

1 Adopted: 1/11/2023  
2 Effective: 1/22/2023

3  
4 SNOHOMISH COUNTY COUNCIL  
5 Snohomish County, Washington

6  
7 ORDINANCE NO. 22-065

8  
9 RELATING TO GROWTH MANAGEMENT; AMENDING SCC 30.65.220 PERTAINING TO PERMITTED USES IN  
10 FLOODWAYS

11  
12 WHEREAS, counties and cities that are required to plan under the Growth Management Act  
13 (GMA), chapter 36.70A RCW, must ensure their comprehensive plans and development regulations plan  
14 for and accommodate affordable housing, while protecting both the environment and property rights;  
15 and

16  
17 WHEREAS, the Snohomish County (“County”) GMA Comprehensive Plan (GMACP) – General  
18 Policy Plan (GPP) has an objective to balance the protection of the natural environment with economic  
19 growth, housing needs, and the protection of property rights; and

20  
21 WHEREAS, the Snohomish County Council (“County Council”) adopted Ordinance No. 20-076 on  
22 November 4, 2020, to permanently adopt the Flood Insurance Study (FIS) for Snohomish County  
23 required by the Department of Homeland Security’s Federal Emergency Management Agency for  
24 compliance with the National Flood Insurance Program (NFIP) as well as to add clarity to the County’s  
25 flood regulations; and

26  
27 WHEREAS, Ordinance No. 20-076 also adopted the federal Flood Insurance Rate Maps and  
28 updated County special flood hazard regulations under chapters 30.43C and 30.65 and title 30.9 of the  
29 Snohomish County Code (SCC); and

30  
31 WHEREAS, Ordinance No. 20-076 amended SCC 30.65.220(8) addressing the repair,  
32 replacement, and improvement of substantially damaged residences in the floodway for consistency  
33 with state and federal regulations; and

34  
35 WHEREAS, changes to SCC 30.65.220(8) were a result of the NFIP Flood Damage Prevention  
36 Ordinance Washington Model, Revised December 9, 2019, (“Model Ordinance”) Section 5.4-2 titled:  
37 “Residential Construction in Floodways” and RCW 86.16.041 which addresses rules for the repair or  
38 replacement of existing residential structures; and

39  
40 WHEREAS, the intent of Model Ordinance Section 5.4-2 is to prohibit construction or  
41 reconstruction of residential structures in floodways, except for repairs, reconstruction, or  
42 improvements to a residential structure that are not substantial improvements and that do not increase  
43 the ground floor area; and

44  
45 WHEREAS, Model Ordinance Section 5.4-2 was implemented through the addition of SCC  
46 30.65.220(8) recognizing that repairs, replacement, or relocation of substantially damaged residences in  
47 the floodway, other than farmhouses can be permitted in floodways when certain criteria are met; and

1           WHEREAS, Ordinance No. 20-076 unintentionally deleted SCC 30.65.220(9) which stated  
2 “Repair, reconstruction, or improvement of residential structures, where repair, reconstruction, or  
3 improvement of a structure does not increase the ground floor area, and is not a substantial  
4 improvement” when permitted by the applicable zone under chapter 30.22 SCC; and  
5

6           WHEREAS, the unintentional deletion of SCC 30.65.220(9) by Ordinance No. 20-076 resulted in  
7 the prohibition of repairs, reconstruction, or improvements to residential structures in the floodway  
8 that have not been substantially damaged; and  
9

10           WHEREAS, due to the deletion of SCC 30.65.220(9) and the lack of other code provisions  
11 allowing for repairs, reconstruction, or improvements to residential structures in the floodway,  
12 homeowners cannot currently perform repairs, reconstruction, or improvements even when such work  
13 does not increase ground floor area and is not a substantial improvement, despite such work being  
14 contemplated and allowed by the Model Ordinance Section 5.4-2; and  
15

16           WHEREAS, as of May 31, 2022, there are over 6,000 homes within the floodway in  
17 unincorporated Snohomish County subject to these codes and potentially impacted by the unintentional  
18 prohibition of repairs, reconstruction, and improvement of these homes due to amendments found in  
19 Ordinance No. 20-076; and  
20

