

1 BEFORE THE WESTERN WASHINGTON GROWTH MANAGEMENT HEARINGS BOARD

2
3 IRONDALE COMMUNITY ACTION NEIGHBORS
4 and NANCY DORGAN,

5
6 Petitioners,

7 v.

8
9 JEFFERSON COUNTY,

10 Respondent.

11
12 IRONDALE COMMUNITY ACTION NEIGHBORS,

13 Petitioner,

14 v.

15
16 JEFFERSON COUNTY,

17 Respondent.

CASE NO. 04-2-0022

**ORDER DENYING MOTION TO
RESCIND INVALIDITY AND
MOTION TO IMPOSE
ADDITIONAL INVALIDITY
DETERMINATION**

CASE NO. 03-2-0010

**ORDER DENYING MOTION TO
RESCIND INVALIDITY AND
MOTION TO IMPOSE
ADDITIONAL INVALIDITY
DETERMINATION**

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21 THIS Matter came before the Board upon motions by Jefferson County and the Irondale
22 Community Action Neighbors (ICAN), Petitioners, regarding invalidity determinations made
23 and proposed in these combined cases. Jefferson County's Clarified Motion to Rescind
24 Invalidation, January 5, 2006; ICAN's Motion for Additional Findings of Non-Compliance and
25 Invalidation, January 18, 2006. These cases are pending before the Board based on findings
26 of non-compliance with the Growth Management Act as set out in the combined Final
27 Decision and Order in WWGMHB Case No. 04-2-0022 and Compliance Order in WWGMHB
28 Case No. 03-2-0010, entered May 31, 2005, and the Board's Order on Reconsideration of
29 July 29, 2005.
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1 A hearing was held February 7, 2006, in Tumwater in accordance with the Board's
2 January 9, 2006, partial compliance extension order. Order Granting Extension of
3 Compliance Period for Sewer Planning and Financing and Setting Hearing for Consideration
4 of Rescission of Invalidity Determinations.
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7 In this order, the Board declines to rescind its determinations of invalidity pertaining to
8 Irondale and Port Hadlock comprehensive plan provisions and development regulations at
9 this time and to enter a determination of invalidity as to noncompliance of the PUD Water
10 System Plan. This order also makes changes to the compliance extension schedule for
11 sewer planning and financing, including the requirement for a midpoint progress report. In
12 an order to be issued shortly, we will rule on the County's additional requests for findings of
13 compliance on other issues, and ICAN's motion of additional findings of noncompliance.
14

15 16 **RECENT PROCEDURAL HISTORY**

17 Jefferson County first notified the Board of its interest in an extended compliance period on
18 December 14, 2005, when it filed its Statement of Actions Taken and Request for Extension
19 to Achieve Compliance. Just prior to the Statement of Actions Taken filing the County
20 submitted several Additions to the Record (December 8, 2005). Additions are a list of 105
21 e-mails, letters, resolutions, County Commissioners' meeting minutes, and ad copy for a
22 notice of public hearings. Formalizing its request for compliance period extension and a
23 lifting of invalidity on January 5, 2006, Jefferson County filed a Clarified Motion to Rescind
24 Invalidity and Request for Extension to Achieve Compliance. Respondent County moved to
25 lift invalidity under terms of RCW 36.70A.302(6) and (7), requesting that the Board rescind
26 its 2005 order of invalidity as to both the Comprehensive Plan and the Development
27 Regulations for the proposed Irondale and Port Hadlock UGA.
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31 Petitioners requested, on January 6, 2006, an opportunity to respond to this motion and for
32 an in-person hearing. Based on a review of the County's compliance report and a series of

1 submissions, the Board extended the compliance period an additional 12 months, to
2 January 25, 2007, solely for sewer planning and financing completion and set a hearing to
3 consider the County's motion to rescind the earlier imposition of invalidity. In that order the
4 Board found the task of fully planning for sewer service for the Irondale and Port Hadlock
5 UGA is of "unusual scope and complexity," noting the Board made this finding in its 2005
6 orders and suggesting then that more than 180 days would be needed to accomplish this
7 work.
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10 A Motion for Determination of Partial Compliance was filed with the Board by Jefferson
11 County on January 12, 2006, asking that this motion and its motion requesting a lifting of
12 Invalidity be argued at the scheduled afternoon compliance hearing on February 7, 2006.
13

