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COUNTY OF NEW KENT

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NEW KENT COUNTY

STORMWATER MANAGEMENT ORDINANCE

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Prepared by
Richmond Regional Planning District Commission

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CHAPTER 9

LAND DEVELOPMENT

ARTICLE I. Local Erosion and Sediment Control And Stormwater Management Plan

Division 1. Erosion and Sediment Control

§ 9-1. Definitions.
§ 9-2. Exemption.
§ 9-3. Application.
§ 9-4. Erosion and Sediment Control Plan, requirements, fees.
§ 9-5. Plan submission, requirements and approval, bonding.
§ 9-6. Amendment of plan.
§ 9-7. Inspection and enforcement.
§ 9-8. Administrative appeal, judicial review.
§ 9-9. Liability for land disturbing activities.
§ 9-10. Penalties.

Division 2. Stormwater Management Plans Within Chesapeake Bay Preservation Areas

~~§ 9-11. Minimum Requirements.~~
§ 9-11. Submittal of Plan.
~~§ 9-12. Submittal of Plan.~~
§ 9-12. Stormwater Management Options.
~~§ 9-13. Best Management Practices (BMP).~~
§ 9-13. Minimum Requirements.
~~§ 9-14. Contents of the Plan.~~
§ 9-14. Exemptions and Exceptions.
§ 9-15. Plan of Development Process.
§ 9-156. Final Plan.
§ 9-167. Performance assurances.
§ 9-178 through 9-19. Reserved for future legislation.

ARTICLE II. Wetlands.

§ 9-20. Appointment, term, etc., of local wetlands board.
§ 9-21. Definitions.
§ 9-22. Uses allowed without permit.
§ 9-23. Permit required; applications.
§ 9-24. Applications, etc., are public records.
§ 9-25. Notice and hearing.
§ 9-26. Hearing procedures.
§ 9-27. Performance guarantees; suspension or revocation of permit.
§ 9-28. Standards for review.
§ 9-29. Permits generally.
§ 9-30. Violations; penalties.
§ 9-31. Repeal of former wetlands ordinance.

ARTICLE III. Zoning

§ 9-35 through § 9-335. Index attached.

ARTICLE IV. Subdivision

§ 9-350 through 9-436. Index attached.

CHAPTER 9

LAND DEVELOPMENT

Article I. Local Erosion and Sediment Control and Stormwater Management Plan

For state law as to erosion and sediment control, see 10.1-560 through 10.1-573 of the Code of Virginia of 1950, as amended.

Division 1. Erosion and Sediment Control

Sec. 9-1. Definitions.

As used in this Article the following terms shall have the meanings respectively ascribed to them, unless the context clearly indicates a different meaning:

A. The term "Land Disturbing Activity" shall mean any land change which may result in soil erosion from water or wind and the movement of sediments into State waters or onto lands in the Commonwealth, including, but not limited to, the clearing, grading, excavating, transporting, and filling of land, other than federal lands.

B. The term "Clearing" shall mean any activity which removes the vegetative ground cover including but not limited to root mat removal and/or topsoil removal.

C. The term "Grading" shall mean any excavating or filling of earth materials or any combination thereof, including the land in its excavated or filled condition.

D. The term "Excavating" shall mean any digging, scooping or other method of removing earth materials.

E. The term "Filling" shall mean any depositing or stockpiling of earth materials.

F. The term "Transporting" shall mean any moving of earth materials from one place to another, other than such movement incidental to grading when such movement results in destroying the vegetative ground cover, either by tracking or by the buildup of earth materials to the extent that erosion and sedimentation will result from the soil or earth materials over which such transporting occurs.

G. The term "Person" shall mean any individual, partnership, firm, association, joint venture, public or private corporation, trust, estate, commission, board, public or private institution, utility, cooperative, county, city, town, or other political subdivision of this state, any interstate body, or any other legal

entity.

H. The term "Erosion and Sediment Control Plan", "Conservation Plan", or "Plan" shall mean a document containing material for the conservation of soil and water resources of a unit or a group of units of land. It may include appropriate maps, an appropriate soil and water plan inventory and management information with needed interpretations, and a record of decisions contributing to conservation treatment. The plan shall contain all major conservation decisions to insure that the entire unit or units of land will be so treated as to achieve the conservation objectives.

