

CERTIFICATE AND ORDER

FOR FILING

PERMANENT

ADMINISTRATIVE RULES WITH THE OFFICE OF THE CODE REVISER

I HEREBY CERTIFY that the attached copy is a true, full and correct copy of PERMANENT rule(s) adopted on May 10, 1988 by the Columbia River Gorge Commission to become effective May 17, 1988.

The within matter having come before the Columbia River Gorge Commission after all procedures having been in the required form and conducted in accordance with applicable statues and rules and being fully advised in the premises:

Notice of Intended Action Published in Code Revisers Register No _____ Yes XX

NOW THEREFORE, IT IS HEREBY ORDERED that the following action be taken:

Adopted: 350-30

Amended: 305-20

as Administrative Rules of the Columbia River Gorge Commission

DATED this 13th day of May, 1988.

By: Richard Benner

Title: Richard P. Benner, Executive Director

Statutory Authority: Chapter 499, Washington Laws 1987.

For Further Information Contact: Richard P. Benner, Executive Director, (509) 493-3323.

STATE OF WASHINGTON
FILED

MAY 17 1988

CODE REVISER'S OFFICE
WSR 88-11-052

Chapter 350

Division 20

Review and Approval of

Major Development Actions and New Residential Development

With Amendments of May 10, 1988

350-20-001. Purpose.

The purpose of this division is to define the procedures and guidelines used by the Columbia River Gorge Commission in reviewing and approving major development actions and new residential development pursuant to section 10(c) of the Columbia River Gorge National Scenic Area Act (P.L. 99-663).

350-20-002. Definitions.

For the purposes of this division, the following definitions shall apply, unless context requires otherwise:

(1) "City" means any city whose boundaries extend into a Special or General Management Area.

(2) "Commission" means the Columbia River Gorge Commission established by Chapter 499, Washington Laws of 1987 and Chapter 14, Oregon Laws of 1987.

(3) "Director" means the Executive Director of the Columbia River Gorge Commission or staff designee.

(4) "Counties" means Multnomah, Hood River and Wasco Counties, Oregon; and Clark, Skamania and Klickitat Counties, Washington.

(5) "General Management Areas (GMAs)" means those lands within the boundaries of the National Scenic Area except for those areas designated as Special Management Areas (SMAs) or Urban Areas (UAs).

(6) "Forest Service" means U.S.D.A. Forest Service Columbia River Gorge National Scenic Area Office.

(7) "Major Development Action" means any of the following:

(a) subdivisions, partitions, and short plat proposals outside of Urban Areas;

(b) any permit for siting or constructing outside Urban Areas of multifamily residential, industrial or commercial facilities, except such facilities as are included in the recreation assessment prepared pursuant to section 6 of P.L. 99-663;

- (c) the exploration, development, and production of mineral resources in General and Special Management Areas unless such exploration, development, or production can (i) be conducted without disturbing the surface of any land within the boundaries of a Special Management Area or (ii) is for sand, gravel, and crushed rock used for the construction, maintenance or reconstruction of roads within the Special Management Areas used for the production of forest products; and
- (d) permits for siting or construction within the Special Management Areas of any residence or other related major structure on any parcel less than forty (40) acres in size.

(8) "National Scenic Area" or "Scenic Area" means the Columbia River Gorge National Scenic Area established pursuant to section 4 of P.L. 99-663.

(9) "Person" means any individual, partnership, corporation, association, governmental division or public or private organization or any character other than the Commission.

(10) "Party" means:

- (a) Each person or agency entitled as of right to a hearing before the Commission;
- (b) Each person or agency named by the Commission to be a party; or
- (c) Any person requesting to participate before the Commission as a party or in a limited status which the Commission determines either has an interest in the outcome of the Commission's proceedings or represents a public interest in such result.

(11) "Related Major Structure" means any detached structure which is accessory to a residence.

(12) "Residential Development" means the permitting for siting or construction of any single family residence, related major structure, or alteration to the exterior of any single family residence or related major structure deemed significant by the Commission or its designee.

(13) "Special Management Areas (SMAs)" means areas within the National Scenic Area established or revised pursuant to section 4(b) of P.L. 99-663.