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15 The County submitted three [3] more sets of Additions to the Index of Record on
16 January 28, 2006: BOCC Minutes of a 12/05/05 meeting and a 01/19/06 meeting; three
17 local ordinances adopted over a 13-month period, specifically: 12/13/04 – Ordinance 17-
18 1213-04; 02/28/05 – Ordinance 03-0228-05; 01/26/05 Ordinance 02-0126-06; and two
19 comprehensive plan and Unified Development Code documents dated 12/13/04 and
20 01/06/06.
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23 Petitioners disputed whether the County has achieved partial compliance as claimed in a
24 series of filings. On January 4, 2006, ICAN sent the Board a list of nine [9] e-mails, letters,
25 maps, ordinances and their attachments; all proposed as Additions to the Index of Record.
26 On that date the Board also received ICAN's Objections with several attachments.
27 January 11, 2006, brought to the Board a Motion for Consolidation of Cases and a Request
28 for Reconsideration of January 9, 2006 Order by ICAN. January 12, 2006, Petitioner ICAN
29 filed two documents with the Board: ICAN's Response Regarding Ongoing Invalidity and
30 Compliance and ICAN's Motion for Additional Findings of Non-compliance and Invalidity.
31 On January 30, 2006, ICAN sent the Board a proposed addition to the Index of Record: a
32

1 front and last page of a draft ordinance amending and refining the Unified Development
2 Code [Title 18, Jefferson County Code] and adding savings and severability clauses. On
3 February 6, 2006, ICAN again sent the Board a list of eight [8] proposed additions to the
4 Index of Record including e-mails, a letter, a list of ordinances, several maps, and a website
5 reference with a map link. On February 7, 2006, ICAN presented to the Board at hearing a
6 proposed addition to the Index of Record: a map of County land use designations from its
7 Comprehensive Plan, dated 12/08/03.
8

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10 **BURDEN OF PROOF**
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12 For purposes of rescinding the Board's prior determination of invalidity, the burden is on the
13 County to show that the ordinance or resolution that it has passed in response to the
14 determination of invalidity "will no longer substantially interfere with the fulfillment of the
15 goals" of the Growth Management Act. RCW 36.70A.320(4).
16

17
18 For purposes of ICAN's motion for a determination of invalidity as to the incorporation by
19 reference of the PUD's Water System Plan and future amendments to it, the burden is on
20 ICAN to demonstrate that the continued validity of a plan or regulation, or a portion of it,
21 substantially interferes with the fulfillment of the goals of the Growth Management Act
22 (GMA). In a compliance hearing upon petition of a party, the Board shall also reconsider its
23 final order and decide, if no determination of invalidity has been made, whether one now
24 should be made under RCW 36.70A.302. RCW 36.70A330(4).
25

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27 **EXHIBIT RULINGS**
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29 Each of the proposed exhibits---Additions to the Record--- offered by Jefferson County is
30 admitted. From the December 8, 2005, filing those are:
31 Exhibit No. 9 series: 9-304, 9-303, 9-302, 9-301
32 Exhibit No. 10 series: 10-204, 10-203, 10-202, 10-201

1 Exhibit No. 12 series: 12-217, 12-216, 12-215, 12-214, 12-213, 12-212, 12-211, 12-210, 12-
2 209, 12-208, 12-207, 12-206, 12-205, 12-204, 12-203,12-202, 12-201

