



June 13, 2016

Cowlitz County and Washington State Department of Ecology
Comments e-filed via CommentWorks

Re: SEPA Draft Environmental Impact Statement for Millennium Bulk Terminals-
Longview Coal Export Terminal

To Whom it May Concern:

The proposed construction and operation of a new coal export terminal near Longview (Millennium Bulk Terminals) is inconsistent with Washington law, poses significant threats to human health, safety, and welfare, and would contribute to catastrophic and irreversible environmental impacts. Cowlitz County and Washington State Department of Ecology ("Ecology") ("Lead Agencies") should not approve the Millennium Bulk Terminals Longview coal export terminal.

A Washington Superior Court found that young Washingtonians' "very survival depends upon the will of their elders to act now, decisively, and unequivocally, to stem the tide of global warming by accelerating the reduction of emission of GHG's before doing so becomes first too costly and then too late."¹

Despite this, the Lead Agencies are considering approving a coal export terminal that would endanger public health and safety and contribute to catastrophic and irreversible environmental impacts. The release of carbon dioxide emissions, which would further destabilize the climate system and worsen ocean acidification will have perilous consequences for all Washingtonians and United States citizens. The Draft Environmental Impact Statement (DEIS) fails to consider these extremely dangerous impacts.

¹ *Foster v. Wash. Dep't of Ecology*, No. 14-2-25295-1 SEA, 5 (Wash. Super. Ct. Nov. 19, 2015), available at http://ourchildrenstrust.org/sites/default/files/15.11.19.Order_FosterV.Ecology.pdf.

It is also important to note that Washington's greenhouse gas emission reduction goals would be severely compromised, and likely impossible to meet, if the project were to be approved. According to RCW 70.235.020, Washington has set the goals of reducing GHG emissions to 1990 levels by 2020 and fifty percent below 1990 levels by 2050, which co-lead agency Ecology has admitted (in its December 2014 Report) do not reflect the current science and need to be updated. The DEIS does not explain how the project is consistent with these GHG reduction goals, and indeed, it is hard to imagine how Washington would be able to come close to meeting these goals if this export terminal, that would emit a tremendous amount of greenhouse gases (GHGs) (37.6 million metric tons of CO₂e over 20 years), were approved.

Global warming of Earth's surface and our oceans, the resulting climate destabilization, and the ocean's uptake of excessive carbon dioxide leading to their acidification is unequivocally caused by human activities (primarily fossil fuel carbon emissions) and has been and continues to be permitted, authorized, facilitated, funded, encouraged, incentivized and in other ways allowed by the Washington government. As the 2014 National Climate Assessment report confirms, climate change is leading to an increase in extreme weather events, which are causing serious damage to American lives across the country, from record heat, to record flooding, to record droughts and wildfires, even with only .8-.9 ° C of surface warming over pre-industrial temperatures. Even more heat is stored in our oceans. Threats to our oceans, agriculture, water supplies, shorelines, forests, wildlife, homes, and communities increase every year our government fails to take significant science-based actions to address global climate change. Every decision made today implicating climate change and ocean warming and acidification needs to be evaluated in light of a comprehensive climate recovery plan and the government's constitutional and public trust obligation to the citizenry, present and future.

We are confronted with an atmospheric emergency, and reducing carbon dioxide emissions to mitigate the disastrous impacts of climate destabilization and ocean acidification is one of the most urgent matters before Washington's environmental decision-makers. Timing and rates of emission reductions are critically important, and must be in line with a plan to achieve atmospheric health and climate recovery according to the best available science. Piecemeal regulatory and agency decisions that are not tiered to defensible science-based standards for atmospheric, climate, and ocean restoration will never meet the urgent job of our time, and the most core function of government—to keep us safe and protect our lives, liberties, and property.² This project presents the classic “death by a thousand cuts” result of state decision-making when

² See Amended Complaint in *Kelsey Cascadia Rose Juliana, Xiuhtezcatl Tonatiuh M., et al. v. The United States of America, Barack Obama, et al.*, No.: 6:15-cv-01517-TC (D. Or. 2015) available at <http://ourchildrenstrust.org/sites/default/files/YouthAmendedComplaintAgainstUS.pdf>; see also *A Climate of TRUST*, <http://www.ourchildrenstrust.org/trust-films/AClimateOfTRUST>.

made in a vacuum, in the absence of standards and a complete cumulative impacts analysis against that standard of protect. It is unlawful.