21           WHEREAS, this ordinance will re-adopt the language of SCC 30.65.220(9) exactly as it existed  
22 prior to the adoption of Ordinance No. 20-076 to again allow the repair, reconstruction, and  
23 improvement of residences located in the floodway, making the code consistent with Model Ordinance  
24 Section 5.4-2; and  
25

26           WHEREAS, on June 28, 2022, the Snohomish County Planning Commission (the “Planning  
27 Commission”) was briefed by Snohomish County Planning and Development Services (PDS) staff about  
28 the proposed code amendments contained in this ordinance; and  
29

30           WHEREAS, the Planning Commission held a public hearing on July 26, 2022, to receive public  
31 testimony concerning the proposed code amendments contained in this ordinance; and  
32

33           WHEREAS, at the conclusion of the Planning Commission’s public hearing, the Planning  
34 Commission deliberated on the proposed code amendments and voted to recommend approval of code  
35 amendments relating to flood hazard areas code correction as shown in its approval letter dated August  
36 10, 2022; and  
37

38           WHEREAS, on January 11, 2023, the County Council held a public hearing after proper notice,  
39 and considered public comment and the entire record related to the code amendments contained in  
40 this ordinance; and  
41

42           WHEREAS, following the public hearing, the County Council deliberated on the code  
43 amendments contained in this ordinance;  
44

45           NOW, THEREFORE, BE IT ORDAINED:  
46

47           Section 1. The County Council adopts the following findings in support of this ordinance:

- 1 A. The foregoing recitals are adopted as findings as if set forth in full herein.  
2  
3 B. This ordinance amends SCC 30.65.220 to re-adopt the former SCC 30.65.220(9) allowing the repair,  
4 reconstruction, and improvement of residential structures located within the floodway so long as  
5 the repairs, reconstruction, and improvements do not increase ground floor area and are not  
6 substantial improvements.  
7  
8 C. This ordinance ensures consistency with state and federal flood regulations and re-adopts a code  
9 provision that was unintentionally deleted by Ordinance No. 20-076.  
10  
11 D. Model Ordinance Section 5.4-2 provides in part:  
12  
13 Construction or reconstruction of residential structures is prohibited within designated  
14 floodways, except for (i) repairs, reconstruction, or improvements to a structure that do not  
15 increase the ground floor area; and (ii) repairs, reconstruction, or improvements to a structure,  
16 the cost of which does not exceed 50 percent of the market value of the structure either, (A)  
17 before the repair or reconstruction is started, or (B) if the structure has been damaged, and is  
18 being restored, before the damage occurred. Any project for improvement of a structure to  
19 correct existing violations of state or local health, sanitary, or safety code specifications that  
20 have been identified by the local code enforcement official and that are the minimum necessary  
21 to assure safe living conditions, or to structures identified as historic places, may be excluded in  
22 the 50 percent.  
23  
24 E. In developing the proposed amendment, the County considered the GMA goals identified in RCW  
25 36.70A.020. In particular, the proposed amendment is consistent with and promotes:  
26  
27 GMA Goal 4 – “Housing. Plan for and accommodate housing affordable to all economic  
28 segments of the population of this state, promote a variety of residential densities and housing  
29 types, and encourage preservation of existing housing stock.”  
30  
31 GMA Goal 10 – “Environment. Protect the environment and enhance the state's high quality of  
32 life, including air and water quality, and the availability of water.”  
33  
34 The proposed amendment supports the housing and environmental goals because it will allow  
35 homeowners to preserve their existing homes through repair, reconstruction, and improvement.  
36 This permitted work would not negatively impact the environment because the home could not be  
37 substantially improved and the footprint could not be expanded.  
38  
39 F. The proposed amendment maintains consistency with the following Multicounty Planning Policy  
40 (MPP) from the Puget Sound Regional Council VISION 2050:  
41  
42 MPP-H-3 – Achieve and sustain – through preservation, rehabilitation, and new development – a  
43 sufficient supply of housing to meet the needs of low-income, moderate-income, middle-  
44 income, and special needs individuals and households that is equitably and rationally distributed  
45 throughout the region.  
46

1 The proposed changes would support the preservation and rehabilitation efforts of this housing  
2 goal. Existing residential housing in the floodway can be preserved with this code correction which  
3 allows existing housing supply to be maintained.  
4

- 5 G. The proposed amendment maintains consistency with the following MPP from the Puget Sound  
6 Regional Council VISION 2050:

