



COMMENT LETTER E



July 2, 2018

Sent via Email

Julia Descoteaux, Associate Planner
14177 Frederick Street
P. O. Box 88005
Moreno Valley CA 92552
juliad@moval.org

Re: Brodiaea Commerce Center DEIR

Dear Ms. Descoteaux:

This law firm represents the Southwest Regional Council of Carpenters (Southwest Carpenters) and submits this letter on the above-referenced project on its behalf.

Southwest Carpenters represents 50,000 union carpenters in six states, including in Southern California, and has a strong interest in the environmental impacts of development projects, such as the Brodiaea Commerce Center (Project). The City of Moreno Valley (City) issued a Notice of Availability of its preparation of a Draft Environmental Impact Report (DEIR) for the Project on May 18, 2018. In the DEIR, the City determined the Project would have a significant effect on several aspects of the environment.

The Project proposes to construct a 33-dock, 261,807 square-foot "high-cube" warehouse building on 12 acres across two parcels near the southwest corner of Allesandro Boulevard and Heacock. The warehouse would contain 248,807 square-feet of warehouse space, 8,000 square-feet of office space, and 5,000 square-feet of mezzanine. The warehouse would be surrounded by 138 parking spaces along its outer edge, and would include stormwater detention, a pump house, utility infrastructure, as well as create a bike path.

The Project would require several approvals, including:

- Zone change from Business Park-Mixed Use (parcel #1) and Business Park (parcel #2) to Light Industrial;
- Lot line adjustment, which merges half of APN 297-170-038 with APN 297-170-036 to allow the full 12 acres of the Project to be placed on the same parcel; and
- Various utility, state, and federal agency permits.

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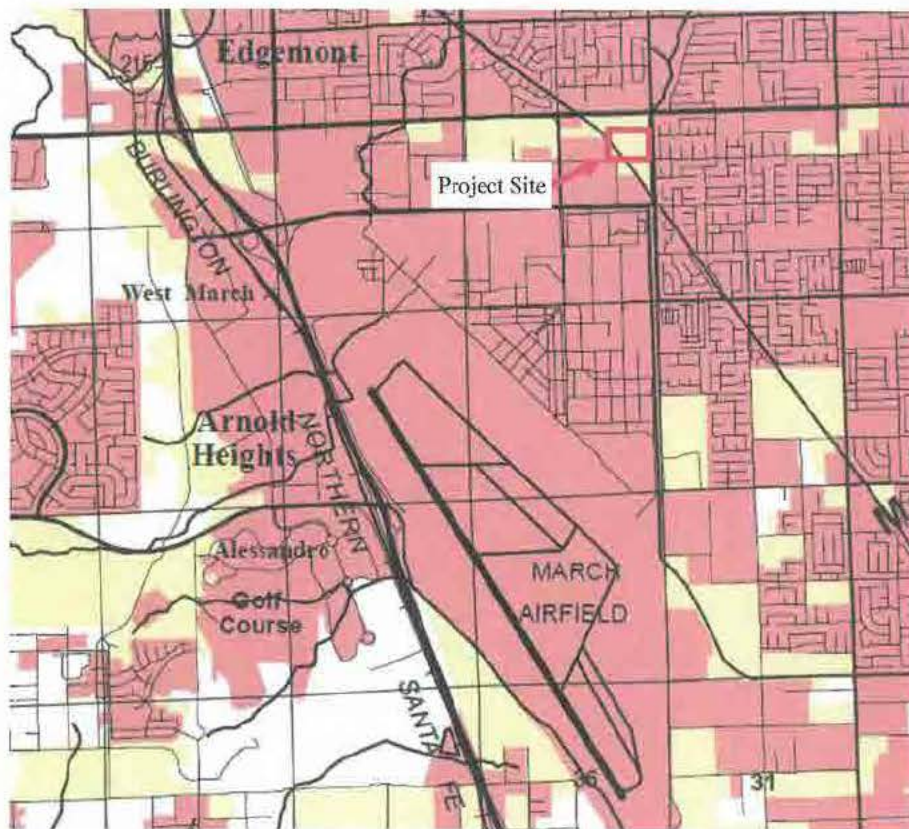
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Southwest Carpenters presents its comments to specific sections of the DEIR, below.

