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**NEW YORK DEPARTMENT OF STATE  
41 STATE STREET  
ALBANY, NY 12231**

**Local Ordinance Filing**

**Town of Fairfield**

**Local Ordinance No. \_\_\_\_\_ of the year 2006**

**A Local Ordinance entitled the Town of Fairfield Wind Energy Facilities Ordinance, As Amended.**

**Be it enacted by the Town Board of the Town of Fairfield as follows:**

Article 1. Title. This Local Ordinance shall be known as the Town of Fairfield Wind Energy Facilities Ordinance, as amended. The Town of Fairfield is hereafter referred to as the Town.

Article 2. Statement of Authority. The Town Board of the Town of Fairfield, pursuant to the authority granted it under Section 10 of the Municipal Home Rule Law of the State of New York, hereby enacts the Town of Fairfield Wind Energy Facilities Ordinance as follows:

Article 3. Statement of Purpose and Findings. The Town Board of the Town of Fairfield hereby finds that in order to facilitate the development of wind energy facilities within the Town of Fairfield, a Local Ordinance must be enacted to regulate their development and set forth other requirements relative to wind energy facilities. This law is to be consistent with the general intent of all other Local Ordinances heretofore enacted by the Town to accommodate the necessary infrastructure for the provision of commercial wind-powered electricity generation facilities so that they may be developed in a manner hereby deemed to be compatible with the general health, welfare and safety of the residents of the Town; and furthermore, to address the visual, aesthetic and land use compatibility aspects of wind energy facilities.

Article 4. Definitions.

**ACCESSORY FACILITIES OR EQUIPMENT:** any structure other than a wind turbine, related to the use and purpose of generating electricity from wind turbines located at a wind energy facility.

**HEIGHT OF THE TOWER –** means the height of the Tower measured from the base of the tower to the center of the rotor hub.

### Section 3 - Applicability and Application process

#### 3-1. Application Process

The applicant shall submit all application materials in triplicate to the Town Clerk of the Town of Fairfield. The application for a permit requires documentation of relevant information pursuant to the regulations listed in Section 5 as well as the following information.

The application will include a project summary providing:

- a. A general description of the project including its approximate generating capacity, potential equipment manufacturers, types and numbers of wind energy facilities, maximum height of wind turbine towers, maximum diameter of rotor (s), and general location of the project.
- b. A description of the applicant, Owner and Operator, including their respective business structures.
- c. The name(s) address (es) and telephone numbers of the Applicant, Owner and Operators and all Tax Map numbers upon which the wind power facilities are planned.
- d. A preliminary site plan or plans, drawn to specified scales for the installation of the wind power facilities, including (to the extent that information is available the location of each tower, guy lines and anchor bases, service drives, fencing and grating, soil protection/restoration locations and meteorological towers. The plan or plans must include any Residence within 3,000 feet of any tower, property lines including the identification of adjoining properties, setback lines, public access roads and turnout locations, substations, electrical cabling from the tower(s) to the substation(s), ancillary equipment third party transmission lines and layout of all structures within the geographic boundaries of any applicable setback.

3-2. The applicant must comply with all SEQR requirements including preparation of a completed SEQR Long Form Part 1. If during the SEQR process it is determined that any part of the project is located in a wetland or crosses a stream, then the applicant will apply for a wetland and stream crossing permit as required by law. If a positive declaration of environmental significance is determined by the SEQRA lead agency, the following studies and information shall be included in the Draft Environmental Impact Statement (DEIS) prepared for a Wind Energy Facility or the following studies may be submitted with the application: Shadow Flicker, Noise, Visual Impact, Electromagnetic Interference and Emergency response.

3-3. The application shall also include any other information normally required by the Town of Fairfield Planning Board, Herkimer County or the State of New York.

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3-4. The applicant shall provide the Town proof of insurance, in form of a duplicate insurance certificate, at a level to be determined by the Town Board and in consultation with the Town's insurer, to cover damage or injury which might result from the failure of a tower or towers or any other part (s) of the generation and transmission facility. This documentation must be provided to the Town of Fairfield prior to issuance of a Building Permit.

