to the investigation and cleanup requirements of the MTCA and the goals and
11 objectives identified under the Bellingham Bay Pilot.

12 17. The Port's leadership role in the cleanups of the Central Waterfront Site and
13 the Cornwall Avenue Landfill Site is further specified in the Port-City Interlocal Agreement
14 for the Acquisition of the Chevron Property and the Colony Wharf Property, and the
15 Remediation of the Cornwall Avenue Landfill Site and the Central Waterfront Site dated
16 December 2005 ("Remediation Interlocal"). A copy of the Remediation Interlocal is
17 attached to the McKinley Declaration as Exhibit A. As specified in the Remediation
18 Interlocal, the Port has completed the acquisition of the Chevron Property, has developed
19 an Agreed Order with Ecology for performance of an RI/FS at the Central Waterfront Site,
20 and has entered into a Professional Services Agreement with a consultant for completion
21 of that RI/FS. Also as specified in the Remediation Interlocal, the City completed purchase
22 of the Colony Wharf Property.

23 18. The Port's leadership of the Whatcom Waterway Site investigation and
24 cleanup is also specified in the Purchase and Sale Agreement between the Port and
25 Georgia-Pacific. Under that agreement, the Port assumed the leadership of the cleanup of

1 the Whatcom Waterway Site and other former Georgia-Pacific properties, including the
2 Chlor Alkali Site, and the Pulp and Tissue Mill Site.

3 **V. RELATIONSHIP BETWEEN THE CENTRAL WATERFRONT SITE AND THE**
4 **WHATCOM WATERWAY SITE**

5 19. The Port and the City determined, according to the requirements of the
6 MTCA, other relevant regulations, the goals and objectives of the Pilot, extensive
7 discussions with federal and state agency decision-makers, and months of public
8 discussion and comment in 2004, that the proposed cleanup plan presented initially to
9 Ecology as "Alternative K" was the most appropriate cleanup alternative for the Whatcom
10 Waterway Site under the proposed transition from an industrial to a mix-use commercial
11 waterfront and that it should serve as the basis for remediation planning between the Port
12 and the City. The parties reached this conclusion and memorialized it in the Remediation
13 Interlocal after (i) holding meetings with Ecology, (ii) analyzing prior RI/FS documents and
14 related studies, and (iii) reviewing potential cleanup alternatives against MTCA, SMS, and
15 SEPA regulatory criteria.

16 20. Alternative K, the key elements of which are shown in Exhibit D, will:

- 17 (i) Provide for careful and targeted dredging of the Whatcom Waterway near
18 the Bellingham Shipping Terminal with upland disposal where deep
19 navigation depth is needed;
- 20 (ii) Provide for complete removal of all mercury contaminated sediments and
21 industrial wastes from within the ASB for future use as a public marina,
22 waterfront park, and marine habitat restoration project;
- 23 (iii) Leave significant volumes of mercury buried safely at depth in the Log Pond
24 where they were safely capped with clean sediments in a 2000 interim
25 cleanup action under an Agreed Order with Ecology; and
- (iv) Leave significant volumes of marine sediment, marginally contaminated with
mercury, safely capped in portions of the Whatcom Waterway underneath
existing piers and bulkheads and in areas near the head of the Waterway

DECLARATION OF
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1 that now contain critical marine habitat or where disturbance of buried
2 mercury is not required to maintain navigation depths.

3 Alternative K also includes reconstruction of the shoreline areas along the Central
4 Waterfront Site as part of an integrated remedial plan, consistent with the remediation
5 needs of both sites and in a manner that implements the goals of the Bellingham Bay
6 Demonstration Pilot.

7 21. The coordination of cleanup actions between the Whatcom Waterway Site
8 and at the Central Waterfront Site is critical to ensure that the remedies are protective and
9 implementable under the MTCA. The cost estimates and cost allocation commitments in
10 the Remediation Interlocal assume that cleanup actions between the two sites would be
11 coordinated consistent with previous evaluations of remediation alternatives. The
12 coordinated cleanup and reconstruction of the Chevron Terminal and Colony Wharf
13 shoreline portions of the Central Waterfront Site is important and integral to both the Port's
14 proposed remedial plan for the Central Waterfront Site and for the Port's Alternative K as
15 presented to Ecology.