Agricultural Resources

The City incorrectly concluded the Project is listed by the California Department of Conservation in its Farm Mapping and Monitoring Program as "Urban and Built-Up Land." However, the Project is actually listed in this database as "Farmland of Local Importance."



In recent environmental review, the City determined that impacts to Farmland of Local Importance required full analysis in an EIR. For instance, in the Moreno Valley Logistics Center Initial Study, the City stated that site was "classified as 'Farmland of Local Importance' The Project site is undeveloped and has been vacant or used for agricultural activities since at least

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1938; however, there are no active agricultural uses on the subject property under existing conditions. *Implementation of the Project would convert areas on the subject property classified as farmland . . . to non-agricultural use. Thus, the potential impacts resulting from the Project's conversion of farmland to non-agricultural use shall be fully analyzed in the EIR.*" (emphasis added).

"Farmland of Local Importance" is defined as "soils that would be classified as prime and statewide but lack available irrigation water. Lands planted to dryland crops of barley, oats, and wheat," "lands producing major crops for riverside county but that are not listed as unique crops," or "lands identified by city or county ordinance as agricultural zones or contracts." Here, the City has elsewhere indirectly recognized the subject property has overlying rights to relatively shallow groundwater, and, thus, would likely even qualify as Prime Farmland.

Please correct this analysis to accurately disclose existing conditions and provide a full analysis of impacts to this farmland. Also, please recirculate the DEIR with this information to provide commenters additional time to review the analysis prepared by the City.

Air Quality

The DEIR concludes the Project would not conflict with the Consistency Criterion No. 1 of Threshold "a." Consistency Criterion 1 states:

The proposed project will not result in an increase in the frequency of severity of existing air quality violations or cause or contribute to new violations, or delay the timely attainment of air quality standards or the interim emissions reductions specified in the AQMP.

The City concluded the Project "would not exceed the SCAQMD localized emissions thresholds during construction or long-term operation and, by extension, would not result in violations of the NAAQS or CAAQS." Please provide more background for this conclusion. The City concluded the Project *would* result in significant and unavoidable NO_x violations, which is a precursor to ozone, PM₁₀, and PM_{2.5}—all of which the Southern California Air Basin is in nonattainment. Because NAAQS and CAAQS are regional, air-basin-specific air quality standards, it is confusing to only evaluate consistency with Criterion 1 using localized emissions thresholds, which are not designed to evaluate basin-wide air quality concerns.

Please provide specific references in the AQMP that would support the City evaluating Consistency Criterion 1 with localized, as opposed to regional, emissions thresholds and values.

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For the cumulative air quality impacts analysis, the City only found VOC (construction) and NO_x (operation) emissions to be cumulatively considerable, despite the air basin's nonattainment status for ozone (O₃), PM₁₀, and PM_{2.5}. The City further found the Project would emit or create these criteria pollutants, but that the Project's direct and indirect impacts regarding these pollutants would be less than significant according to the SCAQMD thresholds.

The City states:

Based on SCAQMD guidance, any direct exceedance of a regional or localized threshold also is considered to be a cumulatively considerable effect, while air pollutant emissions below applicable regional and/or localized thresholds are not considered cumulatively considerable.

Please provide an exact reference to this SCAQMD guidance to Southwest Carpenters so they can independently review it. Also, in the City's response to these comments, please disclose whether this SCAQMD guidance was adopted pursuant to noticed rulemaking, in accordance with the CEQA Guidelines.

CEQA Guidelines define "cumulative impacts" as "two or more individual effects, [which] when considered together, are considerable or which compound or increase other environmental impacts." CEQA Guidelines § 15355. Critically, "Cumulative impacts can result from *individually minor but collectively significant projects* taking place over a period of time," *Ibid.* (emphasis added). As plainly stated in the definition of cumulative impacts, a project-related impact may be individually less than significant but cumulatively significant. CEQA Guidelines § 15355. The City's approach towards its cumulative impacts analysis appears to write the definition of "cumulative impacts" entirely out of its air quality analysis. Under the City's approach, cumulative impacts cannot be significant so long as Project-level impacts are less than significant.