3 Exhibit No. 13 series: 13-103, 12-102, 13-101

4 Exhibit 16 series: 16-547, 16-546, 16-545, 16-544, 16-543, 16-542, 16-541, 16-540, 16-539,
5 16-538, 16-537, 16-536, 16-535, 16-534, 16-533, 16-532, 16-531, 16-530, 16-529, 16-528,
6 16-527, 16-526, 16-525, 16-524, 16-523, 16-522, 16-521, 16-520, 16-519, 16-518, 16-517,
7 16-516, 16-515, 16-514, 16-513, 16-512, 16-511, 16-510, 16=509, 16-508, 16-507, 16-506,
8 16-505, 16-504, 16-503, 16-502, 16-501

9 Exhibit No. 22 series: 22-225, 22-224, 22-223, 22-222, 22-221, 22-220, 22-219, 22-218,
10 22-217, 22-216, 22-215, 22-214, 22-213, 22-212, 22-211, 22-210, 22-209, 22-208, 22-207,
11 22-206, 22-205, 22-204, 22-203, 22-202, 22-201

12 Exhibit No. 24 series: 24-108, 24-107, 24-106, 24-105, 24-104, 24-103, 24-102, 24-101

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15 From the January 28, 2006, filing those are:

16 Exhibit No. 12 series: 12-219, 12-218

17 Exhibit No. 13 series: 13-106, 13-105, 13-104

18 Exhibit No. 17 series: 17-111, 17-110.

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21 With the exception of the January 30, 2006, proposed exhibit 1063, a front and last page of
22 a *draft* ordinance amending and refining the Unified Development Code [Title 18, Jefferson
23 County Code] and adding savings and severability clauses, Petitioner ICAN's proposed
24 exhibits are admitted and will be given the weight they are due. Some ICAN exhibits appear
25 to be duplicative, referencing website versions or other versions of County Ordinances and
26 maps already submitted by Respondent Jefferson County. In the event of any difference
27 whatsoever in these ordinance and map versions, the Board accepts ICAN's submissions to
28 the record.
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1 From the January 4, 2006, filing, the Petitioner exhibit numbers are: 1058, 1057, 1056,
2 1055, 1054, 1053, 1052, 1051, and 1050. From the February 6, 2006, filing, Petitioner
3 exhibit numbers are: 1071, 1070, 1069, 1068, 1067, 1066, 1065, and 1064. From the
4 February 7, 2006, filing, the Petitioner exhibit number is 1072.
5

6 **County's Motion to Rescind Invalidity**

7 **Positions of the Parties**

8 The County argues that a determination of invalidity is no longer necessary to prevent
9 incompatible development from occurring in the Irondale and Port Hadlock urban growth
10 area (UGA)¹ during the period of remand. Jefferson County's Clarified Motion to Rescind
11 Invalidity at 2. The County offers two reasons for rescinding invalidity. First, the County
12 asserts that it had a savings clause in the 2003 UGA ordinance which, under the Board's
13 order, reinstated the rural development standards throughout the Irondale and Port Hadlock
14 UGA. *Ibid.* Second, the County offers a motion adopted by the County Commissioners in
15 their June 6, 2005, public meeting, providing that rural development standards would apply
16 in the Irondale and Port Hadlock UGA – Exhibit 12-210. *Ibid.*
17
18

19
20 ICAN contests the County's assertion that the 2003 UGA ordinance contained a savings
21 clause. The 2003 Ordinance (Ex. 13-22) contains a severance clause, ICAN asserts, but no
22 savings clause "intended to revive prior policies or regulation in the event the new plan or
23 regulations are determined to be invalid." ICAN's Objections at 3.
24

25
26 ICAN further argues that the County has not legally re-established rural development
27 regulations inside the Irondale and Port Hadlock UGA. ICAN's Objections at 4.
28
29

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31 _____
32 ¹ This area is sometimes still referred to as the TriArea.