3-5. The applicant will notify the Town of Fairfield of any changes in the information provided in Sections 3-2 thru 3-4 above that occur while the special permit approval is pending. Additions of new wind energy facilities to an existing or permitted project require issuance of a new permit from the Planning Board.

### Section 4. Permit Timeframe

4-1. Once a wind power project permit application is approved, construction must begin within 24 months of approval date, and the applicant has a total of 36 months from date of permit approval to make a wind energy facility operational, unless the applicant can demonstrate that the circumstances for the delay are the result of a Force Majeure or circumstances beyond the applicant's reasonable control.

### Section 5. Regulations and Requirements

5-1. All permits for construction of wind power projects must comply with all applicable federal and state commercial/industrial-building codes. Additionally, the Town of Fairfield requires compliance with the following in order to obtain a building permit.

#### 5-2. Design and Construction

For each site building permit submitted, the applicant will submit the following.

- a. Applicants shall submit certificates of compliance that wind turbine equipment manufacturers have obtained from Underwriters Laboratories, to the extent these are required, or an equivalent third party.
- b. A professional engineer will certify, as part of the building permit application, that the foundation and tower design of the wind power facilities are within accepted professional standards.
- c. During construction, the Applicant shall secure the services of a certified electrical engineer and project engineer to inspect and oversee the entire project delivery system for safety and quality assurance. All reports addressing these requirements and any findings regarding the project will be forwarded to the Town of Fairfield within 30 days of creation.
- d. If any project service roads are intended to be taken over by the town, such roads will meet the specification of the Town of Fairfield highway superintendent and Town Board.
- e. Plans to prevent the pollution of surface or groundwater; erosion of soil (both during and after construction), excessive runoff, and flooding of other properties

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(as applicable) will be prepared consistent with New York State Department of Environmental Conservation (NYDEC) requirements.

f. The application must demonstrate compliance with all Federal Aviation Administration (FAA) requirements. A full description of the warning light plan must be provided with the Building Permit application.

g. Natural springs and wells. If the natural springs or wells which are a primary source of household water in many areas of the Town are impacted in any way during or after any part of construction, the applicant will restore natural springs or wells to pre-construction flow and quality rates or provide each household that is impacted with another water source, such as a drilled well with all necessary equipment to restore water flow and quality to the effected households.

5-3. Liability insurance and safety

a. The applicant shall provide the Town proof of liability insurance, in form of a duplicate insurance certificate, at a level to be determined by the Town Board to cover any liability for bodily injury or property damage that might be encountered. The Town of Fairfield shall be held harmless for any and all claims resulting from this project. This documentation must be provided to the Town of Fairfield prior to issuance of a Building Permit.

b. No wind energy facility shall be permitted if any wind turbine lacks an automatic breaking, governing or feather system to prevent uncontrolled rotation, over speeding and excessive pressure on the tower structure rotor blades and turbine components.

5-4. Electrical components

a. All electrical components of wind power facilities shall conform to local, state and national codes, and relevant national and international standards (e.g. American National Standards Institute and International Electrical Commission).

b. To the extent reasonably practicable all power collection lines to or from any wind power facility to on-site substations shall be underground. Proper grounding and codes inspections are required.

5-5. Color

a. Towers and blades shall be painted white or gray or another unobtrusive color.

b. No advertising or commercial logos or insignias except for the manufacturer's logo will be visible on the structures.

5-6 Warnings

a. A reasonably visible warning sign concerning voltage must be placed at the base of all pad mounted transformers and substations.

b. Visible, reflective objects such as flags, reflectors or tape shall be placed on the anchor of guy wires and along the guy wires up to a height of 15 feet from the

ground.

#### 5-7. Climb protection

All wind power facilities must be protected by anti-climbing devices such as sealed entrances for facilities having internal stairs with locking portals at least 6 feet tall.