16 VI. PORT REMEDIAL PLANS FOR MILL SITE SOUTH OF WHATCOM WATERWAY

17 22. The Port's remediation plans for the mill site south side of the Whatcom
18 Waterway address the Chlor Alkali Plant Site and the Pulp & Tissue Mill Site. These
19 remedial plans incorporated two sets of actions. The remedial plans as shown in Exhibit E
20 for the Chlor Alkali Site and as shown in Exhibit F for the Pulp and Tissue Mill Site, include
21 a first phase of remedial action that is protective and permanent under the MTCA and
22 independent of future site use. These actions address groundwater protection and
23 compliance with industrial cleanup levels. The remedial plans incorporate a second,
24 additional phase of remedial actions known as Environmental Protection Standards shown
25 in Exhibit G. These actions consist of engineering and institutional controls that are to be

1 applied to achieve compliance with unrestricted use cleanup levels at a conditional point of
2 compliance if the properties are redeveloped under the proposed transition to a mixed-use
3 waterfront, including residential, commercial, and public access. The application of the
4 Environmental Protection Standards to mixed-use redevelopment planning was an element
5 of the New Whatcom Interlocal.

6 VII. PROBLEMS WITH THE PROPOSED INITIATIVE

7 23. The proposed Initiative presents several fundamental problems that impact
8 Port-owned properties and cleanup projects led by the Port.

9 24. The Initiative's singular focus on the maximum removal of mercury and
10 other contaminants technically practicable ignores the resulting harm to human health and
11 the environment. To date, the City has provided extensive comments concerning
12 remediation of the Whatcom Waterway Site and other cleanup projects and has
13 participated in the Bellingham Bay Demonstration Pilot. The City has thus far based its
14 comments on the MTCA selection criteria, the environmental impact criteria of the SMS
15 and SEPA, and the goals developed by the Bellingham Bay Demonstration Pilot. In place
16 of these evaluation criteria, the Initiative would substitute a single narrow policy or test,
17 solely that of technical practicability.

18 25. The requirement under the Initiative that mercury and other contaminants be
19 removed to the maximum extent technically practicable, ignores environmental impacts
20 associated with implementation of certain cleanup alternatives that may be technically
21 practicable, but that should not be used because of their negative impact on existing
22 aquatic habitats, their destabilization of shorelines, and their inconsistencies with land use
23 and infrastructure planning. Dredging in the marine environment, for example, is
24 technically practicable for almost any proposed action, but is very stringently limited under
25 federal and state regulations, because of potentially significant negative impacts to aquatic

1 organisms, including species, such as salmonids and Orca whales, covered under U.S.
2 Endangered Species Act recovery planning efforts. While it would be "technically
3 practicable" to remove significantly more, if not all, of the mercury contaminated sediments
4 from the Whatcom Waterway, such a cleanup action would (i) disturb safely buried mercury
5 and other contaminants resulting in significant and unnecessary exposure to the
6 environment; (ii) involve the removal of the piers and wharves; (iii) the removal of the Log
7 Pond cap and the resultant destruction of important biological habitat; and, (iv) dredging of
8 important biological habitat at the head of the Whatcom Waterway. Indeed, the Ecology
9 interim decision in 2000 to cap the Log Pond was to ensure that the significant
10 concentrations of mercury that were buried beneath a clean sand cap to support a vibrant
11 eelgrass habitat that is now an important part of the Whatcom Waterway ecological
12 system. If the Initiative were to pass, the City would be forced to advocate the removal of
13 the Log Pond cap and sediment underneath. The dredging or other removal of the
14 sediment underneath the Log Pond cap would suspend significant amounts of mercury in
15 the water column. This mercury would then be free to spread and settle over and on the
16 aquatic bed lands in other portions of the waterway or beyond. This would create a greater
17 short term and long term threat to human health and the environment than if the cap had
18 been left in place. The dredging would also destroy valuable shallow-water habitat that has
19 been created by the Log Pond cap and associated habitat restoration action.

20 26. The Initiative's proposed "technically practicability" standard simply ignores
21 the cost/benefit analysis required under the MTCA. Although it is technically practicable to
22 remove virtually all mercury and other contaminants from the area identified in the
23 Initiative, the cost of full removal would be staggering because significant concentrations of
24 mercury and other contaminants are present at various locations throughout the Whatcom
25 Waterway, the former Georgia-Pacific Mill Property, the Cornwall Avenue Landfill, the ASB,

1 and the Log Pond. To illustrate, Alternative 6 for the Whatcom Waterway Site, which
2 leaves significant amounts of mercury and other contaminants safely capped in place,
3 would cost approximately \$44 million to complete, based on the RI/FS estimates.
4 Comparatively, Alternative 8, which is the most expensive alternative evaluated in the
5 RI/FS, but which also manages in place significant amounts of mercury and other
6 contaminants, would cost approximately \$145 million to complete. Full removal of all
7 mercury and other contaminants in the Whatcom Waterway Site to the extent technically
8 practicable, including those located beneath shoreline structures and the Log Pond, would
9 cost in excess of \$200 million, would trigger substantial short term and long term
10 environmental impacts, and would disrupt years of land use and habitat restoration
11 planning. In addition, the remediation of remaining upland areas within the scope of the
12 Initiative to an unrestricted cleanup level utilizing only removal technologies, would cost
13 over \$100 million more than the remedial plans proposed by the Port and City as
14 appropriate under the existing framework of federal and state regulations. This type of
15 unrestricted action would trigger short term and long term environmental impacts, while
16 providing no significant increase in environmental protectiveness for human health or the
17 environment.