1 ICAN responds additionally that, under the Planning Enabling Act, a landowner can submit
2 and vest a request for a zone change at any time as a project permit if that zone change is
3 consistent with the Comprehensive Plan. This, ICAN claims, would allow any landowner to
4 request a rezone to urban densities and intensities within the UGA without any guarantee
5 that sewer would ever be made available. ICAN's Response Regarding On-Going Invalidity
6 and Noncompliance at 2.
7

8 9 **Board Discussion**

10 The Board entered its determinations of invalidity regarding certain designations within the
11 Irondale and Port Hadlock UGA to prevent inconsistent development from occurring while
12 the County undertakes its compliance efforts. In particular, the Board found the designation
13 of "non-sewered" and "optional sewered" areas to substantially interfere with the fulfillment
14 of Goals 1 and 12 of the GMA. (Conclusion of Law M, Order Granting Reconsideration,
15 July 29, 2005). The Board also found that the continuing validity of the development
16 regulations allowing urban levels of development in the Irondale and Port Hadlock UGA
17 without corresponding urban levels of service substantially interfere with Goals 1, 2 and 12
18 of the GMA. The Board further concluded:
19

20 Pursuant to RCW 36.70A.302(4), and to the extent the Ordinance 10-0823-04 has a
21 savings clause in effect, the prior development regulations, allowing only rural levels
22 of development in the area of the proposed UGA, are valid during the period of
23 remand.

24 Conclusion of Law Q, Order Granting Reconsideration, July 29, 2005.
25

26 While the County argues that the Board found that Ordinance 10-0823-04 has a savings
27 clause (Jefferson County's Statement of Actions Taken at 3), Conclusion of Law Q only
28 found that to the extent there was a savings clause the pre-existing rural development
29 standards could remain in effect during the remand period. The County points to no portion
30 of Ordinance 10-0823-04 that contains a savings clause.
31
32

1 The Board of County Commissioners acted swiftly after the Board's Final Decision and
2 Order/Compliance Order was issued on May 29, 2005, to address rural development
3 standards in the UGA. A week after the Board's decision was issued, the County
4 Commissioners unanimously voted to apply rural standards in the Tri Area (Irondale- Port
5 Hadlock- Glen Cove) UGA. Commissioners Meeting Minutes: Week of June 6, 2005, at 3
6 (Ex. 12-210). The Board is satisfied with the County's good faith in pursuing compliance
7 such that incompatible development does not occur during the remand period.
8

9
10 However, the Board is compelled to agree with Petitioners that the motion by the County
11 Commissioners does not have the force of law to alter the effectiveness of the
12 comprehensive plan provisions and development regulations under the invalidity
13 determination here. A motion may be used to undertake an administrative action but the
14 imposition of development standards is a legislative action. It therefore must be
15 accomplished by ordinance or resolution. While the Board does not question the County's
16 good faith, we must be concerned that a private party might be able to vest an application
17 contrary to the County's stated intent if there is no legally effective change to the
18 development regulations and comprehensive plan provisions.
19

20
21 Subsequent to the County's January 2006 motion and shortly before the scheduled hearing,
22 the County submitted a newly adopted ordinance, Ex. 17-111, intended to preclude urban
23 development in the Irondale and Port Hadlock UGA during remand. This exhibit was
24 accepted as being of substantial assistance to the Board in determining whether to rescind
25 invalidity in this case. Ex. 17-111 provides:
26

27 The following text would be added to the top of Ch. 18.18 of the Jefferson County
28 Code:

29
30 The County Commissioners, through adoption of Ordinance #xx-xxxx-
31 06, hereby put the reader on notice that Chapter 18.18 of the Jefferson
32 County Code, listed in its entirety below, is null and void and has no
force and effect and shall not regulate, control or be applicable to any
development, permitting process or other land use action that will occur

1 or is proposed to occur within the boundaries of the Port
2 Hadlock/Irondale Urban Growth Area until such time as the Western
3 Washington Growth Management Hearings Board (“WWGMHB”) states
4 in writing that these development regulations are compliant with Ch.
5 36.70A RCW, commonly known as the Growth Management Act or
6 “GMA.” Until such time as there is a final adjudication by the WWGMHB
7 or any other court of competent jurisdiction which finds Ch. 18.18 JCC
8 to be compliant with the GMA, rural standards shall control and regulate
9 the development of, permitting process for or other land use decisions
10 for proposals that would occur, if approved or allowed, upon real
11 property within the boundaries of the Port Hadlock/Irondale Urban
12 Growth Area.