The proposed Millennium Bulk Terminals would commit us to unleashing decades more greenhouse gas (GHG) pollution—from the terminal construction, operations, and transportation emissions. Thus, approving the Lead Agencies’ proposal would be an abrogation of the Lead Agencies’ constitutional public trust obligation and a violation of Washingtonians’ fundamental and inalienable rights to use essential natural resources, like air and water, without having those public resources substantially impaired. The entire coal export terminal project is an additional cumulative lethal threat to the rights of present and, especially, future generations to their natural rights, including their peace, safety, and happiness—rights secured by Washington’s Constitution—as well as their rights to a healthy atmosphere and stable climate. Unabated fossil fuel emissions, including those that will result from this project and related, interdependent projects, and the consequent climate destabilization, threaten the human race and numerous other forms of life on Earth.

We hereby incorporate all hyperlinked documents in the footnote citations into these comments and the administrative record for this project. If you require PDF or hard copies of any of the hyperlinked documents, please let us know and we will supply them; otherwise we will assume that the Lead Agencies can access and include them in the record via the internet.

The Lead Agencies and Cooperating Agencies have Public Trust and Constitutional Obligations to Protect the Atmosphere and Create a State Climate Recovery Plan

1. According to the Public Trust Doctrine, which is embedded in Washington’s Constitution and in the very sovereignty of our State, all Washingtonians (both present and posterity) have a right to use and access sustainable trust resources for their peace, safety, and happiness. That right belongs not just to present generations, but to Posterity (future generations) as well. Indeed they are the largest majority and the future of this nation.³
2. To uphold citizens’ rights, state governments (as well as the United States government) have fiduciary duties as trustees to manage and protect our country’s

³ See *Foster v. Wash. Dep’t of Ecology*, No. 14-2-25295-1 SEA (Wash. Super. Ct. Nov. 19, 2015); see also *Stories of TRUST: Calling for Climate Recovery*, a mini-documentary film series depicting young Americans whose lives are already being impacted by climate change and who are calling on their government trustees to take urgent action to prepare and implement comprehensive Climate Recovery Plans that will achieve a safe atmosphere for their generation and those to follow. <http://ourchildrenstrust.org/trust-films>.

vital natural resources in trust for present and future generations of citizens.⁴ The Lead Agencies and all of the executive agencies (both state and federal) involved in the environmental review process of the proposed project share these obligations.

3. Under the Public Trust Doctrine, the Lead Agencies and cooperating agencies have a fiduciary obligation to protect the atmosphere from the effects of human-induced global energy imbalance. The Lead Agencies and cooperating agencies may not manage the trust resource in a way that substantially impairs the atmosphere, the climate system, our oceans or water supply, or the public interest in a healthy atmosphere.⁵
4. If the Lead Agencies and cooperating agencies, as trustees of the atmosphere, do not take immediate effective action to protect, preserve, and restore the atmosphere back into balance; our children, future generations, and innumerable species will continue to suffer greater injury and damaging consequences.⁶ Significantly, fundamental constitutional rights of young people will be irreparably violated.
5. Science must define the fiduciary obligation that our state authorities, as trustees, must fulfill under the Public Trust Doctrine and Washington's Constitution. Earth has already heated over pre-industrial temperatures to levels that have substantially impaired our natural systems and if allowed to rise further will threaten the habitability of Earth for the human species. Rapid reduction of greenhouse gas (GHG) emissions is required to preserve a habitable climate for present and future generations. Thus, in order to protect our essential natural systems, the best available science demonstrates that our atmosphere must be returned to an equilibrium of less than 350 parts per million ("ppm")⁷ carbon dioxide to prevent long-term heating

⁴ See *Foster v. Wash. Dep't of Ecology*, No. 14-2-25295-1 SEA (Wash. Super. Ct. Nov. 19, 2015).

⁵ See *Foster v. Wash. Dep't of Ecology*, No. 14-2-25295-1 SEA (Wash. Super. Ct. Nov. 19, 2015).