#### 5-8 Setbacks

- a. All towers shall be set back from any Residence 1,250 feet. The distance for the above setback shall be measured from the point of the Residence foundation to the center of the closest wind power facility tower foundation. An owner of a Residence may waive this setback requirement by a written, recordable agreement with the applicant which shall further require a resolution of the Town Planning Board consenting to the waiver of the setback.
- b. The minimum height of the end of rotor blades above ground surface shall be 30 feet.
- c. All towers shall be set back at least 500' from all public roads.
- d. All towers shall be set back a distance of at least the height of the tower from any adjacent property line of non-participating landowners. The affected non-participating adjacent property owner may waive this set back requirement by a written, recordable agreement with the applicant which shall further require a resolution by the Town Planning Board consenting to the waiver of the setback.
- e. All towers shall be set back a distance a distance of at least 1.5 times the wind power tower height from any other wind power tower.
- f. Any agreement between the applicant and a landowner to waive any of the above setback requirements shall run with the land and be recorded as part of the chain of title in the deed of the subject property.

#### 5-9. Viewscape impacts

- a. The Applicant shall provide such information as may be deemed necessary by the Town to assess the viewscape impact with regard to the number of Residences impacted and the potential for the future development. The Town Board shall assess visual impacts and mitigation measures as part of its review of the application in conformance with the State Environmental Quality Review Act (SEQRA).
- b. The Applicant, at a minimum, will provide a digital elevation model visibility map showing the impact of the project on the viewscape. The scales used shall permit display of a minimum five-mile radius from the proposed site with a scale

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no smaller than 1 inch per mile using a base map locating all roads and Residences within the five-mile radius.

c. Landscape and Screening: Appropriate landscape and screening is required to keep the site in a neat and orderly fashion. Appropriate screening is required to screen accessory structures from adjacent residences and public roads.

5-10. Use of public roads

In order to obtain a building permit, an applicant, owner or operator proposing to use any town, county or state road for the purpose of transporting any and all materials related to wind power facility development (construction, operation, maintenance) will:

- a. Identify such public roads and contact the superintendent of highways for the Town of Fairfield and Herkimer County to obtain permission regarding weight and size limits for use of Town or County roads prior to construction. The applicant must include documentary evidence of this contact and permission.
- b. Conduct a pre-construction baseline survey to determine existing road conditions for assessing potential future damage. The Town of Fairfield and Herkimer County Highway Superintendent must approve this survey for Town or County roads, respectively.
- c. Secure Financial Assurance in a reasonable amount agreed upon by the Town of Fairfield for the purpose of modifying or repairing any damage to the Town, County, and State roads caused by constructing, operating or maintaining wind power facilities.

5-11. Emergency Agencies and Hazardous Material

- a. The Operator of a wind power facility will provide local fire departments and emergency service agencies with training, practice drills and documentation of appropriate actions in case of emergency circumstances at the projects. Such documentation shall include the locations of all emergency shutdown controls, location of any potentially hazardous materials, and site maps showing access routes.
- b. The Operator will provide emergency plan updates to the Town of Fairfield within 4 weeks after any changes in operation or facility occur.
- c. All solid and liquid wastes related to the construction, operation and maintenance of a wind power facility will be removed from the site and disposed of in accordance with applicable laws. Handling, transport and storage of wastes shall likewise be done in accordance with applicable laws.

5-12 Noise level

The Applicant shall provide documentation that the maximum noise level generated by wind power facilities shall not exceed 50dba, as measured at the closest Residence owned by a non-participating landowner. A Non-participating landowner can waive this

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requirement by a written recordable agreement with the applicant, which shall further require a resolution of the Town Planning Board consenting to such waiver.

#### 5-13 Environmental Impacts/ Impact on Wildlife

These issues will be addressed in SEQRA/NEPA and state and federal permitting. To the extent practicable, wind turbines shall be located to avoid a substantial adverse impact on migrating birds or bats. The lighting system for the wind turbines shall be designed in accordance with the most recent FAA guidelines.

