

DEVELOPMENT SERVICES DEPARTMENT

COUNTY OF EL DORADO

<http://www.co.el-dorado.ca.us/devservices>



PLACERVILLE OFFICE:
2850 FAIRLANE COURT PLACERVILLE, CA 95667
BUILDING (530) 621-5315 / (530) 622-1708 FAX
bldgdept@co.el-dorado.ca.us
PLANNING (530) 621-5355 / (530) 642-0508 FAX
planning@co.el-dorado.ca.us
Counter Hours: 8:00 AM to 4:00 PM

LAKE TAHOE OFFICE:
3368 LAKE TAHOE BLVD. SUITE 302
SOUTH LAKE TAHOE, CA 96150
(530) 573-3330
(530) 542-9082 FAX
tahoebuild@co.el-dorado.ca.us
Counter Hours: 8:00 AM to 4:00 PM

TO: Roger Trout, Zoning Administrator
FROM: Jason R. Hade, AICP, Senior Planner *JRH*
DATE: October 12, 2009
RE: **P08-0006 / Ebright Parcel Map Application**

In response to issues raised at the Zoning Administrator hearing of September 16, 2009, staff has prepared this memorandum with the following additional information.

Setbacks

Although the TR1 zone requires a minimum front yard setback of 20 feet, side yard setback of five feet, and rear yard setback of 15 feet, the proposed parcels are one acre or greater requiring a minimum 30-foot fire safe setback from all property lines. Three structures on proposed parcel 2A do meet the minimum fire safe setbacks: a storage building; a playhouse; and an office building. The existing residence on proposed parcel 2B also does not meet the minimum fire safe setbacks. However, the existing residence on proposed parcel 2B does meet the minimum zone district setbacks. A propane tank on proposed parcel 2B is located within the 10-foot required setback. As stated in condition of approval number 12, this issue must be addressed prior to parcel map filing.

Conditions of Approval/Findings for Approval

Conditions of approval have been included for Zoning Administrator consideration as Attachment 1.

Findings for approval have also been included for Zoning Administrator consideration as Attachment 2. As of the time of preparation of this staff report, the applicant has not demonstrated through a parcel map guarantee the ability to make the required off-site fire safe road improvements. The easement exists. However, the width is not sufficient to accommodate the required off-site improvements. Also, the applicant has stated that the adjoining property owner is unwilling to allow any expansion of the existing easement. Without resolution of the applicant's easement rights, fire safe access to the proposed parcels could not be achieved without the use of eminent domain by the County or waiver of the off-site fire safe road

improvements under the Subdivision Map Act. Staff believes there would be no public benefit to utilizing eminent domain to create one additional parcel. Because of this condemnation issue, staff recommends denial of the tentative parcel map.

Fire Safe Turnaround

As shown on the submitted tentative parcel map, a fire safe turnaround is proposed on "Parcel 1." However, "Parcel 1" is not part of this project. As such, the fire safe turnaround would need to be shown on the parcel map as required in condition of approval number 10 in Attachment 1.

Ice House Road

Although it has an easement, Ice House Road is an internal trail system at the subject site. The applicant and staff explored its use as an alternative road system early in the review process, but it was found to be infeasible.

Property Uses

After further discussion with the applicant, it was concluded that the subject site was never under U.S. Forestry Service ownership as was originally understood by staff. As such, a condition of approval has been included within Attachment 1 that would require the labeling of all structures with their current use at time of parcel map filing.

Non-Conforming Use

The non-conforming use mentioned in the staff report is a storage yard and office for a construction business. The storage yard is used to store construction materials and equipment for jobs completed off-site. One full-time employee works in the office four days a week from 8:00 AM to 5:00 PM. Use of the storage facility generally occurs five days a week during the hours of 8:00 AM to 5:00 PM. Although permitted as a legal non-conforming use by TRPA and the County in 2001, this use would potentially need to cease if the parcel map were to be approved. Staff has identified three alternatives for further consideration to address this issue:

1. The non-conforming use ceases upon parcel map filing;
2. A Special Use Permit application is submitted by the applicant after parcel map filing; or
3. A General Plan Amendment and Zone Change application is submitted by the applicant after parcel map filing.