I. "Erosion impact area" shall mean an area of land not associated with current land disturbing activity but subject to persistent soil erosion resulting in the delivery of sediment onto neighboring properties or into State waters. This definition shall not apply to any lot or parcel of land of one acre or less used for residential purposes or to shorelines where the erosion results from wave action or other coastal processes.

J. The terms "District" or "Soil and Water Conservation District" shall mean the Colonial Soil and Water Conservation District.

K. The term "Governing Body" shall mean the Board of Supervisors of New Kent County.

L. The term "Administrator" shall mean the Director of Planning of New Kent County.

M. The term "Plan Approving Authority" shall mean the Director of Planning of New Kent County.

N. The term "Land Disturbing Permit" shall mean a permit issued by the Administrator to persons engaged in a land disturbing activity.

O. The term "Best Management Practices" or "BMPs" means a practice, or a combination of practices, that is determined by a state or designated area-wide planning agency to be the most effective, practical means of preventing or reducing the amount of pollution generated by nonpoint sources to a level compatible with water quality goals.

P. The term "Resource Protection Area" or "RPA" means that component of the Chesapeake Bay Preservation area comprised of lands at or near the shoreline that have intrinsic water quality value due to the ecological and biological processes they perform or are sensitive to impacts which may result in significant degradation to the quality of state waters.

Q. The term "Wetlands" means those areas that are inundated or saturated by surface or ground water at a frequency and duration

sufficient to support, and that under normal circumstances do support a prevalence of vegetation adapted for life in saturated soil conditions. Wetlands generally include swamps, marshes, bogs and similar areas. (9/8/75) (amended 7/12/82) (11/29/91)

R. The term "Chesapeake Bay Preservation Area" means any land designated by the County pursuant to Part III on the Chesapeake Bay Preservation Area Designation and Management Regulations, VR 173-02-01, and Section 10.1-2107 of the Code of Virginia. A Chesapeake Bay Preservation Area Shall consist of a Resource Protection Area and a Resource Management Area.

S. The term "Stormwater Management Plan" means a document containing material for describing how stormwater quality will be maintained by a land development project and comply with the requirements of Division 2 of this ordinance.

T. The term "Plan of Development" means the process for site plan or subdivision plat review to ensure compliance with Section 10.1-2109 of the Code of Virginia and this Article, prior to any clearing or grading of a site or the issuance of a building permit.

U. The term "Development" means the construction, or substantial alteration, of residential, commercial, industrial, institutional, recreation, transportation, or utility facilities or structures.

V. The term "Redevelopment" means the process of developing land that is or has been previously developed.

Sec. 9-2. Exemptions.

A. The provisions of this article shall not be construed to apply to the following land disturbing activities:

1. Such minor land disturbing activities as home gardens and individual home landscaping, repairs and maintenance;

2. Construction, installation or maintenance of electric and telephone utility lines conducted pursuant to §10.1-563D of the Code of Virginia;

3. Installation, maintenance or repair of any underground public utility lines when such activity occurs on an existing hard-surfaced road, street, or sidewalk provided such land disturbing activity is confined to the area of the road, street, or sidewalk which is hard-surfaced;

4. Surface or deep mining;

5. Exploration or drilling for oil and gas, including the well site; roads, and off-site disposal areas;

6. Tilling, planting or harvesting of agricultural,

horticultural, or forest crops;

7. Construction, repair or rebuilding of the tracks, right-of-way, bridges, communication facilities and other related structures and facilities of a railroad company conducted pursuant to §10.1-563D of the Code of Virginia;

8. Installation of fence and sign posts or telephone and electric poles and other kinds of posts or poles;

9. Shore erosion control projects on tidal waters recommended by the soil and water conservation districts in which the projects are located or approved by the Marine Resources Commission.

10. Emergency work to protect life, limb or property, and emergency repairs; provided that if the land disturbing activity would have required an approved erosion and sediment control plan, if the activity were not an emergency, then the land area disturbed shall be shaped and stabilized in accordance with the requirements of the Director of Planning.