⁶ See Expert Declaration of James Hansen in Support of Plaintiffs in *Kelsey Cascadia Rose Juliana, Xiuhtezcatl Tonatiuh M., et al. v. The United States of America, Barack Obama, et al.*, No.: 6:15-cv-01517-TC (D. Or. 2015), available at

<http://ourchildrenstrust.org/sites/default/files/15.08.12.HansenExpertDecSupportingYouth.pdf>; James Hansen, et al., *Assessing 'Dangerous Climate Change': Required Reduction of Carbon Emissions to Protect Young People, Future Generations and Nature*, PLOS ONE 8:12, e81628 (2013) [hereinafter *Assessing 'Dangerous Climate Change'*], available at

<http://www.plosone.org/article/info%3Adoi%2F10.1371%2Fjournal.pone.0081648>; James Hansen, et al., *Ice melt, sea level rise and superstorms: evidence from paleoclimate data, climate modeling, and modern observations that 2 C global warming is highly dangerous*, 16 Atmos. Chem. Phys. Discuss., 3761-3812 (2016), available at <http://www.atmos-chem-phys.net/16/3761/2016/acp-16-3761-2016.pdf>.

⁷ The Status Review Report notes that "Some experts have suggested that atmospheric CO₂ levels must be reduced to those found in the 1970s (below 340 ppm and perhaps as low as 320 ppm) to maintain healthy coral growth over the long term (Veron et al., 2009)." Russell E. Brainard, et al., Status Review Report of 82 Candidate Coral Species Petitioned Under the U.S. Endangered Species Act 52 U.S. Dep. Commer., NOAA Tech. Memo., NOAA-TM-NMFS-PIFSC-27 (2011).

beyond 1° C (1.8° F), which scientific analysis deems catastrophic.⁸ Our atmosphere now has carbon dioxide concentrations of over 404 ppm, which constitutes substantial impairment.⁹ **If the Lead Agencies or any cooperating agency disagrees with this safe standard for atmospheric carbon dioxide levels or for a maximum increase in global surface temperature that should be allowed, please so state in your response to these comments. Please provide your analysis for what standard should be applied, your reasoning, scientific support for that standard, and a comprehensive analysis of what present and future generations of Washingtonians should expect to result from that standard in terms of impacts to their lives, liberties, and property, as well as overall impacts to the ecosystems across our state and nation, in full compliance with SEPA.**

6. To fulfill their constitutional public trust obligations, the Lead Agencies and cooperating agencies, as trustees, must work collectively with other state departments and agencies to prepare and implement a Climate Recovery Plan based on the best available science to manage and protect trust resources for the continued benefit of present and future generations of citizens.
7. The Climate Recovery Plan must place limits on Washington's carbon emissions, while also promoting massive reforestation programs, and must be tiered to bringing the carbon concentration in the atmosphere back to 350 ppm by the end of the century.¹⁰
8. The Plan must be developed and implemented immediately. Significant delay will compound the difficulty of administering a regulatory program to achieve necessary emissions reductions.¹¹
9. Any and all analysis of the Climate Recovery Plan must be evaluated in the context of all Washington carbon emissions in order to assess whether emission limits are in line with the need to reduce emissions by at least 8% per year (and increasing to 15% per year reductions if we wait until 2020), according to James Hansen, et al.'s best science on achieving 350 ppm by 2100.¹²
10. As part of their fiduciary duties as trustees to manage and protect our state's vital natural resources, the Lead Agencies and all of the executive agencies involved in the environmental review process of the proposed project have the duty of loyalty to

⁸ See Hansen, et al., *Assessing 'Dangerous Climate Change.'*

⁹ U.S. Department of Commerce, National Oceanic & Atmospheric Administration, Earth System Research Laboratory, *Trends in Atmospheric Carbon Dioxide*, <http://www.esrl.noaa.gov/gmd/ccgg/trends/global.html> (last visited June 13, 2016).

¹⁰ See Hansen, et al., *Assessing 'Dangerous Climate Change.'*

¹¹ See Hansen, et al., *Assessing 'Dangerous Climate Change.'*

¹² *Id.*

administer the trust solely in the interest of the trust beneficiaries—both present and future generations of citizens.¹³

Based on the Best Science and Evidence, A Climate Recovery Plan Calibrated to Standards of Protection Must Precede Approval of the Proposed Project and the Lead Agencies Must Address the Direct, Indirect, and Cumulative Impacts of GHG Emissions and Climate Change.