Attachments:

- (1) Conditions of Approval
- (2) Findings for Approval

cc: Mike Dill
2409 Lupine Trail
South Lake Tahoe, CA 96150

Turner & Associates
P.O. Box 5067
Stateline, NV 89449

Charles Ebright
P.O. Box 7585
South Lake Tahoe, CA 96158

ATTACHMENT 1
CONDITIONS OF APPROVAL

PARCEL MAP P08-0006

I. PROJECT DESCRIPTION

1. This tentative parcel map is based upon and limited to compliance with the project description, the hearing exhibits marked Exhibits A - M, and conditions of approval set forth below. Any deviations from the project description, exhibits, or conditions must be reviewed and approved by the County for conformity with this approval. Deviations may require approved changes to the permit and/or further environmental review. Deviations without the above described approval will constitute a violation of permit approval.

The project description is as follows:

Tentative parcel map creating two parcels, comprising 1.45 and 8.98 acres, on a 10.43-acre site. Public water will be provided by the Cascade Mutual Water Company and sewer service will be provided by the South Tahoe Public Utility District. Primary site access will be provided via Cascade Road.

The grading, development, use, and maintenance of the property, the size, shape, arrangement, and location of structures, parking areas and landscape areas, and the protection and preservation of resources shall conform to the project description above and the hearing exhibits and conditions of approval below. The property and any portions thereof shall be sold, leased, or financed in compliance with this project description and the approved hearing exhibits and conditions of approval hereto. All plans (such as Landscape and Tree Protection Plans) must be submitted for review and approval and shall be implemented as approved by the County.

II. PROJECT CONDITIONS OF APPROVAL

Planning Services

2. In the event that previously unknown cultural resources are discovered during construction, operations shall stop in the immediate vicinity of the find and a qualified archaeologist shall be consulted to determine whether the resource requires further study. The qualified archeologist shall make recommendations on the measures to be implemented to protect the discovered resources, including but not limited to excavation of the finds and evaluation of the finds, in accordance with § 15064.5 of the CEQA Guidelines. Cultural resources could consist of, but are not limited to, stone, bone, wood, or shell artifacts or features, including hearths, structural remains, or historic dumpsites.
3. If human remains are encountered during earth-disturbing activities within the project area, all work in the adjacent area shall stop immediately and the El Dorado County Coroner's office shall be notified. If the remains are determined to be Native American in origin, both the Native American Heritage Commission (NAHC) and any identified descendants shall be notified by the coroner and recommendations for treatment solicited

(CEQA Guidelines § 15064.5; Health and Safety Code § 7050.5; Public Resources Code §§ 5097.94 and 5097.98).

4. The applicant shall provide a meter award letter or similar document by the water purveyor to Planning Services prior to filing the parcel map.
5. The applicant shall be required to pay a Park-in-Lieu fee of \$150.00 payable to El Dorado County, pursuant to El Dorado County Subdivision Ordinance Chapter 16.12.090. Check shall be submitted to the Development Services Department. A receipt showing compliance with this condition shall be submitted by the applicant to Planning Services prior to filing of the parcel map.
6. This tentative parcel map shall expire within 36 months from date of approval unless a timely extension has been filed.
7. All fees associated with the tentative parcel map shall be paid prior to filing the parcel map.
8. The applicant shall submit to Planning Services a \$50.00 recording fee and a \$1,933 Department of Fish and Game fee prior to filing of the Notice of Determination by the County. No permits shall be issued or parcel map filed until said fees are paid.
9. In the event of any legal action instituted by a third party challenging the validity of any provision of this approval, the developer and landowner agree to be responsible for the costs of defending such suit and shall hold County harmless from any legal fees or costs County may incur as a result of such action, as provided in Section 66474.9(b) of the Government Code.

The subdivider shall defend, indemnify, and hold harmless El Dorado County and its agents, officers, and employees from any claim, action, or proceeding against El Dorado County or its agents, officers, or employees to attack, set aside, void, or annul an approval of El Dorado County concerning a subdivision, which action is brought within the time period provided for in Section 66499.37.

County shall notify the subdivider of any claim, action, or proceeding and County will cooperate fully in the defense.

10. The fire safe turnaround proposed for "Parcel 1" as shown on Exhibit F shall be shown on the parcel map
11. At time of parcel map filing, all structures on the map shall be labeled with their current uses. One of the three alternative identified below shall be implemented by the applicant to the satisfaction of Planning Services after parcel map filing: (1) The non-conforming use shall cease; (2) A Special Use Permit application is submitted by the applicant; or (3) A General Plan Amendment and Zone Change application is submitted by the applicant.