11. Engineering operations on privately owned, occupied or operated agricultural, horticultural or forest lands such as the construction of terraces, terrace outlets, check dams, desilting basins, dikes, ponds, ditches, and the like, and utilization of strip cropping, lister furrowing, contour cultivating, contour furrowing; land drainage; land irrigation; sloping, abandoned, or eroded lands to water-conserving and erosion-preventing plants, trees and grasses; rotation of crops, soil stabilization with trees, grasses, legumes, and other thick growing, soil holding crops, retardation of runoff by increasing absorption of rainfall; and retirement from cultivation of steep, highly erosive areas and areas now badly gullied or otherwise eroded.

12. Land disturbing activities which involve lands which extend into the jurisdiction of another local erosion and sediment control program; provided such person has a plan approved by the Virginia Division of Soil and Water Conservation. Such person shall comply with the requirements of this ordinance concerning the posting of a cash escrow or letter of credit.

13. Land disturbing activities conducted by any state agency pursuant to §10.1-564 of the Code of Virginia. (9/8/75) (7/12/82)

B. For those activities exempted under subsection A, the following conditions apply:

1. To the degree possible, the location of such utilities and facilities shall be outside Resource Protection Area

2. No more land shall be disturbed than is necessary to provide for the desired utility installation;

3. All construction, installation, and maintenance of such utilities and facilities shall be in compliance with all applicable state and federal requirements and permits and designed and conducted in a manner that protects water quality; and

4. Any land disturbance exceeding an area of 2,500 square feet complies with all New Kent County erosion and sediment control requirements.

C. Exemption for Silvicultural Activities.

Silvicultural activities in RPAs are exempt from the requirements of this Article provided that silvicultural operations adhere to water quality protection procedures prescribed by the Department of Forestry in its "Best Management Practices Handbook for Forestry Operations." (11/29/91)

Sec. 9-3. Application.

A. Except as provided for in § 9-2 of this Article, no person may engage in any land disturbing activity until such person has an erosion and sediment control plan for such land disturbing activity approved by the plan approving authority and has obtained a land disturbing permit as provided for in § 9-4 of this Article.

B. In addition to the requirements in subsection A, all development and redevelopment exceeding 2500 square feet of land disturbances, including construction of all single-family houses, septic tanks and drainfields, shall be subject to a plan of development process, including the approval of a site plan in accordance with the provisions of the Zoning Ordinance or a subdivision plat in accordance with the Subdivision Ordinance. (11/29/91)

Sec. 9-4. Erosion and Sediment Control Plan, requirements, fees.

A. The plan required by § 9-3 of this Article shall detail those methods and techniques to be utilized in the control of erosion and sedimentation. As a minimum the plan shall meet the requirements of the Virginia Erosion and Sediment Regulations, VSRS-625-02-00, or any amendments thereto.

B. Upon approval of an erosion and sediment control plan, a land disturbing permit shall be issued. No such permit shall be issued until performance is secured as required by this Article and all required fees have been paid.

C. A plan review and inspection fee of $75.00 for projects involving one acre or less plus $10.00 per acre of land or part thereof in excess of one acre shall be paid at the time of filing the erosion and sediment control plan. In no event shall this fee exceed $1,000.00. The determination by the Administrator of the acreage involved in the project shall be final.

D. No agency authorized under law to issue grading, building, or other permits for activities involving land disturbing activities may issue any such permits until the applicant therefor submits with his application evidence of a plan approved under the provisions of this Article. (7/12/82) (6/12/89) (11/29/91)

Sec. 9-5. Plan submission, requirements and approval, bonding.

A. Five copies of the erosion and sediment control plan shall be submitted to the Administrator, and be accompanied by the following information:

1. Name, address and phone number of applicant.

2. Name, address and phone number of landowner of record.

3. Name, address and phone number of person responsible for carrying out the plan.

4. Name, address and phone number of the person preparing the plan.

5. Location of the site, including but not limited to, road number, tax map reference, and lot number.

6. Other information as determined by the Administrator.

B. Upon submission of an erosion and sediment control plan to the plan approving authority:

1. The plan approving authority shall within forty-five (45) days approve any such plan if it determines the plan meets the conservation standards required by this Article and if the person responsible for carrying out the plan certifies that he will properly perform the erosion and sediment control measures included in the plan and will conform to the provisions of this Article. In determining whether any plan meets the required conservation standards the plan approving authority may seek the advice of the District.