As requested above, please provide the City's legal and factual basis for the City's use of this analytical approach.

Biological Resources

The City's biological resources consultant has identified the presence of two species of special concern on the Project site: the smooth tarplant and the California horned lark. The City also determined the Project site contains suitable burrowing owl habitat and that additional burrowing owl surveys must be conducted prior to Project implementation.

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Regarding the horned lark and tarplant, the City determined that elimination of individuals of these species and their habitat would not constitute a significant impact. The City concluded the lark is adequately conserved under the MSHCP, and that the tarplant does not require conservation because the Project site does not fall within the Criteria Area Plan Species Survey Area (CAPSSA).

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Please provide more information regarding the requirements of the CAPSSA. The Biological Resources Technical Appendix does not suggest the tarplant's location outside of a CAPSSA categorically eliminates the significance of the impacts to the tarplant population(s) found on the Project site; instead, this report simply states that "focused plant surveys are not required pursuant to the MSHCP" for lands falling outside of the CAPSSA. Although the City claims it is not required to conduct focused surveys, it has found at least one tarplant population, nonetheless. Further, please provide more information regarding the size and health of the on-site tarplant population, and what time(s) of year any on-site surveys were conducted (e.g., late summer vs. winter or spring).

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Regarding the horned lark, please provide more information regarding the relation between its MSHCP conservation status and Project-related impacts. This species is a species of special concern and the development of the Project would eliminate suitable habitat for this species and potentially result in the take of this species. Please confirm whether the MSHCP or Department of Fish and Wildlife have promulgated any guidance on the subject of direct, indirect, and cumulative impacts to species of special concern, and confirm whether the City's analysis is consistent with this guidance.

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Further, it is unclear whether the biological consultants evaluated the potential of the Project site to contain habitat or individuals of several Endangered Species Act-listed and migratory bird species the U.S. Fish and Wildlife Service has identified as having the potential to occurring on-site. These species include:

- Nevin's barberry;
- San Diego ambrosia;
- Santa Ana River woolly star;
- California thrasher;
- Common yellowthroat;
- Costa's hummingbird;
- Lawrence's goldfinch;
- Nuttall's woodpecker;

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- Rufous hummingbird;
- Song sparrow;
- Spotted towhee; and
- Wrentit

Furthermore, the Technical Appendix identified one migratory bird—Allen’s hummingbird—as being present on site. However, the City does not reference this in the body of its DEIR or provide specific mitigation for the loss of habitat for this species or other migratory birds. Please revise the EIR to disclose the presence of this migratory bird and provide mitigation as needed. Specifically, please provide mitigation to ensure the implementation of the Project does not result in the take, including harassment, of any individuals of any migratory bird species, which may occur during nesting, sheltering, or foraging.

Geology and Soils

According to the City and as provided by State CEQA Guidelines, Project-related impacts may be significant if the Project could “potentially result in on- or off-site . . . subsidence, liquefaction or collapse.”

The Project lies above the Perris North Groundwater Basin. The DEIR does not inform readers of the health or status of this basin, other than to state the City is not entirely reliant on groundwater resources. Information regarding the status of this groundwater basin may be necessary to understand whether the Project may contribute to subsidence or collapse of this aquifer, which, in turn, may be exacerbated by the overlying land and structures. Please provide information as to whether the groundwater basin is being used beyond its sustainable yield or whether it is in a state of overdraft. Furthermore, please discuss whether the added weight of the Project could feasibly contribute to subsidence or collapse.

Greenhouse Gases

The City determined the Project would have less-than-significant greenhouse gas impacts. The City arrived at this conclusion by using the SCAQMD interim threshold of 10,000 million tons of carbon dioxide-equivalent greenhouse gas emissions per year (MTCO₂e/year) developed for stationary-source industrial land uses.’

