



STATE OF WASHINGTON  
DEPARTMENT OF ECOLOGY

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February 4, 2022

Talon Private Capital  
ATTN: Austin Hunt  
929 108th Ave NE Suite 1510  
Bellevue, WA 98004

RE: Water Quality Certification Order No. **20972** for Corps Reference No.  
**NWS-2019-00328**, 303 South River Street Bank Stabilization and Contaminated  
Sediment Removal, Duwamish River, King County, Washington

Dear Austin Hunt,

On July 7, 2021, Talon Private Capital submitted a request for a Section 401 Water Quality Certification (WQC) under the federal Clean Water Act for the 303 South River Street Bank Stabilization and Contaminated Sediment Removal, Duwamish River, King County, Washington.

On behalf of the state of Washington, the Department of Ecology certifies that the work described in the Water Quality Certification Request and supplemental documents complies with applicable provisions of Sections 301, 302, 303, 306, and 307 of the Clean Water Act, as amended and applicable state laws. This certification is subject to the conditions contained in the enclosed Order.

Please ensure that anyone doing work under this Order has read, is familiar with, and is able to follow all of the provisions within the attached Order.

If you have any questions about this decision, please contact Laura Inouye at (360) 515-8213. The enclosed Order may be appealed by following the procedures described within the Order.

Sincerely,

Brenden McFarland, Section Manager  
Environmental Review and Transportation Section  
Shorelands and Environmental Assistance Program

Order No. 20972, Corps No. NWS-2019-328

Aquatics ID 136940

February 4, 2022

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Enclosure

E-cc: Rory Lee, USACE, Seattle  
Loree' Randall, Ecology HQ  
Grace Roberts, WSP  
ecyrefedpermits@ecy.wa.gov – ID No. 136940

<b>IN THE MATTER OF GRANTING A</b>	)	<b>WQC ORDER No. 20972</b>
<b>WATER QUALITY</b>	)	<b>Corps Reference No. NWS-2019-00328</b>
<b>CERTIFICATION TO</b>	)	303 South River Street Bank Stabilization and
Talon Private Capital	)	Contaminated Sediment Removal, Duwamish
pursuant to 33 U.S.C. 1341 (FWPCA	)	River, located in King County, Washington.
§ 401), RCW 90.48.120, RCW 90.48.260	)	
and Chapter 173-201A WAC	)	

Talon Private Capital  
ATTN: Austin Hunt  
929 108th Ave NE Suite 1510  
Bellevue, WA 98004

On July 7, 2021, Talon Private Capital submitted a request for a Section 401 Water Quality Certification (WQC) under the federal Clean Water Act to the Department of Ecology (Ecology) for the 303 South River Street Bank Stabilization and Contaminated Sediment Removal, Duwamish River, King County, Washington. On July 28, 2021, Ecology issued a public notice for the project.

The project includes bank stabilization repairs that will protect the existing warehouse and upland operations and prevent erosion of materials into the slip that would affect vessel navigation in the slip. The existing deteriorating and failing sheet pile wall bank stabilization will be replaced with a riprap and fish rock slope extending east from the existing riprap stabilization to near the head of Slip 3. The project is proposing to place riprap shore protection to replace the failing steel/timber sheet pile bulkhead along approximately 180 linear feet of shoreline to prevent bank failure. It also includes dredging of contaminated sediment, placement of clean sand backfill, and a clean fish rock layer on surface of bank stabilization slope. Dredging is in coordination with US EPA Region 10 and material will go to upland disposal. This project also includes off-site mitigation at the Port of Seattle’s Eight Avenue South site, in the form of removal of in-water debris.

The project site is located in Slip 3 on the Duwamish River, King County, Washington, Section 29, Township 24 N., Range 4 E., within Water Resource Inventory Area (WRIA) 9 (Duwamish/Green).

**AUTHORITIES**

In exercising authority under 33 U.S.C. § 1341, RCW 90.48.120, and RCW 90.48.260, Ecology has reviewed this WQC request pursuant to the following:

1. Conformance with applicable water quality-based, technology-based, and toxic or pretreatment effluent limitations as provided under 33 U.S.C. §§1311, 1312, 1313, 1316, and 1317
2. Conformance with the state water quality standards contained in Chapter 173-201A WAC and authorized by 33 U.S.C. §1313 and by Chapter 90.48 RCW, and with other applicable state laws;
3. Conformance with the provision of using all known, available and reasonable methods to prevent and control pollution of state waters as required by RCW 90.48.010.

