

<p><b>Meeting Date:</b> <b>October 25, 2018</b></p>	<p><b>Board of Pilot Commissioners for the Bays of San Francisco, San Pablo, and Suisun 660 Davis Street, San Francisco, CA 94111</b></p> <p><b>BOARD MEETING MINUTES</b></p>	<p><b>Page 1 of 12</b></p>
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**Board Members Present**

Jennifer Ferrera Schmid, President, Public Member  
 Dave Connolly, Vice President, Public Member  
 David Hoppes, Dry Cargo Industry Member  
 Captain George Livingstone, Pilot Member  
 Captain Einar Nyborg, Pilot Member  
 Marlon Flournoy, Ex Officio Member, Deputy Secretary for Transportation Planning,  
 Representing the Secretary of the California State Transportation Agency (CalSTA)

**Board Members Absent**

John Schneider, Wet Cargo Industry Member  
 Vacant, Public Member

**Staff Present**

Allen Garfinkle, Executive Director  
 Roma Cristia-Plant, Assistant Director (participated via telephone)  
 Dennis Eagan, Board Counsel  
 Luis Cruz, Associate Governmental Program Analyst

**Public Present**

Past Board President and Pilot Fitness Committee Chairman Knute Mike Miller, Captain Joseph Long, San Francisco Bar Pilots (SFBP) President and Port Agent; Ray Paetzold, SFBP Business Director-General Counsel; Mike Jacob, Pacific Merchant Shipping Association (PMSA) Vice President and General Counsel; Captain David Cvitanovic, SFBP; and Eusebio Fabia, State Lands Commission.

**OPEN MEETING**

**1. Call to Order and Roll Call – President Schmid**

President Schmid called the meeting to order at 9:32 a.m. Associate Governmental Program Analyst Cruz called the roll and confirmed a quorum.

**2. Review and approval of Board meeting minutes – President Schmid**

**Board action to approve the minutes from the Board meeting held on September 27, 2018.**

Board members were presented with the draft minutes from the September 27, 2018, meeting. Commissioners Nyborg, Livingstone, and Hoppes requested minor edits to the minutes.

<b>Meeting Date:</b>  <b>October 25, 2018</b>	<b>Board of Pilot Commissioners for the Bays of San Francisco, San Pablo, and Suisun 660 Davis Street, San Francisco, CA 94111</b>  <b>BOARD MEETING MINUTES</b>	<b>Page 2 of 12</b>
---	--	---------------------

- MOTION:** President Schmid moved to approve the draft minutes of the meeting held September 27, 2018, as amended. Vice President Connolly seconded the motion.
- VOTE:** YES: Schmid, Connolly, Hoppes, Livingstone, and Nyborg.  
NO: None.  
ABSTAIN: None.
- ACTION:** The motion was approved.

### **3. President Announcements and Activities – President Schmid**

President Schmid announced that on September 28, 2018, she met with John McLaurin, PMSA President and Mike Jacob, PMSA Vice President and General Counsel. She stated topics discussed included the Board’s relationship with PMSA, and John McLaurin’s recent commentary article titled, “The Need for More State Oversight,” published in the August 2018 PMSA *West Coast Trade Report*.

### **4. Board Member Announcements and Activities – Board Members**

There were no announcements.

### **5. Directors’ Report – Executive Director Garfinkle/Assistant Director Cristia-Plant**

#### **A) Correspondence and activities since the Board meeting held on September 27, 2018.**

Executive Director Garfinkle reported on the correspondence and activities since the September Board meeting as follows:

- On October 2, 2018, Board staff received a written opinion in Reeder v. Board of Pilot Commissioners, which included a discussion and decision in the case, and will be discussed later in the meeting.
- On October 8, 2018, he attended a Director's meeting at CalSTA office in Sacramento. Discussion items included the upcoming election and the transition to a new Governor.
- On October 19, 2018, Board staff received the October issue of the PMSA *West Coast Trade Report*. The report contains August 2018 container trade data and several other articles.
- On October 22, 2018, Board staff received an article from the *Maritime Executive* entitled "American Pilots’ Association Holds National Convention in Savannah," attended by nearly 200 of the 1200 licensed pilots nationwide.
- On October 24, 2018, Board staff received written notice from Captain Peter McIsaac and Captain George Dowdle of their intent to retire effective January 1, 2019.