As an initial matter, the City has not provided baseline greenhouse gas emissions for the Project. “An EIR must include a description of the physical environmental conditions in the vicinity of the project, as they exist at the time the notice of preparation is published . . . from both a local and regional perspective.” 14 Cal. Code Regs. § 15125(a). The City provides a

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global overview of greenhouse gas emissions but provides no information regarding Project-specific baseline conditions. Please disclose baseline greenhouse gas conditions for the Project site.

Next, the City concludes it may rely upon thresholds adopted by another agency. CEQA Guidelines section 15064.7 requires more:

- (b) Thresholds of significance to be adopted for general use as part of the lead agency's environmental review process must be adopted by ordinance, resolution, rule, or regulation, and developed through a public review process and be supported by substantial evidence.
- (c) When adopting thresholds of significance, a lead agency may consider thresholds of significance previously adopted or recommended by other public agencies or recommended by experts, provided the decision of the lead agency to adopt such thresholds is supported by substantial evidence.

According to this Guidelines section, for the City to use a threshold of significance previously adopted by another agency, it must, itself adopt this threshold by ordinance, resolution, rule, or regulation. **Please clarify whether the City has officially adopted the SCAQMD greenhouse gas significance thresholds.**

It does not appear that the Project is, by definition, an industrial use, or that the 10,000 MTCO₂e/year threshold applies to the Project. Although the Project is a permitted use on land zoned for industrial uses, the City throughout its Municipal Code distinguishes between warehouse and industrial uses. (See, e.g., City Code §§ 9.05.020 (Industrial district "requires buffering between residential districts and industrial and warehouse structures); 9.05.040(B)(9) (distinguishing between "industrial and warehouse" structures in the LI District); 5.02.010 (distinguishing between industrial and warehouse in definition of "Rental of real estate"). Further, as the City recognizes in its DEIR, warehouse uses are even permitted in the City's Business Park Districts.

Industrial land uses are those that involve the manufacture of products. "Industry" is defined as "the companies and activities involved in the production of goods for sale, especially in a factory." (Cambridge English Dictionary); whereas warehouse land uses typically involve the transportation and storage of pre-fabricated goods.

The SCAQMD threshold for other non-industrial projects is 3,000 MTCO₂e/year, which the Project would surpass. If the Project does not qualify as an industrial land use, as suggested

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by the City throughout its City Code, the Project far surpasses the applicable significance threshold.

Please provide further justification for the City's use of the 10,000 MTCO₂e/year threshold. Specifically, please provide the standard(s) or definition(s) the City applied to the Project to determine the Project constitutes an industrial use.

Furthermore, the City has evaluated the consistency of the Project with the California Air Resources Board (CARB) 2016 AB 32 Scoping Plan (See DEIR, pp. 4.6-19—4.6-20). However, the City has not met its analytical burden, as provided in *Center for Biological Diversity v. Department of Fish and Wildlife* (2015) 62 Cal.4th 204. In that case, the Court criticized the application of the CARB AB 32 Scoping Plan to a specific project, noting that the statewide greenhouse gas reduction plan is not made or intended to be used as a project-specific analytical tool to evaluate the impacts of greenhouse gases. The Court noted, "neither Assembly Bill 32 nor the Scoping Plan establishes regulations implementing, for specific projects, the Legislature's statewide goals for reducing greenhouse gas emissions . . . the Scoping Plan does not propose statewide regulation of land use planning but relies instead on local governments." *Id.* at 223, 229. The Court cautioned that "doubt has been cast on the Scoping Plan's project-level appropriateness."

The City has chosen to evaluate the Project for consistency with the Scoping Plan. Please provide support for the City's reliance on this document at the project-level.