4. Conformance with Washington’s prohibition on discharges that cause or tend to cause pollution of waters of the state of Washington. RCW 90.48.080.
5. The Applicant of the project authorized is responsible for obtaining all other permits, licenses, and certifications that may be required by federal, state, local or tribal authorities.

With this Water Quality Certification (WQC) Order, Ecology is granting with conditions Talon Private Capital’s request for a Section 401 Water Quality Certification for the 303 South River Street Bank Stabilization and Contaminated Sediment Removal, Duwamish River, located in King County. Ecology has determined that the proposed discharge(s) will comply with all applicable state water quality requirements, provided the project is conducted in accordance with the Section 401 Water Quality Certification request that Ecology received on July 7, 2021, the supporting documents referenced in Table 1 below, **and the conditions of this WQC Order.**

**Table 1.** Supporting Documents

<b>Date Received</b>	<b>Document Type</b>	<b>Title &amp; Date</b>	<b>Author</b>
7/7/2021	Joint Aquatic Resources Permit Application (JARPA) Form	JARPA (12/20/2018, Victoria England (agent), and 12/27/2018, Lori Noto (applicant))	Victoria England, Berger ABAM
7/7/2021	Water Quality Monitoring Plan	Water Quality Monitoring Plan, 303 South River Street-Bank Stabilization and Contaminated Sediment Removal, September 2019	Grace Roberts, WSP
7/7/2021	Mitigation Plan	Mitigation Plan, 303 South River Street-Bank Stabilization and Contaminated Sediment Removal, February 2020, revised May 2021	WSP USA
7/8/2021	State Environmental Policy Act	City of Seattle, Analysis and Decision of the Director of the Department of Construction and Inspection. SEPA DNS with conditions. Signed January 14, 2021.	Ben Perkowski, City of Seattle

7/8/2021	HPA	Hydraulic Project Approval, 2021-4-146+01. Issued February 26, 2021.	Laura Arber, WDFW
7/9/2021	Biological Evaluation	Biological Evaluation: 303 South River Street-Bank Stabilization and Contaminated Sediment Removal. Dated December 2018.	Berger ABAM
08/02/2021	Memorandum	Revised Final Project Description for EPA (CERCLA coordination). Dated June 3, 2019.	Victoria England, WSP

Issuance of this Section 401 Water Quality Certification for this proposal does not authorize Talon Private Capital to exceed applicable state water quality standards (Chapter 173-201A WAC), ground water quality standards (Chapter 173-200 WAC) or sediment quality standards (Chapter 173-204 WAC). Furthermore, nothing in this Section 401 Water Quality Certification absolves the Talon Private Capital from liability for contamination and any subsequent cleanup of surface waters, ground waters, or sediments resulting from project construction or operations.

The following conditions will be incorporated into the Corps permit and strictly adhered to by the Talon Private Capital.

**A. General Conditions**

1. In this WQC Order, the term “Applicant” shall mean the Talon Private Capital and its agents, assignees, and contractors.
2. All submittals required by this WQC Order shall be sent to Ecology’s Headquarters Office, Attn: Federal Permit Manager, via e-mail to fednotification@ecy.wa.gov and cc to Laura.Inouye@ecy.wa.gov. The submittals shall be identified with WQC Order No. 20972 and include the Applicant’s name, Corps Permit Number, Project Name, Project Contact, and the Contact Phone Number.
3. Work authorized by this WQC Order is limited to the work described in the WQC request package received by Ecology on July 7, 2021 and the supporting documentation identified in Table 1.
4. The Applicant shall keep copies of this WQC Order on the job site and readily available for reference by Ecology personnel, the construction superintendent, construction managers and lead workers, and state and local government inspectors.