<p><b>Meeting Date:</b> <b>October 25, 2018</b></p>	<p><b>Board of Pilot Commissioners for the Bays of San Francisco, San Pablo, and Suisun 660 Davis Street, San Francisco, CA 94111</b></p> <p><b>BOARD MEETING MINUTES</b></p>	<p><b>Page 3 of 12</b></p>
---	---	----------------------------

- Board staff made a tentative offer of employment to Alethea Wong to assume the Board's vacant Administrative Assistant II position. She is to start on November 30, 2018.

**B) Report on pilot licensing matters in the past month and current month.**

- Between the August and September Board meetings, Board staff renewed the licenses of Captains LeSieur, Alferts, and Boriolo.
- Since the September Board meeting, the Board renewed the licenses of Captains Kleess, Vogel, Favro, and Lowe.

**C) Report on Board surcharges.**

Executive Director Garfinkle reported that the Board received a check from the SFBP in the amount of \$170,992.65, itemized as follows:

- Board Operations Surcharge: \$ 82,447.65
- Continuing Education Surcharge: \$ 14,985.00
- Trainee Surcharge: \$ 73,560.00

**D) Report on legislative activities and contractual matters.**

Associate Governmental Program Analyst Cruz stated there were no legislative activities to report.

Associate Governmental Program Analyst Cruz reported the following on contractual matters:

- California Highway Patrol (CHP) contract staff issued an Invitation for Bid (IFB) on October 18, 2018, for the San Francisco Bar Pilot Pension Plan calculation services. Bids are due November 5, 2018, and assuming a responsive and responsible bid is received, the ensuing contract is anticipated to begin on January 1, 2019.
- CHP contract staff continue to work on the IFB documents to procure a San Francisco Bar Pilot Pension Plan actuarial study. CHP expects to provide Board staff with draft procurement documents by the end of October.
- Board staff continue to work on crafting a contract with the California Department of Human Resources for trainee random drug testing.

<p><b>Meeting Date:</b> <b>October 25, 2018</b></p>	<p><b>Board of Pilot Commissioners for the Bays of San Francisco, San Pablo, and Suisun 660 Davis Street, San Francisco, CA 94111</b></p> <p><b>BOARD MEETING MINUTES</b></p>	<p><b>Page 4 of 12</b></p>
---	---	----------------------------

## **6. Port Agent’s Report – Captain Joseph Long**

### **A) Monthly report on San Francisco Bar Pilots (SFBP) pilot availability and absences.**

Port Agent Long reported that Captain Dowdle has been not fit for duty (NFFD) since September 23, 2017.

He reported that the SFBP continually monitors the dispatch list for possible 12-hour minimum rest period (MRP) exceptions, and if the potential exception is likely to result in a rest period of less than 10 hours, mitigating measures are employed by the SFBP. He reported that the mitigating measures include, but are not limited to, suspending continuing professional development protocols, cancelling scheduled meetings, cancelling previously granted compensating-time-off requests, suspending SFBP internal working rules, and calling in off-watch pilots.

He reported that there are currently 54 licensed pilots. He reported that there were 20 MRP exceptions in September 2018, and that the shortest rest period was 9.3 hours.

### **B) Monthly report on SFBP ship piloting business activity.**

Port Agent Long reported the following:

- The P/V GOLDEN GATE was out of service commencing October 4, 2018, through October 5, 2018. He reported that the vessel was out of service due to damage sustained from a collision with another vessel. He reported the collision occurred off the end of Pier 9, that there were no injuries, and that the event is under investigation by the U.S. Coast Guard.
- The P/V SAN FRANCISCO has been out of service since September 4, 2018. He reported that engine overhaul is nearing completion, that delays in the engine work caused a longer-than-anticipated yard period, and that the shipyard is expected to begin other maintenance and repairs soon.

Vice President Connolly inquired if the SFBP attended the American Pilots Association National Convention in Savannah, Georgia. Port Agent Long confirmed that the SFBP attended, and delivered a presentation on the “two-pilot” system for ultra-large container vessels. He stated that the two-pilot system is uncommon in the piloting profession as pilots usually work independently. He stated that he thought the convention was helpful with learning and understanding how other pilot organizations handled mutual problems.