12. Prior to parcel map filing, the existing propane tank on parcel 2B shown on Exhibit E shall be relocated outside of the minimum 10-foot side yard setback or buried underground. An alternative solution to address this issue may also be developed, subject to approval by the Lake Valley Fire Protection District and CAL FIRE.

Air Quality Management District

13. During construction, all activities shall apply standard Best Management Practices (BMPs) to control dust during construction. These practices shall be incorporated into the project and include:
 - Application of water on disturbed soils and unpaved roadways a minimum of three times per day
 - Using track-out prevention devices at construction site access points
 - Stabilizing construction area exit points
 - Covering haul vehicles
 - Restricting vehicle speeds on unpaved roads to 15 miles per hour
 - Replanting disturbed areas as soon as practical and other measures as deemed appropriate to the site, to control fugitive dust
14. Prior to grading permit issuance, a fugitive dust plan shall be submitted to the Air Quality Management District (AQMD) for review and approval.
15. Burning of vegetative wastes that result from "Land Development Clearing" must be permitted through the District Rule 300 Open Burning. Only vegetative waste materials are permitted to be disposed of using an open outdoor fire.
16. The applicant shall adhere to District Rule 224 Cutback and Emulsified Asphalt Paving Materials.

California Department of Forestry and Fire Protection (CAL FIRE)

17. A street sign meeting El Dorado County design standards needs to be placed at the intersection of Cascade Road and the access road. The applicant shall install all necessary signage such as stop signs, street name signs, and/or "not a county maintained road" sign as required by the Department of Transportation prior to the filing of the parcel map.
18. Prior to filing the parcel map, a sign identifying the dead-end road shall be placed at the intersection preceding the traffic access limitation (Article 3. Signing and Building Numbering, Section 1274.06 of the Fire Safe Regulations).
19. All parcels one acre and larger shall provide a minimum 30 foot setback for all new buildings and accessory buildings from all property lines and/or the center of the road (Article 5. Fuel Modification Standards, Section 1276.01(a) of the Fire Safe Regulations).
20. A fire safe management plan, acceptable to the Lake Valley Fire Protection District and the California Department of Forestry and Fire Protection, shall be prepared and

implemented. A letter of compliance with this condition shall be submitted by the Fire District and CAL FIRE to Planning Services prior to filing the map.

Department of Transportation

21. **On-site Access Improvements:** The applicant shall widen the on-site portion of the driveway to a roadway standard, a 20-foot wide road capable of supporting 75,000 lbs of weight, consistent with the 2007 CA Fire Code. This improvement must be made up until the accessway only serves one parcel, at which point it becomes a driveway and can be built to driveway width of 12-foot. The improvements shall be completed to the satisfaction of the Department of Transportation or the applicant shall obtain an approved improvement agreement with security, prior to the filing of the parcel map.
22. **Off-site Access Improvements:** The applicant shall construct and /or verify that the off-site portion of the driveway project boundary to Cascade Road, meets the standard of a 20-foot wide road capable of supporting 75,000 lbs of weight, consistent with the 2007 CA Fire Code. The applicant shall provide an exhibit to the DOT, Planning, Lake Valley Fire Protection District, and CAL FIRE that shows that the access road from Cascade Road to the subject site complies with the DISM and Fire Safe Regulations. The improvements shall be completed to the satisfaction of the Department of Transportation or the applicant shall obtain an approved improvement agreement with security, prior to the filing of the parcel map.
23. **Turnaround:** The applicant shall provide a turn around at the end of the roadway to the provisions of County Standard Plan 114 or approved equivalent. The improvements shall be completed to the satisfaction of the Department of Transportation or the applicant shall obtain an approved improvement agreement with security, prior to the filing of the parcel map.
24. **Easements:** All applicable existing and proposed easements shall be shown on the project plans.
25. **Road & Public Utility Easements:** The applicant shall provide a 50 foot wide non-exclusive road and public utility easement for the on-site access roadway prior to the filing of the parcel map.
26. **Maintenance Entity:** The proposed project must form an entity for the maintenance of any private roads, parking facilities, landscaping, signs and drainage facilities. If there is an existing entity, the property owner shall modify the document if the current document does not sufficiently address maintenance of the roads, parking facilities, landscaping, signs, and drainage facilities of the current project. DOT shall review the document forming the entity to ensure the provisions are adequate prior to filing of the parcel map.
27. **Parcel Map Improvement Agreement & Security:** If the required improvements are not completed prior to filing of the map, the developer shall enter into a Parcel Map Improvement Agreement (PMIA) with the Department of Transportation for onsite