2. The plan approving authority shall act on all plans submitted within forty-five (45) days from receipt thereof by either approving said plan in writing or by disapproving said plan in writing and giving the specific reasons for its disapproval. When a plan submitted for approval under this article is found upon review to be

inadequate, the plan approving authority shall specify such modifications, terms, and conditions as will permit approval of the plan and communicate those requirements to the applicant within forty-five (45) days.

3. If no action is taken by the plan approving authority within the time specified, the plan shall be deemed approved and the person authorized to proceed with the proposed activity.

C. All control measures required by this Article shall be undertaken at the expense of the owner or his agent; and pending actual compliance with the terms of this Article, the owner or his agent shall execute and file with the Administrator prior to the issuance of the land disturbing permit an agreement for a cash escrow or irrevocable loan commitment, or irrevocable letter of credit in an amount determined by the Administrator to be equal to the approximate total cost of providing the erosion and sediment control improvements and in a form approved by the County Attorney, guaranteeing that the required control measures will be properly and satisfactorily undertaken and maintained. The minimum letter of credit or cash escrow required under this section shall be Five Hundred ($500.00) Dollars. Within sixty (60) days of the adequate stabilization of the land disturbing activity, such cash escrow, letter of credit or other legal arrangement, or the unexpended or unobligated portion thereof shall be refunded to the owner or his agent or terminated as the case may be. Adequate stabilization will consist of at least an 85% vegetative cover. The administrator shall have sole authority to determine whether adequate vegetation exists. (9/8/75) (amended 7/12/82) (11/29/91)

Sec. 9-6. Amendment of plan.

An approved plan may be amended by the plan approving authority, if on-site inspection indicates that the approved control measures are not effective in controlling erosion and sedimentation or if because of changed circumstances the approved plan cannot be carried out. (9/8/75) (amended 7/12/82) (11/29/91)

Sec. 9-7. Inspection and enforcement.

A. Inspection and enforcement of this ordinance shall rest with the Administrator and with the County Inspector as the Agent of the Administrator.

B. The Administrator shall provide for periodic on-site inspections. Pursuant to § 10.1-566(A) of the Code of Virginia, and the owner, occupants or operator shall be provided an opportunity to accompany the inspector. Notice of the right of inspection shall be included in all land disturbing permits issued. The Administrator shall be responsible for developing and implementing a filing system for land disturbing projects.

C. Upon determination that a violation exists or that the permittee has failed to comply with the plan, the administrator shall prepare a notice to comply which shall contain a detailed description of the conservation measures necessary for compliance. Such notice shall be served upon the permittee by registered or certified mail to the address specified by the permittee in the in the permit application. If no action is taken within forty-eight (48) hours of delivery of the notice to comply, the Administrator may issue a stop work order or prepare a letter of intent to utilize the performance cash escrow or other legal arrangement to perform the conservation measures to correct the deficiency.

1. Except as provided below, the stop work order may be issued only after the alleged violator has failed to comply with a notice to comply. The order shall be served in the same manner as a notice to comply, and shall remain in effect for seven (7) days from the date of service pending application by the enforcing authority or alleged violator for appropriate relief to the circuit court of the jurisdiction wherein the violation was alleged to have occurred. Where the alleged noncompliance is causing or is in imminent danger of causing harmful erosion of lands or sediment deposition in waters within the watersheds of the Commonwealth, such an order may be issued whether or not the alleged violator has been issued a notice to comply.

2. If the letter of intent to utilize the performance guarantee is used, it shall be sent by registered mail to the permittee. If no action is taken to correct the deficiencies within five (5) days of the sending of the letter of intent to utilize the security, then the Administrator shall proceed to authorize the corrective measures to be made and to recover the cost thereof from the security. The failure of a permittee to comply with the notice provided for in this subparagraph shall be deemed to be a violation of this article.

D. In addition to any criminal penalties provided under this section, any person who violates any provision of this section may be liable to the county, city or the Board, as appropriate, in a civil action for damages.

E. Nothing herein shall be construed so as to prohibit the Administrator from applying to the Circuit Court of New Kent County for appropriate relief, injunctive or otherwise.