(14) "Indian Tribes" means the Nez Perce Tribe, the Confederated Tribes and Bands of the Yakima Nation, the Confederated Tribes of the Warm Springs of Oregon, and the Confederated Tribes of the Umatilla Indian Reservation.

(15) "Urban Areas (UAs)" means those areas within the Scenic Area identified as Urban Areas on the map referred to in section 4(e) of P.L. 99-663 or within the boundaries of an Urban Area as revised pursuant to section 4(f).

350-20-003. Review and Approval Required.

Prior to the effective date of a county's land use ordinance adopted and approved pursuant to sections 7 and 8 of P.L. 99-663, the Commission shall review all proposals for major development actions and new residential development within Special and General Management Areas in that county. Only major development actions and new residential development found by the Commission to be consistent with the standards of section 6 and the purposes of P.L. 99-663 and the Final Interim Guidelines referred to in section 350-20-004 shall be allowed. No major development action or new residential development shall be undertaken or initiated without prior Commission approval.

350-20-004. Review Standards and Guidelines.

(1) The Columbia River Gorge National Scenic Area Final Interim Guidelines, published by the Forest Service and dated June 30, 1987, are adopted by reference as amended in paragraph (2) below and declared to be a part of this rule. In reviewing major development actions and new residential development for consistency with the standards of section 6 and the purposes of P.L. 99-663, Chapter 3 of the Final Interim Guidelines, as amended in paragraph (2) below, shall be utilized.

(2) The Final Interim Guidelines identified in paragraph (1) above are amended as follows:

(a) The definition of agricultural lands shall be revised to read as follows: "Agricultural lands are those lands which are primarily used or are suitable for the production of farm commodities including the growing of crops, fruits or Christmas trees or the pasturing, grazing or feeding of livestock. Lands designated as open space by the Commission shall not be considered agricultural lands."

(b) The definition of forest lands shall be revised to read as follows: "Forest lands are those lands which are used for growing forest products or are capable of producing in excess of twenty (20) cubic feet per acre per year of Douglas fir, Ponderosa pine or other merchantable tree species. Lands designated as open space by the Commission shall not be considered forest lands."

350-20-005. Application for Review and Approval.

(1) Review of a major development action or new residential development shall commence upon the acceptance of an application by the Director.

(2) Applications for the review and approval of major development actions and new residential development shall provide the following information:

- (a) The applicant's name, address and telephone number;
- (b) The land owner's name, address and telephone number (if different from applicant's);
- (c) The county in which the proposed development would be located;
- (d) The section, quarter section, township and range in which the proposed development would be located;
- (e) The street address of the proposed development;
- (f) The tax lot number(s) and size in acres of the parcel(s) involved;
- (g) A description of the current land use for the parcel(s) involved and adjoining lands;
- (h) A narrative description in sufficient detail to clearly explain the major aspects and the features of the proposed development;
- (i) A site plan drawn in black ink, either on the application form or on a separate sheet. The site plan must include:

scale and north arrow; boundaries of the parcel(s) involved; the location and width of all existing and proposed streets and roads; location and size of any existing and proposed structures; outside lighting; significant topographic features such as rock outcrops, swales, cliff or bluff lines; type and approximate location and height of trees 6" dbh (diameter at breast height) within 100 feet of proposed structures, roads, excavations or storage areas; trees 6" dbh (diameter at breast height) to remain on site after completion of development and other post-construction landscaping; boundary and depth of all grading and excavation to be done for road construction, building site preparation or landscaping purposes; location of water courses and bodies of water, including existing drainage patterns and proposed modifications to drainage patterns; location of source of water supply; for surface mining applications, the boundaries of the

area to be mined, the depth of excavations and the proposed final site contours.

If the information required above is included on a site plan required for county or city permit approval, then the county or city site plan may be submitted in lieu of the above plan.

- (j) A listing of major travel routes, scenic viewpoints, and public park and recreational facilities from which the proposed development would be visible;
- (k) A description of the height, exterior color(s) and roofing and siding materials for all proposed structures;
- (l) A description of any historic, archaeological, or cultural features on or adjacent to the development site;
- (m) A description of how the proposed development would affect existing recreational uses or create new recreational opportunities;
- (n) A description of how the proposed development action would affect air quality, water quality and quantity, fish and wildlife, soils, threatened or endangered plants or animals, native plants, and forest and agricultural lands; and
- (o) Any additional information which the applicant feels will assist in the evaluation of the proposal including, but not limited to, maps, drawings, and development plans.