11. The Lead Agencies' decision on whether to approve the proposed project must be preceded by a Climate Recovery Plan. The Climate Recovery Plan ensures annual emission reductions calibrated to the 350 ppm trajectory will be achieved and details how they will be achieved. Allowing the proposed project, which would result in significant GHG emissions, outside a plan for protecting the atmosphere in trust for present and future generations, would be a violation of the Washington Constitution and Washington's public trust responsibility to our posterity, and of SEPA.
12. In the DEIS, the Lead Agencies and cooperating agencies failed to adequately consider the best science and evidence in evaluating the proposed project's impacts on the growing climate crisis and ocean acidification. In particular, Dr. Hansen's paper discussed above, *Assessing 'Dangerous Climate Change': Required Reduction of Carbon Emissions to Protect Young People, Future Generations and Nature*, should have been included.¹⁴ The science and other best evidence presented and included in these comments and the attachments should be fully considered in the Lead Agencies' and any cooperating agency's analyses for the approval of the Longview coal export terminal.
13. When there is incomplete or unavailable information, the Lead Agencies and cooperating agencies should take a precautionary approach.
14. In the DEIS, the Lead Agencies and cooperating agencies have failed to adequately consider the direct, indirect, and cumulative impacts of the proposed project and of alternatives that could reduce or eliminate those environmental impacts. In particular, the Lead Agencies have failed to account for the carbon emission, climate, and ocean acidification impacts to already impaired resources over the lifespan of the project. There is no accounting of the lifespan emissions resulting from the project and all that it facilitates, including construction, operations, and transportation from the Powder River Basin and the Uinta Basin and to Asia. Nor is there any analysis of these cumulative lifespan emissions measured against the Washington's obligation to its citizens to reduce emissions in line with the science to protect life, liberty and property from the lethal threat of fossil fuel emissions to our natural life-sustaining

¹³ See *Robinson Twp. et al. v. Commonwealth of Pa.*, 83 A.3d 901, 957 (Pa. 2013).

¹⁴ See Hansen, et al., *Assessing 'Dangerous Climate Change.'*

systems and human civilization.

15. The Lead Agencies' DEIS should quantify and analyze the impact of increased atmospheric concentration of GHGs over the lifespan of the project that is caused/enabled by the proposed project. Specifically, the Lead Agencies can calculate how additional CO₂ concentrations further imbalance the Earth's energy system in terms of kilowatt hours per square meter.¹⁵ The Lead Agencies can calculate the total metric tons of carbon dioxide Oregon should be decreasing on an annual basis to return to the 350 ppm prescription by 2100, the best science on climate recovery, and how this project affects those necessary reductions over the lifecycle of the project. If the Lead Agencies do not have enough information, then it may not approve the project, and must obtain the information necessary to make a full disclosure and analysis and ensure for Washingtonians and our posterity their rights to life, liberty and property.

16. In assessing the proposed project's impact on the atmospheric concentration of GHGs, the Lead Agencies' and cooperating agencies should consider both the indirect and cumulative GHG emissions from the proposed project. In considering indirect and cumulative impacts, the Lead Agencies failed to analyze any delayed or incremental impacts of the increased GHG emissions caused by the proposed project. Disclosing an estimate of annual emissions from the project itself does not suffice. The Lead Agencies must disclose total emissions over the life span of the project from the construction, operations, and transport associated with the terminal. Once it discloses that figure, the Lead Agencies must do an actual analysis of those emissions, added to all other cumulative emissions beyond 350 ppm and the additional harm to the human environment. To make this analysis meaningful, please answer these questions:
 - a. What do the Lead Agencies or the State use as a maximum global warming temperature goal for the most heating to the Earth's surface and our oceans that is safe for humanity and other living organisms, including human life, liberty and property?
 - b. What do the Lead Agencies or the State use as a maximum atmospheric carbon dioxide concentration level that is safe for humanity and other living organisms, including human life, liberty, and property?
 - c. What plan for restoring our atmosphere to safe levels of carbon dioxide, and our planet to safe temperatures do the Lead Agencies use as a basis for conducting its cumulative impacts analysis?

17. In assessing the proposed project's impact on the atmospheric concentration of GHGs, the Lead Agencies and cooperating agencies must consider the GHG emissions from the entire lifecycle of the gas associated with the proposed project,

¹⁵ See Hansen, et al., *Assessing 'Dangerous Climate Change.'*

which includes the exploration, extraction, production, transportation, shipment and combustion of the gas.

