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DRAFT

As you know, on October 9, my team and I began an assessment at the behest of the U.S. Institute for Environmental Conflict Resolution. This is a preliminary report on my work. I have spoken by phone or in person with nearly 100 people, exchanged e-mails, and read. I continue to meet and talk with people and work through my emails. This assessment phase will continue through to November 13<sup>th</sup>.

[I met with groups](#) of people based on who called in response to the two newspaper articles: everyone who has asked for such a meeting has had or will have one. **The public meeting** on November 13<sup>th</sup> at Empire High School at 6:00 p.m. provides another opportunity for you to meet with me—and hear from one another—on the subject of the possible working group (actually, *groups* in the plural, as you will see). At that meeting, we can go over the proposals below and make changes as appropriate.

Below, please find an interim report: my concerns about whether this is a good idea at all, my thoughts on the design, and my attempt to explain my reasoning without writing a treatise. Many, many, of the insights and design ideas come from you. Thank you for sharing your wisdom and concerns, your passion for good governance, your love of the land, and your support for your communities.

I address this note primarily to the people who want the mine to go away. Because I am a neutral, expect more on the other points of view in a subsequent note.

This proposal is not a *dispute resolution* in the sense that we are going to resolve the mining issue. It is a collaboration to enhance the analysis of the mine proposal and its transparency. This is a new—perhaps exciting, perhaps scary—approach that neither the Institute nor I have ever done before.

Most importantly: the **purpose of the working group** would be to contribute to the quality and openness of the Forest Service’s analysis of the Rosemont Mine Proposal. The context is the National Environmental Policy Act (NEPA). The participants would be diverse stakeholders formally or informally representing communities of interest and communities of place, as well as citizens-at-large. This would not be an advocacy group.

One thing clear from the interviews is that the stakeholders have differing requirements or desires for participating in this process. Some of them are interested in policy issues, but not the hands-on work of sorting through comments. Some can give a great deal of time; others cannot. Some are interested in all aspects of the mine; others want to focus on one or two themes, such as water quality or transportation. Therefore, I propose *groups*, not a single group, in order to accommodate the varying interests.

As a draft proposal, I suggest the types of groups would be:

- The “**working group**” (a name that seems to have stuck already—you’ll change it if you want to) would be the consistent set of people who would continue to meet monthly throughout the duration of this process, and to whom other groups would report. They would:
  - ◆ Address policy;

- ♦ Set tasks for subgroups (exception is the comment analysis workgroup, which I am proposing to get going while the Working Group is still getting organized);
- ♦ Synthesize information from subgroups;
- ♦ Make recommendations to the Forest Service

The Working Group would put whatever investment they wished into creating agreement among whatever proportion of people they chose. Presumably a meeting of the minds has more influence than a set of disparate opinions. However, in this model, the discussion around these issues may be as important in influencing the Forest Service's work than any formal agreement. As well, a single person's ability to shine light on an otherwise missing element of the NEPA analysis could have tremendous power.

If the Working Group wished to submit written recommendations they could do so, using majority and minority reports as necessary.

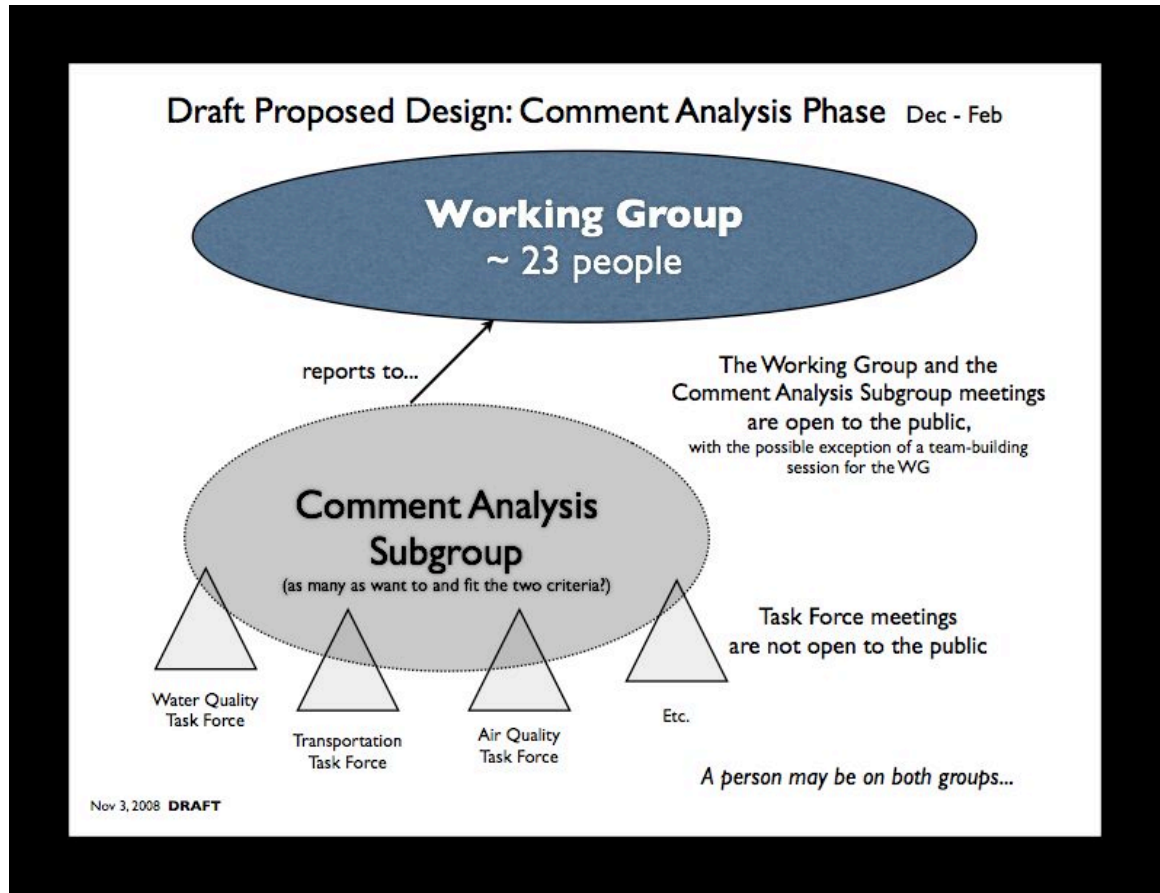
The time commitment for a Working Group member is estimated at 4 hours per month of meeting time plus preparation and communication with communities/constituencies.