Port Agent Long also confirmed for Vice President Connolly that autonomous ships were a topic of discussion, and that the general consensus is that the technology is ahead of

<p><b>Meeting Date:</b> <b>October 25, 2018</b></p>	<p><b>Board of Pilot Commissioners for the Bays of San Francisco, San Pablo, and Suisun 660 Davis Street, San Francisco, CA 94111</b></p> <p><b>BOARD MEETING MINUTES</b></p>	<p><b>Page 5 of 12</b></p>
---	---	----------------------------

formal regulations. Vice President Connolly noted that the topic of autonomy is multi-layered, and that there are many challenges from a regulatory point of view.

Commissioner Hoppes referred to articles in the October issue of the PMSA *West Coast Trade Report*, and inquired if river moves were on the decrease, and posited that a decrease could be due to impending or already-imposed tariffs. Port Agent Long responded and stated that river moves are slightly down, although Port of Stockton activity has increased.

**C) Monthly confidential written report of SFBP pilots who have been absent for medical reasons (AFMR). The Board may go into closed session to discuss contents of the Port Agent’s confidential report as authorized by Harbors and Navigation Code § 1157.1.**

There was no discussion of the confidential written report of pilots who have been absent for medical reasons. There was no closed session discussion of this item.

**7. Pilot Evaluation Committee – Captain Teague**

**A) Report on the Pilot Evaluation Committee (PEC) meeting held on October 17, 2018. Possible PEC recommendation to place one or more Pilot Trainee Training Program trainees on probation, or dismiss one or more trainees from the program. Possible Board action to place one or more Pilot Trainee Training Program trainees on probation, or dismiss one or more trainees from the program.**

Captain Teague was unable to attend the meeting. Executive Director Garfinkle read Captain Teague’s written report submitted to the Board, and stated the following:

- The PEC met on October 17, 2018, and Committee members Captains Teague, Boriolo, Carlier, Haggerty, and Robinson were present. Executive Director Garfinkle was also in attendance.
- In closed session, all trainees were interviewed and counseled individually on their progress in the Pilot Trainee Training Program.
- The eight current trainees are Captains Burchard, Crawl, Corbett, Freese, Greger, Pullin, Pyne Mercier, and Starnitzky. The range of time in the program for these trainees spans 10 to 22 months.
- All trainees have completed all testing for federal pilotage with the U.S. Coast Guard and, where necessary, are gathering their final route trips to complete their endorsements.
- All trainees are handling vessels as much as possible.
- Three trainees are in evaluation stage.

<b>Meeting Date:</b>  <b>October 25, 2018</b>	<b>Board of Pilot Commissioners for the Bays of San Francisco, San Pablo, and Suisun 660 Davis Street, San Francisco, CA 94111</b>  <b>BOARD MEETING MINUTES</b>	<b>Page 6 of 12</b>
---	--	---------------------

- All trainees are presently meeting the recommended benchmarks in the training program, and are progressing at their individual rates.
- The next PEC meeting is scheduled for November 14, 2018, at 7:30 a.m. at the Board office.

Port Agent Long responded to an inquiry from Vice President Connolly and stated that a trainee in evaluation stage typically completes the job on his or her own without any input from the BOPC licensee. He added that the licensee would provide input only when absolutely necessary for safety reasons.

Port Agent Long confirmed for Commissioner Nyborg that the Board's 54 licensed pilots included pilots who are Not Fit for Duty (NFFD). Commissioner Nyborg expressed his gratitude for Captain Dowdle assisting with SFBP office duties while on NFFD status.

- B) Possible PEC recommendation for a determination that a trainee has or trainees have completed the Pilot Trainee Training Program. Possible Board action to award a Certificate of Completion to a trainee who has completed the Pilot Trainee Training Program.**

There was no recommendation.

- C) Possible recommendation from the Executive Director for the appointment of a new pilot or pilots. Possible Board action to accept a recommendation from the Executive Director that a trainee holding a Certificate of Completion from the Pilot Trainee Training Program be licensed as a state-licensed pilot.**

There was no recommendation.

- 8. Reported Safety Standard Violations – Executive Director Garfinkle (Reported safety standard violations occurring up to the start of the meeting will be reported on.)**

Executive Director Garfinkle stated there were no reported safety standard violations.