(3) Standard application forms shall be available at county and city planning offices, the office of the Columbia River Gorge Commission and the Forest Service.

350-20-006. Pre-Application Conference.

An applicant may request a pre-application conference prior to the submission of any application for development review. The purposes of the conference shall be to acquaint the applicant with the substantive and procedural requirements of this division, to discuss the principle elements of the proposed action, and to identify policies and regulations that create opportunities or pose constraints for the proposed action.

350-20-007. Submission of Applications.

Completed application forms shall be submitted directly to the office of the Columbia River Gorge Commission. Applications shall be accompanied by copies of any pertinent applications required for a county or city permit or approval. Applications for county or city permits or approvals shall have been deemed as

complete or accepted for processing by the county or the city. If no county or city permit or approval is required, the application shall be accompanied by a statement from the applicable county or city stating that no permit or approval is required.

350-20-008. Acceptance of Application.

Within five (5) working days of the receipt of an application, the Director shall review the application for completeness and adequacy.

(1) No application shall be accepted until all omissions and deficiencies noted have been corrected by the applicant.

(2) No application shall be accepted which the Director deems cannot be acted upon reasonably within thirty (30) working days, unless the applicant consents to a longer period for action.

(3) No application shall be accepted unless accompanied by copies of pertinent applications for required county or city permits or approvals or by a statement from the affected county or city stating that no permits or approvals are required. Applications for county or city permits or approvals must have been deemed as complete or accepted for processing by the affected city or county.

350-20-009. Notice of Development Review.

(1) Within seven (7) working days of the acceptance of an application, the Director shall issue notice of a proposed development review. The notice shall provide the following information:

- (a) The name of the applicant;
- (b) The general location of the subject property;
- (c) A brief description of the proposed action;
- (d) The deadline for rendering a decision; and
- (e) The deadline for filing comments on the proposed action.

(2) The notice shall state that the application and supporting documents are available for inspection at the Commission office during normal working hours.

(3) The notice shall be mailed to:

- (a) The Forest Service, the States of Oregon and Washington, Indian Tribes and the planning director of the applicable county or city; and

(b) Owners of property within two hundred fifty (250) feet of the subject parcel(s) for all major development actions; and

(c) The appropriate newspaper(s).

(4) The notice shall be posted at the Commission and Forest Service offices and shall be made available for posting at the applicable county or city planning office(s) and applicable library or libraries.

(5) For all new residential development, legal notice shall be published in a newspaper of general circulation within the county in which an action is proposed.

(6) A copy of the notice shall be filed in the records of the Commission.

(7) Interested persons shall have the following time periods to submit written comments to the Director relative to the consistency of the proposed actions with the guidelines of 350-20-004:

(a) Fifteen (15) working days from the date the notice was mailed, or

(b) Ten (10) working days from the date the notice was mailed, where the proposed action is:

(1) A related major structure of 400 square feet or less in a General Management Area;

(2) An alteration to the exterior of or an addition to any residence or related major structure in a General Management Area;

(3) Replacement of a residence or related major structure of the same size and in the same location as the structure replaced; or

(4) Replacement of a structure destroyed or partially destroyed by fire if an application under 350-20-005 is filed within one year of the date of the fire.

350-20-010. Decision of the Director.

(1) In making a decision on a proposed development action the Director shall:

(a) Consult with the applicant and such agencies as the Director deems appropriate;

(b) Consider information submitted by the applicant and all other relevant information available;

- (c) Consider all comments submitted pursuant to 350-20-009(7); and
- (d) Solicit and consider the comments of the Forest Service.

(2) The Director shall approve a major development action and new residential development only if it is consistent with the standards of section 6 and the purposes of P.L. 99-663 and the Final Interim Guidelines referred to in section 350-20-004. In approving a proposed development action, the Director may impose conditions as necessary to ensure consistency with the standards and guidelines of 350-20-004.

(3) The Director shall issue a decision on a proposed development action including findings of fact and conclusions of law and any conditions to ensure consistency with the standards of section 6 and the purposes of P.L. 99-663 and the Final Interim Guidelines referred to in section 350-20-004 within thirty (30) working days after acceptance of the application unless the applicant consents to an extension of time.