7  
8 MPP-En-5 – Locate development in a manner that minimizes impacts to natural features.  
9 Promote the use of innovative environmentally sensitive development practices, including  
10 design, materials, construction, and on-going maintenance.  
11

12 The proposed amendment supports this MPP by minimizing new impacts to natural features  
13 through restricting major improvements and ground floor area expansion of existing homes located  
14 in the floodway.  
15

- 16 H. The proposed amendment is consistent with Countywide Planning Policy (CPP) HO-6 that provides:

17  
18 The county and cities should implement policies and programs that encourage the rehabilitation  
19 and preservation of existing legally established, affordable housing for residents of all income  
20 levels, including but not limited to mobile/manufactured housing and single-room occupancy  
21 (SRO) housing.

22 The proposed code amendment encourages the rehabilitation and preservation of existing housing  
23 supply in the floodway. Affordable existing housing in the floodway will further be preserved.  
24

- 25 I. The proposed amendment maintains consistency with the GPP Housing Chapter, including HO Policy  
26 2.A.2, which provides:

27  
28 The county shall continue programs to repair and maintain existing housing in neighborhoods to  
29 reduce blight and deterioration and preserve and enhance the housing stock.  
30

- 31 J. Procedural requirements.

- 32  
33 1. This is a Type 3 legislative action under SCC 30.73.010.  
34  
35 2. As required by RCW 30.70A.106(1), a notice of intent to adopt the proposed code amendments  
36 was transmitted to the Washington State Department of Commerce for distribution to state  
37 agencies on June 8, 2022.  
38  
39 3. State Environmental Policy Act (SEPA), chapter 43.21C RCW, requirements with respect to this  
40 non-project action have been satisfied through the completion of an environmental checklist  
41 and the issuance of a determination of non-significance on June 8, 2022.  
42  
43 4. The public participation process used in the adoption of this ordinance complies with all  
44 applicable requirements of the GMA and the SCC, including but not limited to, RCW 36.70A.035,  
45 RCW 36.70A.140, and chapter 30.73 SCC.  
46

- 1 5. The Planning Commission was briefed on the proposed amendments at its June 28, 2022,  
2 meeting and conducted a public hearing on the proposed amendments at its July 26, 2022,  
3 meeting resulting in its letter of August 10, 2022, recommending approval of the code  
4 amendments contained in this ordinance.  
5  
6 6. The Washington State Attorney General last issued an advisory memorandum, as required by  
7 RCW 36.70A.370, in September of 2018 entitled “Advisory Memorandum and Recommended  
8 Process for Evaluating Proposed Regulatory and Administrative Actions to Avoid  
9 Unconstitutional Takings of Private Property” to help local governments avoid the  
10 unconstitutional taking of private property. The process outlined in the State Attorney  
11 General’s 2018 advisory memorandum was used by Snohomish County in objectively evaluating  
12 the regulatory changes proposed by this ordinance.  
13

14 K. This ordinance is consistent with the record.

- 15  
16 1. Due to Ordinance No. 20-076, homeowners are restricted from repairing, reconstructing, or  
17 improving their homes located in the floodways when no substantial flood damage has  
18 occurred. The proposed code amendments reinstate the ability of homeowners to repair,  
19 reconstruct, or improve their homes to make necessary maintenance and preserve existing  
20 housing.  
21  
22 2. The Model Ordinance allows for repair, reconstruction, and improvement of homes in the  
23 floodways that have not been substantially damaged and when such repair, reconstruction, or  
24 improvement will not increase the ground floor area.  
25  
26 3. The code amendments proposed by this ordinance will correct an unintentional deletion and re-  
27 insert code that existed prior to 2020.  
28

29 Section 2. The County Council makes the following conclusions:

- 30  
31 A. The amendments proposed by this ordinance comply and are consistent with the GMA.  
32  
33 B. The amendments proposed by this ordinance comply and are consistent with the GMACP.  
34  
35 C. The County has complied with all SEPA requirements with respect to this non-project action.  
36  
37 D. The public participation process used in the adoption of this ordinance complies with all applicable  
38 requirements of the GMA and title 30 SCC.  
39  
40 E. The amendments proposed by this ordinance does not result in an unconstitutional taking of private  
41 property for a public purpose.  
42

43 Section 3. The Snohomish County Council bases its findings and conclusions on the entire record  
44 of the County Council, including all testimony and exhibits. Any finding, which should be deemed a  
45 conclusion, and any conclusion which should be deemed a finding, is hereby adopted as such.  
46

1 Section 4. Snohomish County Code Section 30.65.220, last amended by Amended Ordinance No.  
2 21-060 on October 6, 2021, is amended to read:

3  
4 SCC 30.65.220 Floodways: permitted uses.