#### 5-14. Solid and Hazardous Waste

Any solid or hazardous waste from construction or operation of the wind energy project will be addressed through compliance with State and Federal permit and disposal requirements.

#### 5-15. Impacts on Agriculture

The applicant will demonstrate compliance with the Guidelines for Agricultural Mitigation For Wind Power Projects constructed in County adopted, State certified agricultural districts as proposed by the New York State Department of Agriculture & Markets.

### Section 6. Operational Considerations

If, after a ten (10) year period of operation, a wind energy facility becomes inoperative or nonfunctional for a continuous period of one (1) year, the Applicant shall remove the wind energy facilities, including all wind turbines and any accessory uses, at their expense.

### Section 7. Decommissioning

7-1. The issuance of any approvals under this Local Ordinance shall require the Applicant to establish an interest bearing account in an amount sufficient to ensure the faithful performance of the removal of the wind energy facility and the restoration of the affected properties. Applicant shall provide a bona fide estimate to the Board, for the Board's review and approval, in order to establish the cost of decommissioning the wind energy facility. On the 15th year of operation the Applicant shall commence funding the interest bearing account and thereafter contribute, in equal annual installments, sufficient funds, consistent with its Board approved estimate, to decommission the project in the 25th year of operation. In the event that the Applicant uses only a portion of the fund or uses other means than the fund to effect decommissioning it shall be entitled to such unused fund amounts with interest upon completion of such decommissioning

7-2. Prior to the granting of a special permit for project development, the Owner or Operator shall formulate a decommissioning plan cooperatively with the Town of

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Fairfield, or demonstrate that the Owner's land leases provide adequate requirements for same.

7-3. Unless otherwise agreed between the Town and the Applicant, and unless the Applicant can show that its land leases adequately address this issue, the Decommissioning Plans shall include:

- a. Provision describing the triggering events for decommissioning of wind power facilities.
- b. Provisions for the removal of structures, and debris but not below ground cable.
- c. Provisions for the restoration of the soil and vegetation.
- d. A timetable approved by the Town of Fairfield for site restoration.
- e. An estimate of decommissioning costs certified by a Professional Engineer.
- f. Financial Assurance, secured by the Owner, for the purpose of adequately performing decommissioning, in an amount equal to the Professional Engineer's certified estimate of decommissioning cost, less the expected salvage cost of the wind farm components.
- g. Identification of procedures for the Town of Fairfield to access financial Assurances.
- h. A provision that the terms of the Decommissioning Plan shall be binding upon the Owner or any of their successors, assigns, or heirs.
- i. A Provision that the Town of Fairfield shall have access to the site, pursuant to reasonable notice, to inspect the results of complete decommissioning.
- j. Removal of machinery, equipment, tower, and all other materials related to the project is to be completed within one year of decommissioning.
- k. All town, county or state roads, impacted by project activity, if any, will be restored to original condition upon completion of decommissioning.

#### Section 8. Resale of the Wind Energy Facility.

8-1. All previously approved agreements; regulations and requirements remain in effect. The subsequent owners bear the burden of compliance with all Town of Fairfield regulations and requirements enabling the issuance of this permit.

8-2. The Owner or Operator of wind energy facilities shall maintain a current general liability policy covering bodily injury and property damage with limits typical for power generating facilities.

#### Section 9. Annual Operating Report

9-1. The Owner or Operator shall submit an annual operation report to the town of Fairfield by January 30 of each year that summarizes yearly operations including total electrical power generation in the previous 12 months, changes in technical aspects of operations on the site, status of all individual wind power facilities, and changes in business arrangements of the Owner or Operator.