5. The Applicant shall provide access to the project site and all mitigation sites upon request by Ecology personnel for site inspections, monitoring, and/or necessary data collection, to ensure that conditions of this WQC Order are being met.
6. Nothing in this Order waives Ecology's authority to issue additional orders if Ecology determines that further actions are necessary to implement the water quality laws of the state. Further, Ecology retains continuing jurisdiction to make modifications hereto through supplemental order, if additional impacts due to project construction or operation are identified (*e.g.*, violations of water quality standards, downstream erosion, etc.), or if additional conditions are necessary to further protect water quality.
7. In the event of changes or amendments to the state water quality, ground water quality, or sediment standards, or changes in or amendments to the state Water Pollution Control Act (RCW 90.48) or the federal Clean Water Act, Ecology may issue an amendment to this Order to incorporate any such changes or amendments applicable to this project.
8. The Applicant shall ensure that all project engineers, contractors, and other workers at the project site with authority to direct work have read and understand relevant conditions of this WQC Order and all permits, approvals, and documents referenced in this WQC Order. The Applicant shall provide Ecology a signed statement (see Attachment A for an example) before construction begins.
9. This WQC Order does not authorize direct, indirect, permanent, or temporary impacts to waters of the state or related aquatic resources, except as specifically provided for in conditions of this WQC Order.
10. Failure of any person or entity to comply with the WQC Order may result in the issuance of civil penalties or other actions, whether administrative or judicial, to enforce the state's water quality standards.
11. The Applicant shall provide Ecology documentation for review and approval before undertaking any major changes to the proposed project that could significantly and adversely affect water quality, other than those project changes required by this WQC Order.
12. The Applicant shall send (per A.2.) a copy of the final Corps permit to Ecology's Federal Permit Manager within two weeks of receiving it.
13. Nothing in this WQC Order waives Ecology's discretionary authority to issue additional Orders if Ecology determines that further actions are necessary to implement the water quality laws of the state.

14. This Order will automatically transfer to a new owner or operator if:

- a. A written agreement between the Applicant and new owner or operator with the specific transfer date of the WQC Order's obligations, coverage, and liability is submitted to Ecology per condition A.2.;
- b. A copy of this Order is provided to the new owner or operator; and
- c. Ecology does not notify the new Applicant that a new WQC Order is required to complete the transfer.

## **B. Notification Requirements**

1. The following notification shall be made via phone or e-mail (e-mail is preferred) to Ecology's Federal Permit Manager via e-mail to [fednotification@ecy.wa.gov](mailto:fednotification@ecy.wa.gov) and cc to [Laura.Inouye@ecy.wa.gov](mailto:Laura.Inouye@ecy.wa.gov). Notifications shall be identified with WQC Order #20972 Corps reference #NWS-2021-00328, and include the Applicant name, project name, project location, project contact and the contact phone number.
  - a. Immediately following a violation of state water quality standards or when the project is out of compliance with any conditions of this WQC Order.
  - b. At least ten (10) days prior to all pre-construction meetings
  - c. At least ten (10) days prior to conducting initial in-water work activities.
  - d. Within seven (7) days of completing each in-water work activities.
2. In addition to the phone or e-mail notification required under B.1.a. above, the Applicant shall submit a detailed written report to Ecology within five (5) days that describes the nature of the event, corrective action taken and/or planned, steps to be taken to prevent a recurrence, results of any samples taken, and any other pertinent information.

## **C. Timing**

1. This WQC Order is effective upon issuance of the U.S. Corps of Engineers (Corps) individual permit for this project and will remain valid for the duration of the associated permit for the project.
2. The following in-water work windows apply to the project unless otherwise approved by Ecology:
  - a. All activities within the wetted perimeter of the Duwamish River may be conducted between October 1 through February 15 of any year, unless otherwise authorized by Ecology.
3. Any project change that requires a new or revised Hydraulic Project Approval (HPA) from the Department of Fish and Wildlife should be sent to Ecology for review before the change is implemented. Proposed changes shall be implemented only with written approval from Ecology.