13 This disclaimer was adopted in Ordinance 02-0126-06 on January 26, 2006:

14 Section 2. The current version of Jefferson County Code Title 18.18 entitled
15 “Irondale Port Hadlock UGA Development Regulation Implementation” is
16 hereby repealed and replaced in its entirety with the attached version of Title
17 18.18, also known as Attachment “C” hereto.

18 Ordinance 02-0126-06, Section 2.

19 This ordinance goes a long way towards ensuring that incompatible development will not
20 occur in the Irondale and Port Hadlock UGA during the remand period. However,
21 Petitioners allege that this adoption does not make it clear what rural standards will apply
22 and to which rural designations they will apply. Unfortunately, that is the case. Since the
23 prior ordinance did not have a savings clause (although Ordinance 02-0126-06 does have a
24 savings clause), the County was not able to simply revert to the prior development
25 regulations applicable to the Irondale and Port Hadlock UGA. The motion passed on June
26 6, 2005, (Ex. 12-210) lists several rural zones and designations that are meant to apply
27 during the compliance remand period. The parameters of those zones and designations as
28 well as the development regulations to apply within them are not clear. While the Board has
29 no doubt about the County’s good intentions in this regard, we are unable to rescind
30 invalidity until the ambiguities concerning the type of development that may continue to
31 occur within the Irondale and Port Hadlock UGA are resolved.
32

1 **Conclusion:** Despite the good faith efforts of the County in attempting to impose rural
2 development standards during the period of remand, it is not clear to the Board those efforts
3 have replaced the need for lifting the Board's determination of invalidity at this point.
4

5 **Petitioners' Motion for a Determination of Invalidity**

6 **Positions of the Parties**

7
8 Petitioners request a new finding of invalidity based on Conclusion of Law K of the May 31,
9 2005 Final Decision and Order/Compliance Order. ICAN's Motion for Additional Findings of
10 Non-Compliance and Invalidity at 5. This conclusion of non-compliance pertains to the
11 portion of Ordinance 10-0823-04 that incorporates the PUD's adopted Water System Plan
12 "as may be amended" into the County's comprehensive plan. Adoption of future
13 amendments to a part of a comprehensive plan without public participation in those
14 amendments fails to comply with RCW 36.70A.130(2) and 36.70A.140. See Conclusion of
15 Law K of the May 31, 2005, Final Decision and Order/Compliance Order. Petitioners cite to
16 a proposed additional amendment to the PUD's Water System Plan which will be
17 incorporated by reference into the County's comprehensive plan as evidence that a
18 determination of invalidity is needed. ICAN's Motion for Additional Findings of Non-
19 Compliance and Invalidity at 7.
20
21

22
23 The County argues that there is no basis for an additional determination of invalidity at this
24 time. Jefferson County contends in its Response to [Petitioner's] Motion for
25 Reconsideration of 1/9/06 that it "understands and concurs that any WSP amendments
26 which the PUD might make are not to be inserted automatically into the CP, despite the
27 continued presence of such language. The County cannot and will not take actions which
28 the FDO has forbidden. While it is true that the County has not yet amended the WSP
29 language in the CP, it should be allowed to do so prior to the January 25, 2007 deadline."
30 [p.2]
31
32

1 **Board Discussion**

2 While Petitioners are correct that the GMA allows them to seek a determination of invalidity
3 at this time (RCW 36.70A.330(4)), the Board does not find that there has been a showing
4 that inconsistent development will occur as a result of any pending Water System Plan
5 amendments. Nor do we find that the County is intentionally ignoring the Board's order. It
6 is apparent that the County has a great deal on its plate and is trying in all good faith to
7 achieve compliance. The Board finds that this County is working diligently within its means
8 on a variety of GMA issues. In the absence of evidence that inconsistent development is
9 likely, we will not require the County to give priority attention to curing the non-compliant
10 feature of its incorporation of the PUD's Water System Plan while it is engaged in other
11 compliance efforts.
12
13