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9-2. In addition the report shall include:

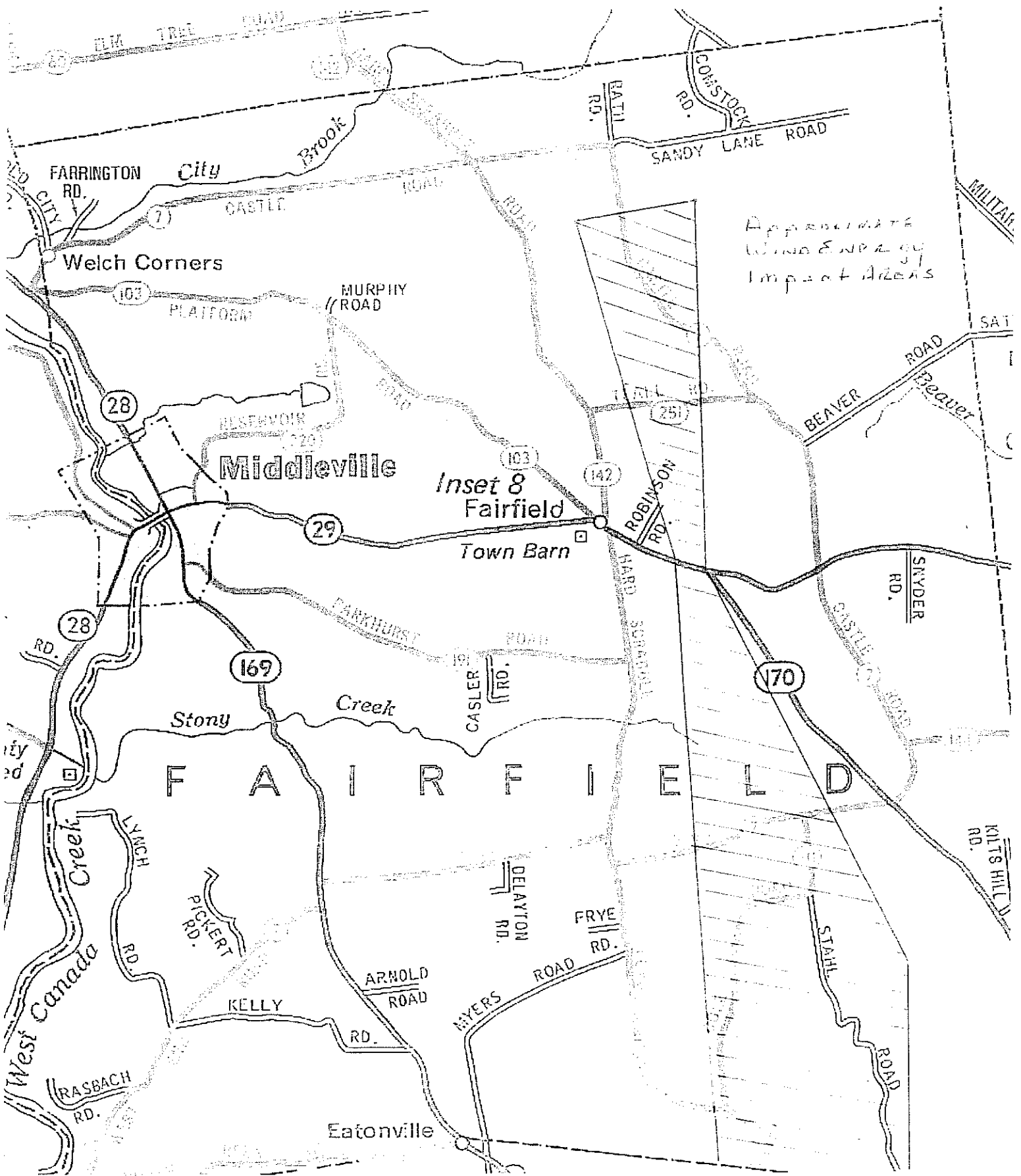
- a. Proof of an annual Insurance Liability Policy
- b. Proof of Financial Assurance for Decommissioning
- c. Proof of Road Bonds.

Article 6. - Severability.

If any part of this Chapter shall be found to be void, voidable or unenforceable for any reason whatsoever, it shall no affect the validity or enforceability of any remaining section or provision of this Chapter.

Article 7. - Effective Date.

This Local Ordinance shall take effect immediately upon filing with the Secretary of State.



# Fairfield Wind Energy Overl

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