18 27. The Initiative would set aside the Bellingham City Council's careful
19 deliberations leading up to the Port-City Interlocal Agreements. Those deliberations
20 considered the advice from City staff and addressed the complex relationships between
21 site cleanup, waterfront land use and infrastructure planning, and shoreline and habitat
22 restoration activities. A host of studies and technical documents were available to the City
23 and the public prior to December 2005, many of which are listed in Exhibit H. The
24 deliberations of the City Council with respect to the Port-City interlocal agreements had the
25 benefit of over a decade of previous City involvement in the investigation and cleanup of

1 state-listed sites, including the Whatcom Waterway Site and the Central Waterfront Site,
2 and in the work of the Bellingham Bay Demonstration Pilot. The City's previous
3 commitment to work together with the Port and other stakeholders as part of the
4 Bellingham Bay Demonstration Pilot is contained in the Letter of Agreement in Exhibit I.
5 The conclusions of the City Council deliberations were documented by the authorization of
6 the Port-City Interlocal Agreements, on which the Port has subsequently relied.


7 28. The Port and City entered into the Remediation Interlocal to coordinate the
8 remediation of the Central Waterfront Site and Whatcom Waterway Site. That agreement
9 addressed the coordinated cleanup of the Whatcom Waterway and the shoreline areas of
10 the Chevron Property and Colony Wharf Property, including properties now owned by the
11 City. This coordinated cleanup assumed the use of Alternative K for the remediation of
12 Whatcom Waterway sediments and reconstruction of the Central Waterfront area
13 shoreline. Alternative K represents a protective cleanup that 1) is permanent to the
14 maximum extent practicable as defined under the MTCA regulations, 2) minimizes and
15 mitigates adverse environmental impacts as evaluated under SEPA, and 3) best addresses
16 the goals of the Bellingham Bay Demonstration Pilot. However, because Alternative K
17 avoids unnecessary disturbance of safely buried low-level mercury contamination through
18 dredging, and instead employs capping technologies to safely contain a significant volume
19 of mercury-contaminated sediments at depth in portions of the Whatcom Waterway,
20 Alternative K does not comply with the narrow test of technical practicability as proposed in
21 the Initiative. The City would be obligated under the Initiative to not in any way advocate for
22 or support a cleanup plan using Alternative K. This would disrupt the coordinated
23 remediation of the Central Waterfront site and the Whatcom Waterway as specified in the
24 Remediation Interlocal. It should be noted that like Alternative K, every other alternative
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1 evaluated in the RI/FS for the Whatcom Waterway Site would safely cap significant
2 amounts of mercury and other contaminants beneath a layer of clean sediment.

3 29. With respect to the Port-owned properties acquired from GP and located
4 south of the Whatcom Waterway, the Initiative does not recognize the potentially different
5 cleanup levels that may apply based on different land uses consistent with MTCA
6 regulatory requirements. The Initiative requires that the City not advocate for or support
7 any cleanup plan that cleans the former Mill Site only to an industrial standard, unless such
8 actions are technically impracticable. In contrast, the New Whatcom Interlocal specifies
9 that in the event the Port and City are unable to develop standards for mixed-use
10 development of the Mill Site, the property would remain industrial, in which case industrial
11 cleanup levels under MTCA would be appropriate and protective of human health and the
12 environment.

13 30. Finally, the New Whatcom Interlocal provides for the application of
14 Environmental Protection Standards shown in Exhibit G as part of the remediation and
15 redevelopment of the former Georgia-Pacific properties located south of the Whatcom
16 Waterway. The Environmental Protection Standards apply engineering and institutional
17 control requirements of MTCA regulations and are applicable to mixed-use redevelopment
18 of the Chlor Alkali and Pulp and Tissue Mill Sites. The standards apply capping
19 technologies to some site areas as the method of safely complying with unrestricted
20 cleanup levels, and safely containing residual contamination that is not practicable to
21 remove, as defined under MTCA alternatives evaluation criteria. Because the Initiative
22 does not clarify key MTCA regulatory issues such as the use of conditional points of
23 compliance or engineering controls, it is not certain how the Initiative affects the application
24 of the Environmental Protection Standards.
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Dated this 31st day of August, 2006, at Bellingham, Washington.



MICHAEL G. STONER
Director of Environmental Programs
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DECLARATION OF
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