18. The Lead Agencies must consider transboundary impacts from the proposed project, including GHG emissions from the construction, operations, transport from transportation from the Powder River Basin and the Uinta Basin, and to end use transport to Asian markets.
19. Scientists agree that emission levels this decade will determine our fate and may push us beyond tipping points from which we cannot return. Time is of the essence.¹⁶ The DEIS does not explain how the cumulative GHG emissions from the proposed project, and the related projects that depend on it, will affect the state's response to the urgency of the crisis and the need to reduce emissions at sufficient levels to avoid unsafe levels of heating and further acidification of our oceans.
20. The Leading Agencies and cooperating agencies must analyze the cumulative impact of life cycle GHG emissions of all federally-approved fossil fuel development, transportation, and export projects and any other state action that results in the increased concentration of GHGs in the atmosphere (e.g., timber sale). The Lead Agencies failure to fully evaluate the cumulative impacts of the proposed project's life cycle GHG emissions combined with the GHG emissions from other state actions is a violation of SEPA and the Lead Agencies' constitutional public trust obligations. As noted by the Ninth Circuit in *Center for Biological Diversity v. NHTSA*, "the fact that climate change is largely a global phenomenon that includes actions outside of the agency's control does not release the agency from the duty of assessing the effects of its actions on global warming within the context of other actions that also affect global warming."¹⁷
21. Specifically, the Lead Agencies must evaluate the dozens of Pacific Northwest fossil fuel projects as part of a program to open up global markets for U.S. fossil fuel and the cumulative impacts of that export program.

The DEIS Fails to Address the Following Impact Issues Based on the Best Science and Evidence.

22. How much atmospheric carbon dioxide is safe for oceans and will additional carbon dioxide released as an effect of the proposed project further impact and harm oceans? Scientists say that carbon dioxide levels higher than 350 ppm are dangerous for our oceans.

¹⁶ See Hansen, et al., *Assessing 'Dangerous Climate Change.'*

¹⁷ *Ctr. for Biological Diversity v. NHTSA*, 538 F.3d 1172, 1217 (9th Cir. 2008) (emphasis in original) (alterations and internal quotation marks omitted).

23. How much surface temperature warming is safe for oceans and will additional carbon dioxide released as an effect of the proposed project further impact and harm oceans? Scientists say that current levels of ocean warming are already harming marine life and causing significant melting, including the West and East Ice Sheet of Antarctica, which are irreversibly on their way to collapse due to ocean warming.
24. We have already lost significant ocean productivity (i.e. food supply potential and ecological function) due to GHG emissions, which have caused acidification and warming and will additional emissions as an effect of the proposed project further impact and harm ocean productivity and economic benefits. This is not analyzed in the DEIS.
25. The DEIS should address how much surface temperature warming would be safe to avoid dangerous melting of ice sheets, glaciers and permafrost, which would release methane and will additional carbon dioxide released as an effect of the proposed project further threaten our ice resources.
26. Do the Lead Agencies have any evidence to show that this project, and the related projects that depend on it, will not cumulatively press warming past tipping points of no return? And how would that tipping point be quantified in terms of GHG emissions and CO₂ levels?
27. If Arctic communities need to relocate because of melting ice and sea level rise and severe storms and flooding, doesn't that establish unacceptable risk? It presents considerable risk to present generations and eliminates the prospects of continued habitation in culturally important areas for future generations. How is this taken into account?
28. The paleoclimate records and James Hansen's work are not incorporated anywhere in the DEIS. The paleoclimate records are the best indications of understanding cause and effect with GHG emissions and warming.
29. Given that significant impairment and degradation and loss of life has already occurred as a result of human-caused climate disruption, how much more risk do the Lead Agencies estimate is tolerable or legally viable?
30. The atmospheric resource has already been substantially impaired. At what point did substantial impairment occur? When do carbon dioxide levels become unsafe?
31. How is consumption correlated to emissions? The Lead Agencies' decision should evaluate how completion of the proposed project would potentially enable other

projects to proceed and how these interdependent projects would increase consumption and thus increase emissions.