The City also evaluates the consistency of the Project with the City's Energy Efficiency and Climate Action Strategy. The City concludes the project would not conflict with Energy Efficiency and Climate Action Strategy because it would comply with the California Building Standards Code, including California Energy Code, Title 24, Part 6 of the California Code of Regulations. However, the SCAQMD thresholds guidance document the City relies on states projects that exceed the significance thresholds should adopt as mitigation "efficiency measures beyond Title 24." As shown in the DEIR, compliance with Title 24, in itself, would not serve to sufficiently mitigate Project impacts, and further mitigation would be required beyond the provisions of Title 24.

Further, the primary goal of the Energy Efficiency and Climate Action Strategy is to "reduce its community-wide emissions to a total of 798,137 MT CO₂e" per year. In comparison, the City reported its 2010 greenhouse gas emissions totaled 920,657 MTCO₂e. In its DEIR, the City does not disclose whether it is on track to meet its emissions reductions goal. If it is not, please discuss how the Project, which serves to increase the City's carbon footprint, can be consistent with a plan designed to reduce these emissions.

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Hazards and Hazardous Materials

The City's analysis regarding potential impacts arising from exposure to hazardous materials is inadequate. In response to its Notice of Preparation for the Project, the City received a "[r]equest that historical uses of pesticides on the Project be disclosed." The City did not provide the requested disclosure.

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The City's hazardous materials consultant determined the potential of the Project to contain hazardous materials from past agricultural activities to be low, noting it "did not observe any signs of any pesticide use, storage, or mismanagement on the Project site associated with former agricultural use," further noting:

the types of pesticides most commonly associated with adverse human health effects (organochlorides such as DDT and dieldrin) were banned from agricultural use in the early 1970s; therefore, there is no potential any of these pesticides harmful to human health were used on the Project site . . . [I]n SCS's experience it is not uncommon to find trace amounts of pesticides in the soils of former agricultural areas in southern California, but that trace concentrations of pesticides do not represent a hazard to future industrial uses of the Project site and, also, do not represent a hazard to the environment or to people who live near the Project site.

First, the City's response does not address potential impacts to workers who will come into greatest contact with these potentially toxic or carcinogenic soils. Second, the City's presumption of absence of certain harmful pesticides does nothing to negate the potential of the Project site to contain these or other severely harmful toxic and carcinogenic substances. Third, it is clear from the City's discussion that it has not conducted soil testing to evaluate the risk that these soils contain hazardous materials. The City cannot expect a visual inspection of the Project site to provide sufficient information regarding the potential of Project soils to contain hazardous materials. As the City and its consultant are aware, most hazardous chemicals contained in Project soils would not be visible upon a simple, surface-level inspection. (Attachment A).

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Furthermore, the consultant's opinion regarding the risk of Project soils to contain significantly hazardous levels of contaminants provides no information relevant to the Project site. "Substantial evidence" . . . means enough relevant information and reasonable inferences from this information." Substantial evidence does not include "[a]rgument, speculation, unsubstantiated opinion or narrative." The consultant did not test the soils to conclude that only trace amounts of pesticides are contained within Project soils. The consultant's opinion based on experience with unrelated projects does nothing to inform the public and decisionmakers about



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the potential impacts specific to the Project. Furthermore, in terms of workplace safety, there is no acceptable safe level, or "dose threshold" for exposure to carcinogens, meaning that any exposure to carcinogens, even a trace amount, is considered a workplace safety hazard.

Southwest Carpenters takes the health and safety of workers and others near the Project seriously. Please provide an adequate evaluation of the potential of the Project to contain hazardous concentrations of chemicals from past uses of the Project site.

Hydrology and Water Quality

As mentioned, above, the City does not disclose the current health of the Perris North Groundwater Basin underlying the Project site. Please provide this information in the FEIR.

Furthermore, the City does not evaluate the impacts of the Project on aquifer infiltration, claiming "incremental reduction in groundwater would not be significant as domestic water supplies are not reliant on groundwater as a primary source." This does not respond to the impact Threshold "b," which is designed to evaluate whether the Project would substantially interfere with groundwater recharge. The City's current use of the aquifer underlying the Project does not address whether the Project, especially in conjunction with other past, present, and reasonably foreseeable development above this aquifer, will impact the ability of the aquifer to recharge. The Project proposes to replace the vast majority of Project soils with impervious surfaces and redirect water that flows or falls onto the Project site into the City's stormwater system. The potential of the Project to contribute to groundwater recharge will be reduced to almost nothing. Whether the City currently relies heavily on this groundwater basin for its potable water is of secondary importance to the overall impacts of the Project on the future recharge capacity of this aquifer.