(4) The Director shall mail a copy of the decision to the applicant, the Commission, the Forest Service, the States of Oregon and Washington, the Indian Tribes, the planning director of the applicable county or city and each person who submitted comments under 350-20-009(7). The decision shall set forth the rights of appeal under 350-20-011.

(5) The decision of the Director shall be final unless a Notice of Appeal is filed in accordance with 350-20-011 or a Notice of Commission Initiated Review is filed in accordance with 350-20-013.

(6) The decision of the Director approving a proposed development action shall become void

- (a) in one year if the development action is not undertaken within that year, or
- (b) when the development action is discontinued for any reason for one continuous year or more.

(7) An applicant may request an extension of the validity of a development approval. Such request shall be considered an Administrative Action and shall be submitted to the Executive Director prior to the expiration of such approval, in writing, stating the reason why an extension should be granted. The Executive Director may grant an extension of up to twelve (12) months in the validity of a development approval if it is determined that conditions, for which the applicant was not responsible, would prevent the applicant from commencing his operation within the original time limitation.

350-20-011. Appeal of Decision by Director.

(1) The applicant or any person who submitted comments on a proposed development action pursuant to 350-20-009(7) may appeal the decision of the Director within the following time periods:

- (a) Twenty (20) working days after the date the decision was mailed under 350-20-010(4); or
- (b) Fifteen (15) working days after the date the decision was mailed under 350-20-010(4) where the proposed development action is one of these described in 350-20-009(7)(b).

(2) The Notice of Appeal shall:

- (a) Refer to the decision being appealed;
- (b) Show that the person filing the appeal is either the applicant or submitted comments within the time specified in 350-20-009(7);
- (c) Set forth the specific standards, guidelines or other grounds upon which the appeal is based;
- (d) State the date of the Director's decision; and
- (e) Shall show service by mail upon those persons listed in subsection (1).

(3) Notices of Appeal not received within the time allotted by this section shall not be accepted.

350-20-012. Intervention in Appeal Hearing

(1) The applicant or any person who submitted comments on a proposed development action pursuant to 350-20-009(7) may participate in an appeal of the Director's decision by filing a Motion to Intervene with the Director within fifteen (15) working days of the date of the Notice of Appeal or Notice of Commission Initiated Review was mailed. The Motion to Intervene shall also be served by mail upon the applicant, the applicable county or city, and all persons who submitted comments on the proposed development action pursuant to 350-20-009(7).

(2) The Motion to Intervene shall:

- (a) Refer to the Notice of Appeal for which intervenor status is being sought;
- (b) Show that the person filing the motion is either the applicant or submitted comments on the proposed development action pursuant to 350-20-009(7);
- (c) Set forth the specific standards, guidelines or other grounds upon which the motion to intervene is based;

- (d) State the date of the Notice of Appeal; and
- (e) Show service by mail upon those persons listed in subsection (1).

350-20-013. Commission Initiated Review

(1) A decision of the Director shall be referred directly to the Commission for hearing if three (3) or more members of the Commission submit a written Notice of Commission Initiated Review to the Director within twenty (20) working days after the date the Notice of Decision was mailed. Copies of the Notice shall also be served by mail upon the applicant and all persons who submitted comments on the proposed development action pursuant to 350-20-009(7).

- (2) The Notice of Commission Initiated Review shall:
 - (a) Refer to the decision being appealed;
 - (b) Identify the Commission members filing the Notice;
 - (c) Set forth the specific policy issues, standards, guidelines or other grounds upon which the Notice of Commission Initiated Review is based;
 - (d) State the date of the Director's decision; and
 - (e) Show service by mail upon those persons listed in subsection (1).

350-20-014. Stay of Development Action.

No major development action or new residential development approved by the Director shall be undertaken or initiated during the appeal filing period set forth in 350-20-011 if the Director received any adverse comments during the comment period set forth in 350-20-009(7). If the Director received no adverse comments, major development action or new residential development approved by the Director may be undertaken or initiated during the appeal filing period, subject to the risk and consequences of an appeal or a Commission initiated review pursuant to 350-20-013. The application remains subject to rules and regulations of other state and local authorities with jurisdiction over the proposed development.

350-20-015. Hearing Date and Notice.