#### **D. Water Quality Monitoring & Criteria**

1. This WQC Order does not authorize the Applicant to exceed applicable water quality standards beyond the limits established in WAC 173-201A.
2. This WQC Order does not authorize the Applicant to exceed applicable turbidity standards beyond the limits established in WAC 173-201A-210(1) (e) (i)}.
3. For in-water activities within the Duwamish River turbidity shall not exceed 5 Nephelometric Turbidity Units (NTU) over background when the background is 50 NTU or less; or a 10 percent increase in turbidity when the background turbidity is more than 50 NTU;
4. The Applicant shall comply with a 150-foot point of compliance for turbidity.
5. Visible turbidity anywhere beyond the temporary area of mixing (point of compliance) from the activity shall be considered an exceedance of the standard.
6. If water quality exceedances for turbidity are observed outside the point of compliance, work shall cease immediately and the Applicant or the contractor shall assess the cause of the water quality problem and take immediate action to stop, contain, and correct the problem and prevent further water quality turbidity exceedances.
7. The Applicant shall conduct water quality monitoring as described in the approved Water Quality Monitoring Plan, 303 South River Street-Bank Stabilization and Contaminated Sediment Removal (WSP, September 2019) as identified in Table 1 (hereafter referred to as the WQMP).
8. Monitoring results shall be submitted weekly to Ecology's Federal Permit Manager, per condition A.2.
9. Ecology may require the Applicant to provide mitigation and/or additional monitoring if the monitoring results indicate that the water quality standards have not been met.

#### **E. Construction**

##### General Conditions

1. All work in and near waters of the state shall be conducted to minimize turbidity, erosion, and other water quality impacts. Construction stormwater, sediment, and erosion control Best Management Practices (BMPs) suitable to prevent exceedances of state water quality standards shall be in place before starting maintenance and shall be maintained throughout the duration of the activity.



2. All clearing limits, stockpiles, staging areas, and trees to be preserved shall clearly be marked prior to commencing construction activities and maintained until all work is completed for each project.
3. No stockpiling or staging of materials shall occur at or below the Ordinary High Water Mark (OHWM) of any waterbody.
4. All clearing limits, stockpiles, staging areas, and trees to be preserved shall clearly be marked prior to commencing construction activities and maintained until all work is completed for each project.
5. No petroleum products, fresh concrete, lime or concrete, chemicals, or other toxic or deleterious materials shall be allowed to enter waters of the state.
6. All construction debris, excess sediment, and other solid waste material shall be properly managed and disposed of in an upland disposal site approved by the appropriate regulatory authority.
7. All equipment being used below the ordinary high water mark shall utilize biodegradable hydraulic fluid.

#### Equipment & Maintenance

8. Staging areas will be located a minimum of 50 feet and, where practical, 200 feet, from waters of the state including wetlands, unless otherwise requested and authorized by Ecology.
9. Equipment used for this project shall be free of external petroleum-based products while used around the waters of the state, including wetlands. Accumulation of soils or debris shall be removed from the drive mechanisms (wheels, tires, tracks, etc.) and the undercarriage of equipment prior to its use around waters of the state, including wetlands.
10. Fuel hoses, oil drums, oil or fuel transfer valves and fittings, etc., shall be checked regularly for drips or leaks, and shall be maintained and stored properly to prevent spills into state waters.
11. Wash water containing oils, grease, or other hazardous materials resulting from washing of equipment or working areas shall not be discharged into state waters. The Applicant shall set up a designated area for washing down equipment.
12. Turbidity curtains shall be properly deployed and maintained in order to minimize turbidity and re-suspension of sediment.
13. Barges shall not be allowed to groundout during in-water construction.
14. Barges shall be kept free of material that could be blown into water.

Bank Stabilization

15. Placement of rip-rap shall be conducted in compliance with water quality standards for turbidity.

Debris Removal

16. Debris removed from the substrate shall be moved immediately from the water onto a barge or onto upland.
17. Debris shall not be shaken, hosed off, left hanging to drip or any other action intended to clean or remove adhering material from the pile over waters of the state.
18. During debris removal, containment booms and absorbent sausage booms shall be placed around the perimeter of the in-water work area and upland storage area, if used, to capture wood debris, oil, and other materials from being released into waters of the state.
19. All debris that is collected shall be disposed upland in an approved disposal site.
20. If a barge is used to remove debris, the work surface on the barge deck shall include containment for debris and any liquid or sediment removed during debris removal.
21. Sediments spilled on work surfaces shall be contained and disposed of with the debris at an approved upland disposal site.
22. Water left in the containment on the barge shall be filtered to minimize turbidity prior to release into waters of the state.