5  
6 The following uses are allowed in the floodway when permitted by the applicable zone under chapter  
7 30.22 SCC, provided the use is in compliance with the applicable general and specific floodproofing  
8 standards of SCC 30.65.110 and 30.65.120, and other applicable provisions of this chapter:

9  
10 (1) Agriculture;

11  
12 (2) Forestry, including processing of forest products with portable equipment;

13  
14 (3) Preserves and reservations;

15  
16 (4) Park and recreational activities;

17  
18 (5) Removal of rock, sand and gravel, when the applicant can provide clear and convincing evidence  
19 that such uses will not divert flood flows causing channel shift or erosion, accelerate or amplify the  
20 flooding of downstream flood hazard areas, increase the flooding threat to upstream flood hazard areas,  
21 or in any other way threaten public or private properties. When allowed, such removal shall comply with  
22 the provisions of chapter 30.32C SCC and the county shoreline management program;

23  
24 (6) Utility transmission lines when allowed in underlying zones unless otherwise prohibited by this  
25 chapter. When the primary purpose of such a transmission line is to transfer bulk products or energy  
26 through a floodway en route to another destination, as opposed to serving customers within a  
27 floodway, such transmission lines shall conform to the following:

28  
29 (a) All utility transmission lines shall cross floodways by the most direct route feasible as  
30 opposed to paralleling floodways;

31  
32 (b) Electric transmission lines shall span the floodway with support towers located in flood  
33 fringe areas or beyond. Where floodway areas cannot be spanned due to excessive width,  
34 support towers shall be located to avoid high flood water velocity and/or depth areas, and shall  
35 be adequately floodproofed;

36  
37 (c) Buried utility transmission lines transporting hazardous materials, including but not limited  
38 to crude and refined petroleum products and natural gas, shall be buried a minimum of four  
39 feet below the maximum established scour of the waterway, as calculated on the basis of  
40 hydrologic analyses. Such burial depth shall be maintained horizontally within the hydraulic  
41 floodway to the maximum extent of potential channel migration as determined by hydrologic  
42 analyses. In the event potential channel migration extends beyond the hydraulic floodway,  
43 conditions imposed upon floodway fringe and special flood hazard areas shall also govern  
44 placement. All hydrologic analyses are subject to acceptance by the county, shall assume the  
45 conditions of a 100-year frequency flood as verified by the U.S. Army Corps of Engineers, and  
46 shall include on-site investigations and consideration of historical meander characteristics in  
47 addition to other pertinent facts and data. The use of riprap as a meander containment

1 mechanism within the hydraulic floodway shall be consistent with the county shoreline  
2 management program;

3  
4 (d) Buried utility transmission lines transporting non-hazardous materials including water and  
5 sewage shall be buried a minimum of four feet below the maximum established scour of the  
6 waterway as calculated on the basis of hydrologic analyses. Such burial depth shall be  
7 maintained horizontally within the hydraulic floodway to the maximum extent of potential  
8 channel migration as determined by hydrologic analyses. All hydrologic analyses shall conform  
9 to requirements in subsection (6)(c) of this section. The use of riprap as a meander containment  
10 mechanism within the hydraulic floodway shall be consistent with the county shoreline  
11 management program;

12  
13 (e) Beyond the maximum extent of potential channel migration, utility transmission lines  
14 transporting hazardous and non-hazardous materials shall be buried below existing natural and  
15 artificial drainage features. Burial depth in all agricultural areas requiring or potentially requiring  
16 subsurface drainage shall be a minimum of six feet as measured from ground surface to the top  
17 of the transmission line, or at other such depth as deemed necessary by on-site investigations  
18 performed by a qualified soils expert familiar with county soils. Burial depth in all other  
19 agricultural and non-agricultural floodway areas shall be determined on the basis of accepted  
20 engineering practice and in consideration of soil conditions and the need to avoid conflict with  
21 agricultural tillage;