- 9. Reportable Piloting Events – Executive Director Garfinkle (Reportable piloting events occurring up to the start of the meeting will be reported on.)**

- A) Initial report of an interaction between the M/V XING ZUN HAI while passing the mooring M/V WENCHE VICTORY in Stockton on October 4, 2018.**

Executive Director Garfinkle reported that on October 4, 2018, the M/V XING ZUN HAI was entering the Port of Stockton and passed the M/V WENCHE VICTORY,

<p><b>Meeting Date:</b> <b>October 25, 2018</b></p>	<p><b>Board of Pilot Commissioners for the Bays of San Francisco, San Pablo, and Suisun 660 Davis Street, San Francisco, CA 94111</b></p> <p><b>BOARD MEETING MINUTES</b></p>	<p><b>Page 7 of 12</b></p>
---	---	----------------------------

which was in the mooring process. He reported that as the M/V XING ZUN HAI passed the M/V WENCHE VICTORY, the M/V WENCHE VICTORY experienced some interaction that resulted in two mooring lines parting. He reported there were pilots aboard both vessels, the event is under investigation, and that the statutory 90-day investigation report deadline is January 1, 2019.

**B) Initial report of an unintended contact between the M/V ALYARMOUK and a temporary buoy marking the Fleet Week parade boundaries on October 7, 2018.**

Executive Director Garfinkle reported that on October 7, 2018, while the M/V ALYARMOUK was inbound from the pilot station, the vessel allided with a temporary buoy marking a Fleet Week air show box. He reported that the event is under investigation, that a Commission Investigator was not dispatched, and that the statutory 90-day investigation report deadline is January 4, 2019.

**10. Loss-of-Propulsion/Low-Sulfur-Fuel Report – Executive Director Garfinkle**

**Report on loss-of-propulsion events arising in September 2018, as reported by the U.S. Coast Guard, including those events suspected to be due to low-sulfur-fuel issues.**

Executive Director Garfinkle reported that according to the U.S. Coast Guard’s Prevention/Response-San Francisco Harbor Safety Statistics report for September 2018, there were two Loss-of-Propulsion Events that month, and that neither event was attributed to fuel-switching.

**11. Joint Pilot Fitness/Rules and Regulations Committee – Knute Michael Miller and Commissioner Livingstone**

**A) Report on the Joint Pilot Fitness/Rules and Regulations Committee held on October 23, 2018.**

Joint Pilot Fitness/Rules and Regulations Committee Co-Chairman Livingstone reported the Committee met on October 23, 2018, and reviewed the proposed amendments to the Board fitness regulations. Co-Chairman Livingstone deferred to Board Counsel Eagan for the report on the proposed regulatory amendments.

**B) Report on proposed amendments to the Board fitness regulations in Title 7, California Code of Regulations sections 217-217.45 and related forms. Possible Board action to direct staff to commence formal rulemaking to amend regulations in Title 7, California Code of Regulations sections 217-217.45 and related forms consistent with the Joint Committee recommendation.**

<p><b>Meeting Date:</b> <b>October 25, 2018</b></p>	<p><b>Board of Pilot Commissioners for the Bays of San Francisco, San Pablo, and Suisun 660 Davis Street, San Francisco, CA 94111</b></p> <p><b>BOARD MEETING MINUTES</b></p>	<p><b>Page 8 of 12</b></p>
---	---	----------------------------

Board Counsel Eagan reported that comprehensive pilot and trainee fitness regulations became effective in April 2014. He stated that after several years of implementation, it became apparent that additional edits needed to be made to the fitness regulations. He stated at its December 2017 meeting, the Board authorized the Pilot Fitness Committee to work jointly with the Rules and Regulations Committee to propose amendments to the regulations in Title 7, California Code of Regulations §§217-217.45, consistent with the Pilot Fitness Committee’s findings.

Board Counsel Eagan stated that the proposed amendments generally impact the following broad areas of the fitness regulations—timetable to complete a fitness evaluation, the allowance of a fitness determination by Board-appointed physicians for a period of less than one year, relaxing the minimum qualifications for an examining physician to potentially ensure a sufficient availability of physicians, and updating various terms and forms. He then extensively reviewed each proposed draft amendment to the fitness regulations, dated as of October 25, 2018, and all corresponding revisions to the required forms.