The City further relies on a Storm Water Pollution Prevention Plan (SWPPP) for various purposes throughout the DEIR; however, the City repeatedly states that details regarding this plan will be formulated at a later date. According to CEQA Guidelines, "Formulation of mitigation measures should not be deferred until some future time." 14 Cal. Code Regs. § 15126.4. Furthermore, mitigation measures contained in the EIR "must be fully enforceable" by the City. 14 Cal. Code Regs. § 15126.4(a)(2). The City mentions the SWPPP in various locations throughout the DEIR, but nowhere provides a complete list of requirements for this plan, as it did with the Water Quality Management Plan (WQMP). Please disclose all mitigation the SWPPP will be required to contain.

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Noise

The City concluded that all Project-related noise impacts would be less than significant. Table 4.10-1 contains a list of existing 24-hour ambient noise level measurements, each showing average noise levels from various locations surrounding the Project site to range between 49.7 and 62.0 dBA. In its traffic-related noise impact analysis, the City disclosed that existing-plus-Project noise levels would range between 62.7 and 78.3 dBA during the operation of the Project, while Year 2040 projections ranged between 62.8 and 80.1 dBA. The City determined that two of these increases (Gilbert south of Brodiaea and Gilbert north of Cactus) would exceed a significance threshold but would result in no significant impact. The City determined that no other noise levels would exceed significance thresholds, which included noise levels ranging from 67.0 and 80.2. For certain of those impacts, the City determined:

noise-sensitive and non-noise-sensitive receptors in the Project study area would be exposed to traffic noise levels that exceed acceptable levels for the respective land category (i.e. 65 dBA CNEL for noise-sensitive land uses and 70 dBA CNEWL for non-noise-sensitive land uses) under both near-term and long-term cumulative analysis scenarios The Project's traffic noise contribution at each of the affected receiver locations . . . would not exceed the applicable significance thresholds (i.e. 1.5 dBA adjacent to noise-sensitive receivers and 3 dBA adjacent to non-noise sensitive receivers). Accordingly, the Project's traffic noise impacts would not be cumulatively considerable under near- or long-term cumulative conditions.

To arrive at this conclusion, the City applies its *direct* impacts thresholds and singles out Project-specific impacts to determine cumulative impacts would be less than cumulatively significant. This ignores the thrust of the cumulative impacts analysis, which requires the City to consider the impacts of the Project in conjunction with "past, present, and reasonably foreseeable probable future projects." 14 Cal. Code Regs. § 15355(b). Here, the City determined that the Project will contribute to exceedances of its maximum noise levels, but that impacts will be less than significant.

According to Table 4.10-11, the Project will cumulatively contribute to at least three exceedances of the City's maximum noise standard. This by definition is a significant cumulative impact, which requires mitigation.

Next, regarding the Gilbert St. south of Brodiaea Ave. and Gilbert Street north of Cactus Ave. Project-related impacts, the City takes the confusing stance that the Project would exceed a significance threshold but would not result in a significant impact. According to CEQA Guidelines:

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A threshold of significance is an identifiable quantitative, qualitative or performance level of a particular environmental effect, non-compliance with which means the effect will normally be determined to be significant by the agency

Please clarify how these Project-related impacts could exceed significance thresholds, yet not result in significant impacts.

Conclusion

Southwest Carpenters thanks the City for providing an opportunity to comment on the DEIR. Moving forward, please send all future notices relating to this Project to Nicholas Whipps at nwhipps@wittwerparkin.com. Thank you for your consideration of these comments.

Very truly yours,
WITTWER PARKIN LLP

Nicholas Whipps

Attachment

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