14
15 **Conclusion:** Petitioners have not met their burden of proof that the continued validity of the
16 incorporation by reference of the PUD Water System Plan with future amendments
17 substantially interferes with the fulfillment of the goals of the GMA.
18

19 **Petitioner's Request for Minor Amendments to Compliance Schedule Dates and**
20 **Request to Require a Compliance Report**

21 **Positions of the Parties**

22
23 Petitioner points out that some of the filing dates in the Compliance Extension Schedule fall
24 on a Saturday. Petitioner also requests that the Board require the County to file a
25 compliance report midway through the compliance schedule. Request for Reconsideration
26 of January 9, 2006 Order (January 11, 2006) at 3 and 4.
27

28 Jefferson County offered to provide status reports when it asked for an extension of the
29 compliance schedule. Jefferson County's Clarified Motion to Rescind Invalidity and Request
30 for Extension to Achieve Compliance (January 5, 2006) at 2 and 3.
31
32

1 **Discussion and Conclusion:**

2 The Board finds that a compliance report will be useful to the Board and the parties for
3 following the County’s compliance activities and that some of the deadlines should be
4 changed to a working day to allow for ease of filing.
5

6
7 **ORDER**

8 **A. Invalidity:** The Board declines to rescind its determinations of invalidity pertaining to
9 Irondale and Port Hadlock comprehensive plan provisions and development regulations at
10 this time. The Board further declines to enter a determination of invalidity as to the PUD
11 Water System Plan.
12

13 **B. Amending Terms and Schedule of the Compliance Extension Order:**

14 A mid-point status and progress report on compliance matters is due July 25, 2006. The
15 County report should cover the status of sewer planning and financing.
16

17 The County compliance schedule for 2007 is adjusted to avoid Saturday filing dates in this
18 fashion:
19

20 Compliance Due	January 25, 2007
21 Report of Actions Taken and any	February 9, 2007
22 County Motions on Compliance or Invalidity Due	
23	
24 Petitioner’s Response Due	February 23, 2007
25 County’s Reply Due	March 12, 2007
26	
27 Compliance Hearing	March 20, 2007

28
29 Pursuant to RCW 36.70A.300 this is a final order of the Board.

30 **Reconsideration.** Pursuant to WAC 242-02-832, you have ten (10) days from the date of
31 mailing of this Order to file a motion for reconsideration. The original and three copies
32 of a motion for reconsideration, together with any argument in support thereof, should

1 be filed with the Board by mailing, faxing or otherwise delivering the original and three
2 copies of the motion for reconsideration directly to the Board, with a copy served on all
3 other parties of record. Filing means actual receipt of the document at the Board office.
4 RCW 34.05.010(6), WAC 242-02-240, WAC 242-020-330. The filing of a motion for
reconsideration is not a prerequisite for filing a petition for judicial review.

5 Judicial Review. Any party aggrieved by a final decision of the Board may appeal the
6 decision to superior court as provided by RCW 36.70A.300(5). Proceedings for judicial
7 review may be instituted by filing a petition in superior court according to the
8 procedures specified in chapter 34.05 RCW, Part V, Judicial Review and Civil
9 Enforcement. The petition for judicial review of this Order shall be filed with the
10 appropriate court and served on the Board, the Office of the Attorney General, and all
11 parties within thirty days after service of the final order, as provided in RCW 34.05.542.
12 Service on the Board may be accomplished in person or by mail, but service on the
13 Board means actual receipt of the document at the Board office within thirty days after
service of the final order. A petition for judicial review may not be served on the Board
by fax or by electronic mail.

14 Service. This Order was served on you the day it was deposited in the United States
15 mail. RCW 34.05.010(19).

16 Done this 8th day of March 2006.
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18

19 _____
Gayle Rothrock, Board Member

20 _____
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22 Holly Gadbow, Board Member

23 _____
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25 Margery Hite, Board Member
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