Executive Director Garfinkle explained to Commissioner Hoppes that any change in prescription medication requires the pilot or trainee to complete two separate forms, a Notice to Executive Director and a Notice to Board Appointed Physician. He added that depending on the situation, the pilot/trainee may become subject to a medical assessment.

Commissioner Nyborg stated that the proposed addition of a fit for duty determination for a time period of less than one year provides the physicians a mechanism that allows for a follow-up visit with the pilot/trainee after the initial medical assessment, while keeping the a pilot/trainee working in the interim. He stated that he thought a fit for duty determination for a period of less than one year would be a good addition to the regulations.

**MOTION:** Vice President Connolly moved that the Board direct Board staff to commence the formal rulemaking process to amend regulations in Title 7, California Code of Regulations sections 217-217.45, and related forms, consistent with the Joint Pilot Fitness/Rules and Regulations Committee’s recommendations as reflected in the October 25, 2018 proposed regulatory amendments. Commissioner Hoppes Seconded the motion.

**VOTE:** YES: Schmid, Connolly, Hoppes, Livingstone, and Nyborg.  
NO: None.  
ABSTAIN: None.

**ACTION:** The motion was approved.



<p><b>Meeting Date:</b> <b>October 25, 2018</b></p>	<p><b>Board of Pilot Commissioners for the Bays of San Francisco, San Pablo, and Suisun 660 Davis Street, San Francisco, CA 94111</b></p> <p><b>BOARD MEETING MINUTES</b></p>	<p><b>Page 9 of 12</b></p>
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## **12. Pilot Fitness Committee – Knute Michael Miller**

### **A) Report on the Pilot Fitness Committee meeting held on October 23, 2018.**

Pilot Fitness Committee (PFC) Chairman Miller reported that the Committee met on October 23, 2018, commented on the detailed review of the San Francisco Bar Pilot Fatigue Study conducted under contract by researchers the San Jose State University Research Foundation with the assistance of researchers at the National Aeronautics and Space Administration, and also discussed the status of the pilot and trainee fitness determination protocols involving the Division of Occupational & Environmental Medicine at the University of California, San Francisco Campus (UCSF).

### **B) Progress report on the Committee’s review of relevant sections of Board statutes, regulations, Senate Bill 1408 (2012), and recommendations from the July 2018 San Francisco Bar Pilot Fatigue Study prepared by the San Jose State University Research Foundation and the National Aeronautics and Space Administration.**

PFC Chairman Miller reported that the Committee commenced review of relevant sections of Board statutes and regulations, Senate Bill 1408 (2012), and recommendations from the July 2018 San Francisco Bar Pilot Fatigue Study. He stated that the Committee is approximately halfway through its review of the study, and the Committee is tentatively scheduled to meeting again on November 16, 2018, to continue its efforts toward drafting relevant pilot and trainee fatigue mitigation regulations.

## **13. Navigation Technology Equipment and Software Acquisition Update – SFBP Business Director-General Counsel Paetzold**

### **Status report on the SFBP’s navigation technology equipment and software implementation.**

Mr. Paetzold reported that Rose Point expects to release an update to their navigation software for the route piloting system units by December 2018. He reported that SFBP plans to purchase several copies for testing before deciding whether to proceed with purchasing copies of the software to update all 62 route piloting units. He stated the cost for the software update was identified in SFBP’s Final Authorization request, and that once the actual expenditures are made, the SFBP will report the expenditure to the Finance Committee, which will make its recommendation to the Board regarding recovery of that expense from the Navigation Technology Surcharge revenues, as provided in the Board’s Final Authorization order that it issued in June 2017.

Mr. Paetzold reported that the precision docking system equipment is working well, and that the SFBP is partially through the first annual maintenance session for the CATII precision

<b>Meeting Date:</b>  <b>October 25, 2018</b>	<b>Board of Pilot Commissioners for the Bays of San Francisco, San Pablo, and Suisun 660 Davis Street, San Francisco, CA 94111</b>  <b>BOARD MEETING MINUTES</b>	<b>Page 10 of 12</b>
---	--	----------------------

docking system hardware. He reported that the precision docking system software is periodically updated, and is working well.