(1) The Commission shall at the earliest practical date set a time and place to hear an appeal. In any event, the Commission shall conduct a hearing with forty-five (45) working days after the receipt of a Notice of Appeal or Notice of Commission Initiated Review, unless the parties agree to a later date.

(2) Notice of Hearing shall be mailed to all parties at least ten (10) working days in advance of the scheduled hearing in the form prescribed in 350-16-010, the Commission's Administrative Procedures Rule.

350-20-016. Content and Transmittal of the Record.

Unless otherwise stipulated by all parties to the review, the record shall include:

(1) The final decision of the Director including the findings and conclusions;

(2) The written comments on the proposed action submitted pursuant to 350-20-009(7);

(3) The application and any other documentation submitted by the applicant;

(4) Written comments or recommendations submitted to the Director during consultations pursuant to 350-20-010(1); and

(5) Documents and other materials not described above relied on by the Director in making a decision.

350-20-017. Conduct of the Hearing.

(1) The Commission's review of the Director's decision shall be de novo. De novo means that the Commission shall hear the matter as if no decision had been rendered by the Director, except that all materials and information received by the Director and the Director's decision including findings and conclusions shall be included in the record.

(2) The hearing shall be conducted by the Commission or a hearings officer, if the Commission so chooses, in accordance with 350-16-009 through 350-16-017, the Commission's Administrative Procedures Rule.

350-20-018. Final Order.

(1) Unless the parties agree to an extension of time, the Commission shall within fourteen (14) working days after the completion of a hearing adopt a final order upholding, amending or reversing the decision of the Director.

(2) The order shall be in the form prescribed in 350-16-018 and shall be distributed in accordance with the provisions of 350-16-018, the Commission's Administrative Procedures Rule.

(3) The order of the Commission shall be final and shall be subject only to judicial review pursuant to the provisions of P.L. 99-663 and the applicable laws of Oregon and Washington.

350-20-019. Resubmission of Disapproved Application.

If a proposed action is disapproved by the Director, and the Commission does not approve the development on appeal, no new application for the same or substantially similar action shall be filed for at least twelve (12) months from the date of the decision disapproving the action.

350-20-020. Changes or Alterations to an Approved Action.

Any change or alteration to a development action approved by the Commission or Director pursuant to this division shall be processed as new action, except that the Director may approve minor changes or alterations deemed to be consistent with the guidelines of 350-20-004 and the findings and conclusions for the original action. The decision to approve a minor alteration or change shall be supported by written findings and conclusions.

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Chapter 350

Division 30

Enforcement

350-30-005. Purpose.

The purpose of this division is to establish procedures and criteria for enforcement of P.L. 99-663 by the Commission as set forth in Section 15 of the Scenic Area Act.

350-30-010. Definitions.

For the purpose of this division the following definitions apply unless the context requires otherwise:

(1) "Commission" means the Columbia River Gorge Commission established by Chapter 499, Washington Laws of 1987 and Chapter 14, Oregon Laws of 1987.

(2) "Director" means the Executive Director of the Columbia River Gorge Commission or staff designee.

(3) "Implementation measure" means any ordinance, regulation or order adopted by the Columbia River Gorge Commission or a county which carries out the Act, the management plan or a land use ordinance.

(4) "Interim guidelines" means the guidelines adopted pursuant to section 10(a) of P.L. 99-663.

(5) "Land use ordinance" means any ordinance adopted by a county or the Commission pursuant to P.L. 99-663, and includes any amendment to, revision of, or variance from such ordinance. Examples of a land use ordinance are a zoning ordinance and a land division ordinance.

(6) "Management plan" means the scenic area management plan adopted pursuant to section 6 of P.L. 99-663.

(7) "Violation" means failure to comply with any law, rule, ordinance or order under P.L. 99-663.

(8) "Continuing violation" means continuing activity which violates any law, rule, ordinance or order under P.L. 99-663. For example, continued operation of a rock quarry after receipt of a notice of alleged violation would be a continuing violation.

350-30-015. Civil Penalty.

(1) Any person who willfully violates any of the following may incur a civil penalty:

- (a) P.L. 99-663;
- (b) the management plan;
- (c) a land use ordinance;
- (d) an implementation measure; or
- (e) any order issued by the Commission or the Director.