Dredging

23. All dredging is to be done using a mechanical (clamshell) dredge. Ecology must approve any other dredging method prior to its use.
24. All unsuitable material will be transloaded at a permitted facility and disposed of at a permitted upland disposal site.
25. Dredging operations shall be conducted in a manner that minimizes the disturbance and siltation of adjacent waters and prevents the accidental discharge of petroleum products, chemicals or other toxic or deleterious substances into state waters.
26. Dredged material shall not be temporarily or permanently stockpiled below the OHWM.
27. Placement of clean sand cover shall be conducted in compliance with water quality standards for turbidity.

28. A pre-dredge meeting is required to be convened prior to the start of dredging. A Dredging and Disposal Workplan (Workplan) shall be submitted to Ecology per Condition A2 two weeks prior to the pre-dredge meeting. The Dredging and Disposal Workplan (Workplan) shall include the following:
  - a. General information including schedule, primary contact, and hours of operation
  - b. Dredged quantities and disposal location, including any upland locations.
  - c. Dredging procedures and sequence
  - d. Equipment list
  - e. A description of the BMPs to be used for dredging, dewatering, transloading, and disposal.
29. Barges shall not be allowed to groundout during in-water construction.
30. Post-removal sediment sampling shall be conducted described in the WSP memorandum, Revised Final Project Description for EPA, dated June 3, 2019, as identified in Table 1. Results shall be submitted to Ecology as per condition A2.
31. If further contamination is discovered on site, it must be reported to Ecology (per Condition A.2.). Protective measures shall be implemented to isolate and remove the contaminated media and avoid escaping dust, soil erosion, and water pollution during construction activities.

**F. Mitigation conditions**

1. Unless otherwise approved by Ecology in writing, the Applicant shall begin the compensatory mitigation project before, or concurrently with, bank stabilization at Slip 3 in the Duwamish River, or Ecology could use its discretionary authority to require the Applicant to provide additional compensation to account for additional temporal loss of beneficial uses.
2. If the mitigation site(s) cannot be completed within 13 months of the date of this Order, the Applicant shall inform Ecology, in writing, of the status of:
  - a. 303 S River Street Bank Stabilization and Contaminated Sediment Removal
  - b. Talon Slip 3 Mitigation Site
  - c. Port of Seattle Eighth Avenue South Shoreline Restoration Site

With the:

- d. Reason for the delay.
- e. Expected date of completion.
- f. The Applicant shall submit an updated written notification every 12 months thereafter until the 303 S River Street Bank Stabilization and Contaminated Sediment Removal, Talon Slip 3 mitigation site, and Port of Seattle Eighth Avenue South Shoreline Restoration are complete.

### **G. Emergency/Contingency Measures**

1. The Applicant shall develop and implement a spill prevention and containment plan for this project.
2. The Applicant shall have adequate and appropriate spill response and cleanup materials available on site to respond to any release of petroleum products or any other material into waters of the state.
3. Fuel hoses, oil drums, oil or fuel transfer valves and fittings, etc., shall be checked regularly for drips or leaks, and shall be maintained and stored properly to prevent spills into state waters.
4. Work causing distressed or dying fish and discharges of oil, fuel, or chemicals into state waters or onto land with a potential for entry into state waters is prohibited. If such work, conditions, or discharges occur, the Applicant shall notify Ecology's Federal Permit Manager per condition A2 and immediately take the following actions:
  - a. Cease operations at the location of the non-compliance.
  - b. Assess the cause of the water quality problem and take appropriate measures to correct the problem and prevent further environmental damage.
  - c. In the event of a discharge of oil, fuel, or chemicals into state waters, or onto land with a potential for entry into state waters, containment and cleanup efforts shall begin immediately and be completed as soon as possible, taking precedence over normal work. Cleanup shall include proper disposal of any spilled material and used cleanup materials.
  - d. Immediately notify Ecology's Regional Spill Response Office and the Washington State Department of Fish & Wildlife with the nature and details of the problem, any actions taken to correct the problem, and any proposed changes in operation to prevent further problems.
  - e. Immediately notify the National Response Center at 1-800-424-8802, for actual spills to water only.
5. Notify Ecology's Regional Spill Response Office immediately if chemical containers (e.g. drums) are discovered on-site or any conditions present indicating disposal or burial of chemicals on-site that may impact surface water or ground water.