F. Without limiting the remedies which may be obtained in this section, any person violating or failing, neglecting or refusing to obey any injunction, mandamus or other remedy obtained pursuant to this section shall be subject, in the discretion of the court, to a civil penalty not to exceed $2,000 for each violation. (9/8/75) (amended 7/12/82) (11/29/91)

Sec. 9-8. Administrative appeal, judicial review.

Final decisions of the Administrator or the plan approving authority under this article shall be subject to review by the Board of Supervisors, provided an appeal is filed within thirty (30) days of the date of any written decision by the Administrator or the plan approving authority.

Final decisions of the Board of Supervisors shall be subject to review by the Circuit Court of New Kent County, provided an appeal is filed within thirty (30) days of any written decision adversely affecting the rights, duties or privileges of the person engaging in or proposing to engage in land disturbing activities. (9/8/75) (amended 7/12/82) (11/29/91)

Sec. 9-9. Liability for land disturbing activities.

Compliance with the provisions of this article shall be prima facie evidence in any legal or equitable proceeding for damages caused by erosion, siltation or sedimentation that all requirements of law have been met and the complaining party must show negligence in order to recover any damages. (9/8/75) (amended 7/12/82) (11/29/91)

Sec. 9-10. Penalties.

Violation of any provision of this article shall be deemed a misdemeanor. Any person convicted of violating any provisions of this article shall be subject to a fine of not more than one thousand dollars ($1,000.00) or to thirty (30) days imprisonment for each violation or both. Nothing herein shall be deemed to limit the authority of the County to apply to the Circuit Court of the County of New Kent for injunctive relief to enjoin a violation or threatened violation of this Article. (9/8/75) (amended 7/12/82) (11/29/91)

Note: For state law as to penalties and injunctive proceedings, see § 10.1-560 et seq, Code of Virginia.

Division 2. Stormwater Management Plan Within Chesapeake Bay Preservation Areas

~~Sec. 9-11. Minimum Requirements.~~

~~A stormwater management plan for a land development project shall be developed so that from the site, the post development peak runoff rate from a two-year storm and a ten-year storm, considered individually, shall not exceed the predevelopment rates. (11/29/91)~~

Sec. 9-11. Submittal of Plan.

In addition to a Site Plan and an Erosion and Sediment Control Plan, development that occurs within designated Chesapeake Bay Preservation Areas shall have an approved Stormwater Management Plan. A stormwater management plan shall be submitted as part of the plan of development process required by this ordinance and in conjunction with site plan or subdivision plan preliminary approval. (11/29/91) **[Previous sentence moved from original Sec. 9-12 below]**

~~Sec. 9-12. Submittal of Plan.~~

~~A stormwater management plan shall be submitted as part of the plan of development process required by this ordinance and in conjunction with site plan or subdivision plan preliminary approval. (11/29/91)~~

Sec. 9-12. Stormwater Management Options.

The following stormwater management options shall be considered adequate to control stormwater runoff:

A. Incorporation on the site of best management practices that achieve the required control as detailed in Sec. 9-12;

B. Compliance with a locally adopted regional stormwater management program incorporating pro-rata share payments pursuant to the authority provided in § 15.1-466(j) of the Code of Virginia that results in achievement of equivalent water quality protection;

C. For a redevelopment site that is completely impervious as currently developed, restoring a minimum 20% of the site to vegetated open space.

Any maintenance, alteration, use, or improvement to an existing structure which does not degrade the quality of surface water discharge, as determined by the local government, may be exempted from the above stormwater management requirements.

~~Sec. 9-13. Best Management Practices (BMP).~~

~~To control stormwater runoff, the Director of Planning may require structural BMP's for site plans with impervious cover exceeding 16% of site area and for subdivisions with more than 0.5 dwelling units per acre. BMP's shall be designed and constructed in accordance with guidelines established by the Director of Planning. (11/29/91)~~

Sec. 9-13. Minimum Requirements.