(2) The Commission may not assess a civil penalty under section 15(a)(3) of P.L. 99-663 unless it provides notice and an opportunity for a public hearing to the person alleged by the Commission to have violated one of the measures listed in subsection (1) of this section.

(3) Each day of continuing violation is a separate and distinct violation.

350-30-020. Investigation.

(1) The Director shall investigate alleged violations of the measures listed in subsection 1 of 350-30-015 of this Division and shall report its findings to the Commission if the Director determines a violation occurred.

(2) The Director's report shall include:

- (a) the name and address of the alleged violator;
- (b) the legal and common description of the subject property;
- (c) a description of the alleged violation; and
- (d) a determination whether a civil penalty or other action by the Commission is warranted.

(3) The Director shall send a copy of the report to the alleged violator.

(4) The Director may inspect the subject property if necessary to conduct an investigation under subsection (1) of this section.

(5) If the Director determines a violation has occurred and assessment of a civil penalty is warranted, the Director shall provide notice to the alleged violator under section 350-30-025 of this division.

350-30-025. Notice of Alleged Violation.

(1) The Director shall serve written notice of violation on the alleged violator by personal service or by registered or certified mail. The notice shall include:

- (a) a plain statement describing the alleged violation;

- (b) the provision of P.L. 99-663, the management plan, the land use ordinance, the implementation measure or the order alleged to have been violated;
- (c) the legal and common description of the subject property;
- (d) the proposed penalty to be imposed and the criteria from 350-30-050 upon which the penalty is based;
- (e) a statement that the alleged violator may file an answer within 20 days after receipt of the notice of violation;
- (f) a copy of 350-30-030 which prescribes how to file an answer; and
- (g) a statement that the Commission will consider a proposed order of violation at a contested case hearing which may result in the entry of a final order imposing a civil penalty based upon a prima facie case made on the record whether or not the alleged violator participates.

(2) Service shall be deemed complete three days after written notice is mailed to:

- (a) the alleged violator; or
- (b) any person designated by law as competent to receive service of a summons or notice for the alleged violator.

(3) Notice sent by registered or certified mail to a person at the last known address of the person is presumed to have reached the person within three days after mailing.

350-30-030. Answer.

(1) The alleged violator may file an answer within 20 days of receipt of a notice of violation. The answer must be received by the Director within the 20 days allowed.

(2) The answer shall agree or disagree with all factual matters and shall affirmatively allege any and all affirmative claims or defenses and the reasoning in support thereof. The answer may include proposed measures to compromise or settle the matter and any reason the penalty recommended should be reduced or suspended.

350-30-035. Compromise or Settlement.

At any time after service of the notice of alleged violation, the Director may seek to compromise or settle a matter subject to a notice of alleged violation. No compromise or settlement is final until approved by the Commission following a hearing as provided in 350-30-040.

350-30-040. Hearing.

(1) No sooner than 20 days following expiration of the time for filing an answer to a notice of alleged violation under 350-30-025, the Director shall forward the notice of alleged violation and a proposed order to the Commission. The Commission shall place the matter on its agenda for hearing.

(2) The hearing shall be conducted as a contested case in accordance with the Commission's administrative procedure rule, 350-16-009 to -018.

(3) The Director shall notify the alleged violator of the date, time and place of the hearing no later than 20 days prior to the hearing.

350-30-045. Order.

(1) The Commission shall issue a final order assessing or rejecting assessment of a civil penalty. The order shall be served by personal delivery or certified or registered mail. If served by mail, the order shall be deemed received three days after mailing.

(2) Any penalty assessed may be remitted, compromised, modified, or suspended for a period to allow for curing, upon such terms and conditions determined by the Commission to be necessary and proper and consistent with P.L. 99-663.

(3) The order shall be final for purposes of judicial review under the applicable laws of Oregon and Washington.

350-30-050. Penalty Criteria.

(1) In determining the amount of a civil penalty, the following factors shall be considered:

- (a) whether the person has violated the P.L. 99-663 management plan, a land use ordinance, an implementation measure or an order in the past;
- (b) whether the person has undertaken measures to correct the violation or mitigate harm resulting from the violation;
- (c) the gravity and magnitude of the violation; and
- (d) whether the violation is repeated or continuous.

(2) No penalty assessed under this division may exceed \$10,000 for each violation.

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