roadway, drainage infrastructure, grading, etc. The developer shall also provide a security to guarantee performance of the PMIA as set forth within the County of El Dorado Subdivision Division Ordinance, prior to filing of the map. The improvements shall be installed to the satisfaction of DOT prior to filing of the map. This condition shall appear as a note on the recorded parcel map.

28. **Off-site Improvements (Security):** Prior to the filing of a parcel map, the applicant shall enter into an agreement pursuant to Government Code Section 66462.5 to complete the required offsite improvements, including the full costs of acquiring any real property interests necessary to complete the required improvements. In addition to the agreement, the applicant shall provide a cash deposit, letter of credit, or other acceptable surety in the amount sufficient to pay such costs, including legal costs, subject to the approval of County Counsel.
29. **Off-site Improvements (Acquisition):** As specified in the Conditions of Approval, the applicant is required to perform off-site improvements. If it is determined that the applicant does not have or cannot secure sufficient title or interest of such lands where said off-site improvements are required, the County may, at the applicant's expense and within 120 days of filing the Final Map, acquire by negotiation or commence proceedings to acquire an interest in the land which will permit the improvements to be made, including proceedings for immediate possession of the property. In such cases, prior to filing of any final map or parcel map, the applicant shall submit the following to the Department of Transportation Right of Way Unit, and enter into an agreement pursuant to Government Code Section 66462.5 and provide acceptable security to complete the offsite improvements, including costs of acquiring real property interest to complete the required improvements, construction surveying, construction management and a 20% contingency:
- a. A legal description and plat, of the land necessary to be acquired to complete the offsite improvements, prepared by a civil engineer or land surveyor.
 - b. Approved improvement plans and specifications of the required off-site improvements, prepared by a civil engineer.
 - c. An appraisal prepared by a certified appraiser of the cost of land necessary to complete the off-site improvements.

In addition to the agreement the applicant shall provide a cash deposit, letter of credit, or other acceptable surety in an amount sufficient to pay such costs including legal costs subject to the approval of County Counsel.

30. **Off-site Access Easements:** The applicant shall provide proof of access to the project site from a State or County maintained road. Said proof shall be provided by and through a "Parcel Map Guarantee" which shall be submitted to the County Surveyor's Office with the first map check for the parcel map.

31. **Electronic Documentation:** Upon completion of the improvements required, and prior to acceptance of the improvements by the County, the developer will provide a CD to DOT with the drainage report, structural wall calculations, and geotechnical reports in PDF format and the record drawings in TIF format.
32. **TIM Fees:** The applicant shall pay the traffic impact mitigation fees in effect at the time a building permit is deemed complete.

Environmental Management Department

33. If any commercial, industrial, agricultural, mining or any other hazardous materials handling activities have taken place on the property in the past, the applicant must conduct a Phase I Environmental Site Assessment (ESA). The Phase I must be conducted in accordance with ASTM standard E 1527-00. All information developed in the Phase I process must be submitted to the Hazardous Materials Division (HMD) for review. If upon review of the Phase I information, HMD determines the property is a potentially impacted site, the applicant must apply for a permit, submit a workplan and conduct a Phase II ESA and any required site remediation activities prior to developing property.

Lake Valley Fire Protection District

34. No gates shall be installed across the access road without an approved Special Use Permit and approval from the Fire District.
35. Prior to filing the map, signage along the fire access road and within the fire apparatus turn-around area shall be installed in accordance with Section D103.6 of the 2007 California Fire Code.
36. Prior to filing the map, a fire hydrant shall be installed within 200 feet of the residence along the fire apparatus road to the satisfaction of the Fire District.