For any development or redevelopment, stormwater runoff shall be controlled by the use of best management practices that achieve the following:

A. For development, the post-development nonpoint source pollution runoff load shall not exceed the pre-development load, based on the calculated average land cover conditions as determined by the County Planning director;

B. For redevelopment sites, the existing nonpoint source pollution load shall be reduced by at least 10 percent. The County may waive or modify this requirement for redevelopment sites that originally incorporated best management practices for stormwater runoff quality control, provided the following provisions are satisfied:

1. In no case may the post-development non-point source pollution runoff load exceed the pre-development load;

2. Runoff pollution loads must have been calculated and the BMPs selected for the expressed purpose of controlling nonpoint source pollution;

3. If best management practices are structural, evidence shall be provided that facilities are currently in good working order and performing at the design levels of service. The County may require a review of both the original structural design and maintenance plans to verify this provision. A new maintenance agreement may be required to ensure compliance with this ordinance.

C. For redevelopment, both the pre- and post-development loadings shall be calculated by the same procedure. However, where the design data is available, the original post-development nonpoint source pollution loadings can be substituted for the existing development loadings.

~~Sec. 9-14. Contents of the Plan.~~

~~A. At a minimum, the stormwater management plan shall contain the following;~~

~~1. Location and design of stormwater control devices and BMPs.~~

~~2. Procedures for implementing nonstructural stormwater control practices and techniques.~~

~~3. Pre- and Post-development and nonpoint source pollution loading with supporting documentation of all utilized coefficients and calculations.~~

~~4. For facilities, verification of structural soundness, including a professional engineer or Class III B Surveyor Certification.~~

~~B. The plan shall establish a long-term schedule for inspection and maintenance of stormwater management facilities that includes all maintenance requirements and persons responsible for performing maintenance. If the designated maintenance responsibility is with a party other than New Kent County, then a maintenance agreement shall be executed between the responsible party and the County.~~

~~C. Erosion and sediment control plan in accordance with Division 1 of this Article.~~

~~D. Site Plan in accordance with Article III, Division 18 of this chapter. (11/29/91)~~

Sec. 9-14. Exemptions and Exceptions.

Exemptions and exceptions to the requirements of this division are contained in ARTICLE VI, Chesapeake Bay Preservation Areas, Sec. 9-473 and Sec. 9-474.

Sec. 9-15. Plan of Development Process.

A. **The stormwater management plan shall contain maps, charts, graphs, tables, photographs, narrative descriptions, explanations, and citations to supporting references as appropriated to communicate the information required by this Division.** At a minimum, the stormwater management plan shall contain the following;

1. Location and design of stormwater control devices and BMPs.

2. Procedures for implementing nonstructural stormwater control practices and techniques.

3. Pre- and Post-development and nonpoint source pollution loading with supporting documentation of all utilized coefficients and calculations.

4. For facilities, verification of structural

soundness, including a professional engineer or Class III B Surveyor Certification.

B. The plan shall establish a long-term schedule for inspection and maintenance of stormwater management facilities that includes all maintenance requirements and persons responsible for performing maintenance. If the designated maintenance responsibility is with a party other than New Kent County, then a maintenance agreement shall be executed between the responsible party and the County. **[Non-bold language taken from original Sec. 9-13 above]**

Sec. 9-~~15~~ **16.** Final Plan.

A. Final site plans or final subdivision plans for all lands within CBPAs shall include the following information:

1. Delineation of the RPA boundary;

2. Delineation of required buffer areas;

3. Delineation of wetlands;

4. All wetlands permits required by law;

5. Delineation of slopes 25% or greater; and

6. BMP maintenance agreement to ensure proper maintenance of BMPs in order to continue their functions.

7. When deemed necessary by the Zoning Administrator, an analysis of the impacts of stormwater flows downstream in the watershed.

B. It may not be necessary to satisfy the basic requirements for water quality ~~and quantity~~ control by means of structural methods. Non-structural practices including, but not limited to, cluster land use development, minimization of impervious surfaces and curbing open space acquisition, flood plain management, and protection of wetlands, steep slopes and vegetation may be coordinated with structural practices. (11/29/91)

Sec. 9-~~16~~ **17.** Performance assurances.

Performance assurances shall be provided that all BMPs required in plans of development shall be constructed to comply with the performance criteria set forth therein. The form of agreement and type of bond, letter of credit or other security shall be to the satisfaction of and approved by the County Attorney. The amount of bond, letter of credit or other security and designated length of completion time shall be set by the Director of Planning. (11/29/91)

Secs. 9-~~17~~ **18** through 9-19. Reserved for future legislation.

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