**14. Fee and Surcharge Recovery Actions Involving Hanjin Shipping Company – SFBP Business Director-General Counsel Paetzold**

**Status report on the SFBP’s fee and surcharge recovery actions involving pilotage services provided to vessels operated by Hanjin Shipping Company.**

Mr. Paetzold stated there was nothing new to report. He stated that at some point in the future, the Port Agent may consider petitioning the Board to cease collection efforts as allowed in §219(a) of the Board’s regulations.

Port Agent Long requested that this agenda item be removed from the following Board meeting agendas until new information is received from the SFBP. President Schmid stated she would consider the request.

**15. Board Meeting Calendar for 2019 – Executive Director Garfinkle**

**Presentation of the proposed Board meeting calendar for 2019. Possible Board action to approve a Board meeting calendar for 2019.**

Board members were presented with the proposed Board meeting calendar for 2019. Executive Director Garfinkle stated that the Board is free to set any meeting schedule it prefers, that the Board’s statutes state the Board can meet at any time, and that the Board’s regulations state the Board must meet monthly. He confirmed for Commissioner Hoppes that the Board may vote in the future to change any meeting date.

**MOTION:** President Schmid moved to approve the proposed Board meeting calendar for 2019. Commissioner Livingstone seconded the motion.

**VOTE:** YES: Schmid, Connolly, Hoppes, Livingstone, and Nyborg.

NO: None.

ABSTAIN: None.

**ACTION:** The motion was approved.

**16. San Francisco Bar Pilot Pension Plan Litigation – Board Counsel Eagan**

**Status report on Craig E. Reeder vs. State Board of Pilot Commissioners litigation. The Board may go into closed session to discuss with Board Counsel any matters subject to attorney-client privilege as per Government Code §11126(e) of the Bagley-Keene Open Meeting Act.**

<p><b>Meeting Date:</b> <b>October 25, 2018</b></p>	<p><b>Board of Pilot Commissioners for the Bays of San Francisco, San Pablo, and Suisun 660 Davis Street, San Francisco, CA 94111</b></p> <p><b>BOARD MEETING MINUTES</b></p>	<p><b>Page 11 of 12</b></p>
---	---	-----------------------------

Board Counsel Eagan reported that the California Court of Appeal affirmed the Superior Court's decision on Craig E. Reeder vs. State Board of Pilot Commissioners. He stated the court determined that the Board's conclusion denying Captain Reeder a pension from the San Francisco Pilot Pension Plan was neither unsupported nor arbitrary, focusing specifically on Captain Reeder's failure, under section 1164(c)(4) of the Harbors and Navigation Code, to hold himself out as providing pilotage assistance to the entire shipping industry. Lastly, he stated the appeal court decision is not final until December 2, 2018, providing that Captain Reeder does not seek review of the decision.

Commissioner Nyborg noted a misspelling of Captain Wally Slough's name in the appellate ruling.

**17. Board discussion of best practices in Maritime Safety – Vice President Connolly**

**Board discussion of best practices in maritime safety and/or lessons learned from Incident Review Committee incident reports or other sources, and possible directions to staff to develop safety policies and procedures. Possible Board action to direct staff to develop maritime safety policies and procedures.**

Vice President Connolly stated he had nothing to report.

**18. Public comment on matters not on the agenda.**

Captain Eusebio Fabia announced that the California State Lands Commissions (CSLC) is accepting applications for a Marine Safety Specialist I. More information can be found on the CSLC website at <http://www.slc.ca.gov/>.

There were no further public comments.

**19. Proposals for the next Board meeting agenda.**

There were no proposals for the next Board meeting agenda.

<b>Meeting Date:</b> <b>October 25, 2018</b>	<b>Board of Pilot Commissioners for the Bays of San Francisco, San Pablo, and Suisun 660 Davis Street, San Francisco, CA 94111</b>  <b>BOARD MEETING MINUTES</b>	<b>Page 12 of 12</b>
---	--	----------------------

**20. Adjournment.**

- MOTION:** President Schmid moved to adjourn the meeting. Commissioner Livingstone seconded the motion.
- VOTE:** YES: Schmid, Connolly, Hoppes, Livingstone, and Nyborg.  
NO: None.  
ABSTAIN: None.
- ACTION:** The motion was approved and the meeting adjourned at 11:49 a.m.

Submitted by:



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