Surveyor's Office

37. All survey monuments must be set prior to filing the parcel map.
38. Prior to filing the parcel map, the applicant shall provide a parcel map guarantee, issued by a title company, showing proof of access to a State or County maintained road as defined in 16.44.120(B)(2) with referenced and retraced deeds clearly noted on the parcel map.
39. Prior to filing the parcel map, a letter will be required from all agencies that have placed conditions on the map stating that "all conditions placed on P08-0006 by that agency have been satisfied." The letter is to be sent to the County Surveyor and copied to the consultant and applicant.

Tahoe Regional Planning Agency

40. The final subdivision map shall be revised to include the maximum permitted density on the site plan.
41. The permittee shall provide a recorded copy of an easement to be recorded against Assessor's Parcel Number 018-090-12 that will allow access across the parcel for owners of proposed Parcel 1 and 2, and Assessor's Parcel Number 018-320-08.
42. Prior to final recordation, the permittee shall provide a final Mylar map or similar document for the approved subdivision, which contains a signature block for TRPA to document regional approval, and three copies of the final subdivision map to TRPA for review and approval.
43. The permittee shall submit two (2) copies of the final subdivision map to TRPA for review and approval.
44. The permittee shall assign and record coverage to each resulting parcel in addition to limiting each parcel to no more than one residential unit of use.
45. The permittee shall complete and record the attached deed restriction that will permanently treat the parcels resulting from this subdivision as one parcel for the purposes of land coverage, shorezone structures, and scenic analysis. A copy of the recorded deed restriction or the original recorded deed restriction shall be provided to TRPA prior to acknowledgement of this permit.

ATTACHMENT 2

FINDINGS

PARCEL MAP P08-0006

FINDINGS FOR APPROVAL

1.0 CEQA Findings

- 1.1 El Dorado County has considered the Negative Declaration together with the comments received during the public review process. The Negative Declaration reflects the independent judgment of the County and has been completed in compliance with CEQA and is adequate for this project.
- 1.2 No significant impacts to the environment as a result of this project were identified in the initial study.
- 1.3 The documents and other materials which constitute the record of proceedings upon which this decision is based are in the custody of the Development Services Department - Planning Services located at 2850 Fairlane Court, Placerville, CA.

2.0 GENERAL PLAN FINDINGS

- 2.1 As proposed, the project is consistent with the Adopted Plan (AP) land use designation of the subject site, as defined by General Plan Policy 2.2.1.2, which refers to the Tahoe Regional Planning Agency's Regional Plan, because the parcel is located within TRPA Plan Area Statement (PAS) 175, Cascade Properties, which is primarily intended for residential use.
- 2.2 The proposal is consistent with all applicable Policies of the General Plan including 2.2.1.2 (land use density), 2.2.5.21 (compatibility with the surrounding neighborhood), and 5.2.1.4 (adequate public water supply). The project provides adequate access and site design that ensure compatibility with the surrounding permitted land uses, and is consistent with the General Plan policies identified above.

3.0 ZONING FINDINGS

- 3.1 The project, as proposed and conditioned, is consistent with the El Dorado County Zoning Ordinance Development Standards because the proposed parcels meet the development standards of the TR1 zone district pursuant to section 17.56.040 for minimum parcel areas and lot widths, and to permit the yard setbacks required of future residential development.

4.0 ADMINISTRATIVE FINDINGS

4.1 Tentative Parcel Map

- 4.1.1 *The proposed tentative map, including design and improvements, is consistent with the General Plan and Specific Plan, where applicable.* As proposed, the tentative map conforms to the AP General Plan land use designation and applicable General Plan policies concerning, adequate roadways, utilities and other public services, compatibility with the surrounding neighborhood, and adequate public water supply.
- 4.1.2 *The tentative map conforms to the applicable standards and requirements of the County's zoning regulations and Minor Land Division Ordinance.* The proposed parcel sizes of 1.45 to 8.98 acres conform to the 7,000 square foot minimum parcel size of the TR1 zone district. Additionally, the project conforms to the applicable provisions of the Minor Land Division Ordinance.
- 4.1.3 *The site is physically suitable for the proposed type and density of development.* The creation of one additional parcel at the 10.43 acre site is compatible with the surrounding existing residential land use densities and has been designed in a manner which avoids environmental impacts.
- 4.1.4 *The proposed subdivision is not likely to cause substantial environmental damage.* A negative declaration was prepared for the proposed tentative parcel map. Based on the initial study, it was determined that the project would not have a significant effect on the environment.