22  
23 (f) All buried utility transmission lines shall achieve sufficient negative buoyancy so that any  
24 potential for flotation or upward migration is eliminated;

25  
26 (g) Above ground utility transmission lines, not including electric transmission lines, shall only  
27 be allowed for the transportation of non-hazardous materials where an existing or new bridge  
28 or other structure is available and capable of supporting the line. When located on existing or  
29 new bridges or other structures with elevations below the level of the 100-year flood, the  
30 transmission line shall be placed on the down-stream side and protected from flood debris. In  
31 such instances, site specific conditions and flood damage potential shall dictate placement,  
32 design and protection throughout the floodway. Applicants must demonstrate that such above  
33 ground lines will have no appreciable effect upon flood depth, velocity or passage, and shall be  
34 adequately protected from flood damage. If the transmission line is to be buried except at the  
35 waterway crossing, burial specifications shall be determined as in subsection (6)(d) of this  
36 section;

37  
38 (h) All floodway crossings by utility transmission lines transporting hazardous materials shall be  
39 equipped with valves capable of blocking flow within the pipeline in the event of leakage or  
40 rupture. All floodway crossings shall have valves unless otherwise indicated by standard  
41 engineering review of the site and type of transmission line as acceptable to the county with  
42 locations determined by other provisions of this chapter;

43  
44 (i) Above ground utility transmission line appurtenant structures including valves, pumping  
45 stations, or other control facilities shall not be permitted in the floodway; and  
46

1 (j) Where a floodway has not been determined by preliminary Corps of Engineers'  
2 investigations or official designation, a floodway shall be defined by qualified engineering work  
3 by the applicant on the basis of a verified 100-year flood event.  
4

5 (7) Repairs, reconstruction, replacement, or improvements to existing farmhouse structures which are  
6 located on lands designated as agricultural lands of long-term commercial significance under RCW  
7 36.70A.170, subject to the following:  
8

9 (a) The new farmhouse is a replacement for an existing farmhouse on the same farm site;

10  
11 (b) There is no potential building site for a replacement farmhouse on the same farm outside  
12 the designated floodway;

13  
14 (c) The farmhouse being replaced shall be removed, in its entirety, including foundation, from  
15 the floodway within 90 days after occupancy of the new farmhouse;

16  
17 (d) For substantial improvements, and replacement farmhouses, the elevation of the lowest  
18 floor of the improvement and farmhouse respectively, including basement, is one foot higher  
19 than the base flood elevation;

20  
21 (e) New and replacement water supply systems, are designed to eliminate or minimize  
22 infiltration of flood waters into the system;

23 (f) New and replacement sanitary sewerage systems are designed and located to eliminate or  
24 minimize infiltration of flood waters into the system and discharge from the system into the  
25 flood waters;

26  
27 (g) All other utilities and connections to public utilities are designed, constructed, and located  
28 to eliminate or minimize flood damage;

29  
30 (h) The replacement farmhouse shall not exceed the total square footage of encroachment of  
31 the structure which it is replacing; and

32  
33 (i) Repairs, reconstruction, or improvements to a farmhouse shall not increase the total square  
34 footage of encroachment of the existing farmhouse.  
35

36 (8) Repairs, replacement, or relocation of substantially damaged residences in the floodway, other than  
37 farmhouses, are subject to the following:  
38

39 (a) When residences other than farmhouses are substantially damaged in the floodway, the  
40 floodplain administrator may make a written request to the Department of Ecology under RCW  
41 86.16.041(4) to assess the risk of harm to life and property posed by the specific conditions of  
42 the floodway. Based on analysis of depth, velocity, flood-related erosion, channel migration,  
43 debris load potential, and flood warning capability, the Department of Ecology may exercise  
44 best professional judgment in recommending to the floodplain administrator authority to  
45 permit repair, replacement, or relocation of the substantially damaged structure. The property  
46 owner shall submit any information necessary to complete the assessment to the county and  
47 the Department of Ecology. Without a favorable recommendation from the Department of

1 Ecology for the repair or replacement of a substantially damaged residential structure located in  
2 the regulatory floodway, no repair or replacement is allowed under WAC 173-158-076(1).