32. How has the 2014 National Climate Assessment, or any other recent state of federal climate change reports and studies been incorporated to enable a decision that allows for timely mitigation to climate change? It does not appear that the Lead Agencies have taken this information into account in its environmental analysis.

The DEIS Fails to Address the State of Washington’s Constitutional and Public Trust Obligation to its Citizens to Protect Public Trust Resources, Including Water, Shorelines, Wildlife, Air/Atmosphere, and Oceans.

33. Pursuant to Washington’s Constitution and public trust doctrine, and court order, Lead Agencies have “a constitutional obligation to protect the public’s interest in natural resources held in trust for the common benefit of the people of the State” and a “responsibility to protect fundamental and inalienable rights protected by the Washington State Constitution.” To fulfill these obligations, Lead Agencies must take actions to reduce carbon emissions within the State pursuant to the best science of climate recovery, as presented herein. In *Foster v. Ecology*, the court found:

The scientific evidence is clear that the current rates of reduction mandated by Washington law cannot achieve the GHG reductions necessary to protect our environment and to ensure the survival of an environment in which Petitioners can grow to adulthood safely. In fact, in its 2014 report to the legislature the Department stated, “Washington’s existing statutory limits should be adjusted to better reflect the current science. The limits need to be more aggressive in order for Washington to do its part to address climate risks.”¹⁸

34. This proposed project would emit a tremendous amount of greenhouse gases (GHGs) (37.6 million metric tons of CO₂e over 20 years) if approved. Lead Agencies must evaluate how approval of this project would adversely impact the State’s sovereign obligations to its citizens to protect their public trust res, for present and future generations.

¹⁸ *Foster v. Wash. Dep’t of Ecology*, No. 14-2-25295-1 SEA, 5 (Wash. Super. Ct. Nov. 19, 2015), available at http://ourchildrenstrust.org/sites/default/files/15.11.19.Order_FosterV.Ecology.pdf.

The DEIS Fails to Disclose any Conflicts of Interest, State Subsidies or Other Ways in Which Lead Agencies' Duty of Loyalty to Washingtonians is Compromised in the Decision-making Around This Project

35. The Lead Agencies owe a duty of loyalty to the Washingtonians and future generations in making decisions of this magnitude. The Lead Agencies owe no duty of loyalty to corporations or other countries when evaluating this project. How have the Lead Agencies exercised its duty of loyalty to the public and posterity?
36. Has, or will, the Project Proponent receive any state funding, tax breaks, or other forms of subsidy related to this project?
37. Has the DEIS been prepared with the assistance of a contractor or consulting firm? If so, has the contractor executed a disclosure statement specifying that they have no financial or other interest in the outcome of the project?
38. Has there been any conflict of interest that would jeopardize the objectivity and integrity of the Lead Agencies or any cooperating agency's environmental review of the proposed project?
39. Does any employee or contractor of the Lead Agencies or any cooperating agency involved in the environmental review of the proposed project have any financial or other interest in the outcome of the decision on whether to approve the proposed project?
40. Do any of the decision-makers have affiliations with fossil fuel industries? Have they worked for the fossil fuel industry in the past? Please disclose all ties that the Lead Agencies staff working on this project have to fossil fuel industries.
41. What type of lobbying has the fossil fuel industry done to the Lead Agencies regarding this project?
42. What will this project cost Washingtonian taxpayers in the form of direct and indirect subsidies and tax breaks?
43. Please disclose all communications that the Lead Agencies have had with the fossil fuel companies that would benefit from the project.

As confirmed by the 2014 reports from the National Climate Assessment and the Intergovernmental Panel on Climate Change, the climate changes that are currently occurring are unprecedented. The Lead Agencies and all of the agencies involved in the environmental review process of the proposed project must accept their constitutional public trust responsibility to protect the atmosphere and take the immediate bold action

necessary to prevent catastrophic climate change before it's too late.

Our Children's Trust submits this letter also on behalf of the TRUST Campaign and its partners, Earth Guardians, Youth Climate Action Now, WITNESS, 350 Eugene, Plant for the Planet, and on behalf of the young citizens of Washington. We also submit these comments as a Guardian for future generations of Washingtonians.

Thank you for your consideration. Please send us a response to our comments and the final EIS at the address listed below, on behalf of all of the commenters listed above.

Sincerely,

A handwritten signature in cursive script that reads "Julia Olson".

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