5.0 DESIGN WAIVER APPROVAL FINDINGS

5.1 Permit proposed parcel 2B to exceed the depth to width lot ratio and have no street frontage.

- 5.1.1 *There are special conditions or circumstances peculiar to the property proposed to be divided which would justify the adjustment or waiver.* Proposed parcel 2B has a width of 150 feet and a depth of 475 feet. Therefore, proposed parcel 2B only exceeds the maximum lot depth by 25 feet. The current parcel configuration was established in 1993 as a result of a land exchange between the U.S. Forest Service and current property owner. A boundary line adjustment (BLA05-0111) was approved by Planning Services in 2006 which further revised the parcel configuration.
- 5.1.2 *Strict application of County design and improvement requirements would cause extraordinary and unnecessary hardship in developing the property.* Strict compliance with the DISM would prevent compliance with Chapter 20 of the TRPA Code of Ordinances. The proposed parcel line configuration is consistent with the TRPA requirements for land coverage.
- 5.1.3 *The adjustment or waivers would not be injurious to adjacent properties or detrimental to the health, safety, convenience and welfare of the public.* The waiver will not be injurious to adjacent properties or detrimental to the health, safety, convenience and welfare of the public as proposed parcel 2B only exceeds the maximum lot depth by 25 feet.

5.1.4 *The waivers would not have the effect of nullifying the objectives of Article II of Chapter 16 of the County Code or any other ordinance applicable to the division.* The requested design waiver will not hinder the County's implementation of the Subdivision Map Act as outlined in Article II of Chapter 16 of County Code or any of the other applicable ordinances discussed within the staff report.

6.0 DESIGN WAIVER DENIAL FINDINGS

6.1 Permit Cascade Road to remain 12 to 14 feet wide rather than be improved to 24 feet wide as required by the *El Dorado County Design and Improvement Standards Manual*.

6.1.1 *There are special conditions or circumstances peculiar to the property proposed to be divided which would justify the adjustment or waiver.* According to the applicant, the existing main access road, Cascade Road, is a private road that was approved by the County and paved in 2003 at 14-feet wide with turnouts. The existing and proposed unnamed access road to the subject parcels is currently 12 to 14 feet wide compacted gravel with turnouts and soft shoulders. Lake Valley Fire Protection District reviewed the requested design waiver and had no objections. However, DOT and CAL FIRE recommend the unnamed access roadway from Cascade Road to the subject site be widened to 20 feet as required by the DISM. No improvements are recommended for Cascade Road. As such, DOT and CAL FIRE are not supportive of the design waiver request. There are not sufficient special conditions to the property which would justify the waiver of minimum fire safe requirements.

6.1.2 *Strict application of County design and improvement requirements would cause extraordinary and unnecessary hardship in developing the property.* Strict application of the DISM would not cause extraordinary and unnecessary hardship in developing the property as DOT is not requiring any improvements to Cascade Road nor that the off-site access roadway from Cascade Road to the subject site be paved, both of which could be required under the DISM. Off-site road improvements to meet minimum fire safe standards consist of widening the existing gravel access roadway from 12 feet to 18 feet wide with one-foot shoulders. If the access easement can be secured, sufficient space is available to make the required off-site road improvements.

6.1.3 *The adjustment or waivers would not be injurious to adjacent properties or detrimental to the health, safety, convenience and welfare of the public.* Both DOT and CAL FIRE reviewed the design waiver request and have concerns regarding the existing 12 to 14 foot-wide access roadway not being improved to meet minimum fire safe standards. The project site is located within a very high fire hazard area. As such, the waiver would be injurious to adjacent properties and detrimental to the health, safety, convenience and welfare of the public. Insufficient site access resulted in challenges for emergency vehicles responding to a fire at the subject site this past winter.

6.1.4 *The waivers would not have the effect of nullifying the objectives of Article II of Chapter 16 of the County Code or any other ordinance applicable to the division.* The requested design waiver will hinder the County's implementation of the Subdivision Map Act as outlined in Article II of Chapter 16 of County Code because the applicant does not have the easement rights to make the required off-site fire safe road improvements resulting in inadequate emergency access to any potential future residential structure without the County's use of eminent domain to acquire the land necessary for the off-site road improvements.

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