### **YOUR RIGHT TO APPEAL**

You have a right to appeal this WQC Order to the Pollution Control Hearings Board (PCHB) within 30 days of the date of receipt of this WQC Order. The appeal process is governed by Chapter 43.21B RCW and Chapter 371-08 WAC. "Date of receipt" is defined in RCW 43.21B.001 (2).

To appeal you must do all of the following within 30 days of the date of receipt of this WQC Order:

- File your appeal and a copy of this WQC Order with the PCHB (see addresses below). Filing means actual receipt by the PCHB during regular business hours.
- Serve a copy of your appeal and this WQC Order on Ecology in paper form - by mail or in person. (See addresses below.) E-mail is not accepted.

You must also comply with other applicable requirements in Chapter 43.21B RCW and Chapter 371-08 WAC.

Address and location information.

### **Filing an appeal with the PCHB**

**Mailing Address:**

Pollution Control Hearings Board  
PO Box 40903  
Olympia, WA 98504-0903

**Street Address:**

Pollution Control Hearings Board  
1111 Israel RD SW  
STE 301  
Tumwater, WA 98501

### **Serving a copy of the appeal on Ecology**

**Mailing Address:**

Department of Ecology  
Attn: Appeals Processing Desk  
PO Box 47608  
Olympia, WA 98504-7608

**Street Address:**

Department of Ecology  
Attn: Appeals Processing Desk  
300 Desmond Drive SE  
Lacey, WA 98503

### **CONTACT INFORMATION**

Please direct all questions about this WQC Order to:

Laura Inouye  
Department of Ecology  
(360) 515-8213  
Laura.Inouye@ecy.wa.gov

### **MORE INFORMATION**

**Pollution Control Hearings Board Website**

<http://www.eluho.wa.gov/Board/PCHB>

**Chapter 43.21B RCW - Environmental and Land Use Hearings Office – Pollution Control Hearings Board**

<http://app.leg.wa.gov/RCW/default.aspx?cite=43.21B>

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**Chapter 371-08 WAC – Practice and Procedure**  
<http://app.leg.wa.gov/WAC/default.aspx?cite=371-08>

**Chapter 34.05 RCW – Administrative Procedure Act**  
<http://app.leg.wa.gov/RCW/default.aspx?cite=34.05>

**Chapter 90.48 RCW – Water Pollution Control**  
<http://app.leg.wa.gov/RCW/default.aspx?cite=90.48>

**Chapter 173.204 WAC – Sediment Management Standards**  
<http://apps.leg.wa.gov/WAC/default.aspx?cite=173-204>

**Chapter 173-200 WAC – Water Quality Standards for Ground Waters of the State of Washington**  
<http://apps.leg.wa.gov/WAC/default.aspx?cite=173-200>

**Chapter 173-201A WAC – Water Quality Standards for Surface Waters of the State of Washington**  
<http://apps.leg.wa.gov/WAC/default.aspx?cite=173-201A>

**SIGNATURE**

Dated this 4<sup>th</sup> day of February 2022 at the Department of Ecology, Olympia Washington



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Brenden McFarland, Section Manager  
Environmental Review and Transportation Section  
Shorelands and Environmental Assistance Program

**Attachment A**

**Statement of Understanding  
Water Quality Certification Conditions**

303 South River Street Bank Stabilization and Contaminated Sediment Removal

Water Quality Certification Order No. 20972

As the Applicant for 303 South River Street Bank Stabilization and Contaminated Sediment Removal project Applicant, I have read and understand the conditions of Washington State Department of Ecology WQC Order No. 20972 and any permits, plans, documents, and approvals referenced in the WQC Order. I have and will continue to ensure that all project engineers, contractors, and other workers at the project site with authority to direct work have read and understand the conditions of this WQC Order and any permits, plans, documents, and approvals referenced in the WQC Order.

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Signature

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Date

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Title

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Phone

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Company