3  
4 (b) Before the repair, replacement, or relocation is started, all applicable requirements of the  
5 National Flood Insurance Program, chapter 86.16 RCW, chapter 30.43C SCC, and this chapter  
6 must be satisfied. In addition, the following conditions must be met:

7  
8 (i) There is no potential building location for the replacement residential structure on  
9 the same property outside the regulatory floodway;

10  
11 (ii) The replacement residential structure is equivalent in use and size to the  
12 substantially damaged residential structure;

13 (iii) The structure being repaired, replaced, or reconstructed was legally constructed;

14  
15 (iv) Repairs, reconstruction, or replacement do not result in an increase of the total  
16 square footage of floodway encroachment;

17  
18 (v) The elevation of the lowest floor of the substantially damaged or replacement  
19 residential structure is a minimum of one foot higher than the base flood elevation;

20  
21 (vi) New and replacement water supply systems are designed to eliminate or minimize  
22 infiltration of floodwater into the system;

23  
24 (vii) New and replacement sanitary sewerage systems are designed and located to  
25 eliminate or minimize infiltration of floodwater into the system and discharge from the  
26 system into the floodwaters; and

27  
28 (viii) All other utilities and connections to public utilities are elevated a minimum of one  
29 foot above the base flood elevation and are designed, constructed, and located to  
30 eliminate or minimize flood damage.

31  
32 (9) Repair, reconstruction, or improvement of residential structures, where repair, reconstruction, or  
33 improvement of a structure does not increase the ground floor area, and is not a substantial  
34 improvement.

35  
36 ~~((9))~~ (10) Water-dependent utilities and other installations which by their very nature must be in the  
37 floodway. Examples of such uses are: Dams for domestic/industrial water supply, flood control and/or  
38 hydroelectric production; water diversion structures and facilities for water supply, irrigation and/or  
39 fisheries enhancement; flood water and drainage pumping plants and facilities; hydroelectric generating  
40 facilities and appurtenant structures; structural and nonstructural flood damage reduction facilities, and  
41 stream bank stabilization structures and practices. The applicant shall supply convincing evidence that a  
42 floodway location is necessary in view of the objectives of the proposal and that the proposal is  
43 consistent with other provisions of this chapter and the county shoreline management program. In all  
44 instances of locating utilities and other installations in floodway locations, project design must  
45 incorporate floodproofing.

1 ((10)) (11) Dikes, when the applicant can provide clear and convincing evidence that:

2  
3 (a) Adverse effects upon adjacent properties will not result relative to increased floodwater  
4 depths and velocities during the base flood or other more frequent flood occurrences;

5  
6 (b) Natural drainage ways are minimally affected in that their ability to adequately drain  
7 floodwaters after a flooding event is not impaired; and

8  
9 (c) The proposal has been coordinated through the appropriate diking district where applicable,  
10 and that potential adverse effects upon other affected diking districts have been documented.

11  
12 ((11)) (12) Public works, limited to roads and bridges.

13  
14 Section 5. Severability and Savings. If any section, sentence, clause or phrase of this ordinance  
15 shall be held to be invalid by the Growth Management Hearings Board ("Board"), or unconstitutional by  
16 a court of competent jurisdiction, such invalidity or unconstitutionality shall not affect the validity or  
17 constitutionality of any other section, sentence, clause or phrase of this ordinance. Provided, however,  
18 that if any section, sentence, clause or phrase of this ordinance is held to be invalid or unconstitutional  
19 by the Board or court of competent jurisdiction, then the section, sentence, clause or phrase in effect  
20 prior to the effective date of this ordinance shall be in full force and effect for that individual section,  
21 sentence, clause or phrase as if this ordinance had never been adopted.

22  
23 PASSED this 11<sup>th</sup> day of January 2023.

24  
25 SNOHOMISH COUNTY COUNCIL  
26 Snohomish County, Washington

27  
28   
29 Council Chairperson

30 ATTEST:

31  
32   
33 Asst. Clerk of the Council

34  
35 (x) APPROVED

36  
37 ( ) EMERGENCY

38  
39 ( ) VETOED

40 DATE: January 12, 2023

41  
42   
43 County Executive

44  
45 ATTEST:

46  
47 

1 Approved as to form only:

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Deputy Prosecuting Attorney

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