Criteria for Working Group members are presented on [page 10](#). As well, there I suggest a list of types of community representation, totaling 23 possible members.

Working Group members can choose their alternates in whatever way they wish, so long as the alternates are fully prepared.

Unless the Working Group wants to do a team-building retreat, these meetings would be open to the public.

A DRAFT meeting schedule through January is presented on the last page. After January, meetings will—I hope—be held on the **third Saturday of the month.**



**Figure 1: Concept of Comment Analysis Phase**

- The **comment analysis group** has the job of sifting through the comments submitted to the Forest Service during the scoping phase. Yes, this is a big job: a minimum of thirty hours from December through February. You *will* have high-tech assistance.<sup>1</sup> I don't believe you would find it necessary to go through all of the comments based on our design.

Why do this at all? I notice, as a generalization, that those who are almost exclusively concerned with the actual mine find this step annoying and even suspicious. They tend to see the "voice" issue (giving voice to the public) as a means to getting at the mine, not a thing in itself. And if they want this process at all, they want to jump straight to the issues statements. This makes a lot of

<sup>1</sup> Here's the short version: First, you validate the obvious big bins into which you might want to sort comments. Philip designs software that homes in on the keywords that fit with the bins. He presorts the comments into the bins. You validate that work. Then, you map a subset of the presorted comments and in the process refine the keywords. Philip can then identify comments that say essentially the same thing as what you already mapped (which you validate to your heart's content). Finally, Philip identifies the "orphans" that don't seem to be duplicates and you focus on those. You, the public, set the priorities for the software. Philip, the amazing software writer and decision scientist, is your willing slave.

sense; for people in this camp, being on the Working Group would be desirable but being on the Comment Analysis Group would not.

There are those for whom “voice” is almost as important as the mine itself. In general, they tend to be more passionate about comment analysis. Part of their focus is on honoring what was said. Many of them see a strength and integrity in building the rest of the NEPA process out of this base of raw comments from the public. This makes sense as well. People who have this point of view can be in the Comment Analysis Group (and, yes, a person can be in both groups).

I need to get a sense of the numbers of people who want to participate in the comment analysis. My hunch is that the criteria for membership will be (1) being able to put in the time between now and February—no skipping meetings, no alternates, because that would send us into chaos—and (2) agreeing to give voice to all the comments, not just the ones an analyst agrees with. Unless I hear that hundreds of people want to do this, anyone who meets those two criteria is in.

These Working Group meetings will be open to the public with the possible exception of a teambuilding meeting if I can ever talk you into one.

- The **Comment Analysis Subgroups** are really just clumps within the Comment Analysis Group. After everyone gets trained in the approach and gets a chance to tweak my colleague Philip’s software, we’ll ask you to divvy yourselves into the transportation subgroup, the water quality subgroup, etc. With Philip’s help, each group will get comments (more or less) from their area—so if you are interested in water quality you don’t have to wade through transportation, air quality etc. (That’s Philip Murphy: [www.InfoHarvest.com](http://www.InfoHarvest.com))

We’re planning on having some web-based conference calls about our proposed sorting and comment-mapping technique prior to starting, and you will be invited to those (though attending a webinar is not a prerequisite for being on the Comment Analysis Group). The short version for now: our design is to have you participate in the development of Philip’s rules for sorting and you check his work and tell him how to improve it. And secondly, you design a “map” of what those sorted comments are telling you. (It is easier to show than to describe in writing.)

These subgroups will be doing homework (that’s part of the estimated thirty hours), and that homework could be done as a group in someone’s home. So, no... these meetings will not be open to the public. All the meetings, including these, will be facilitated.

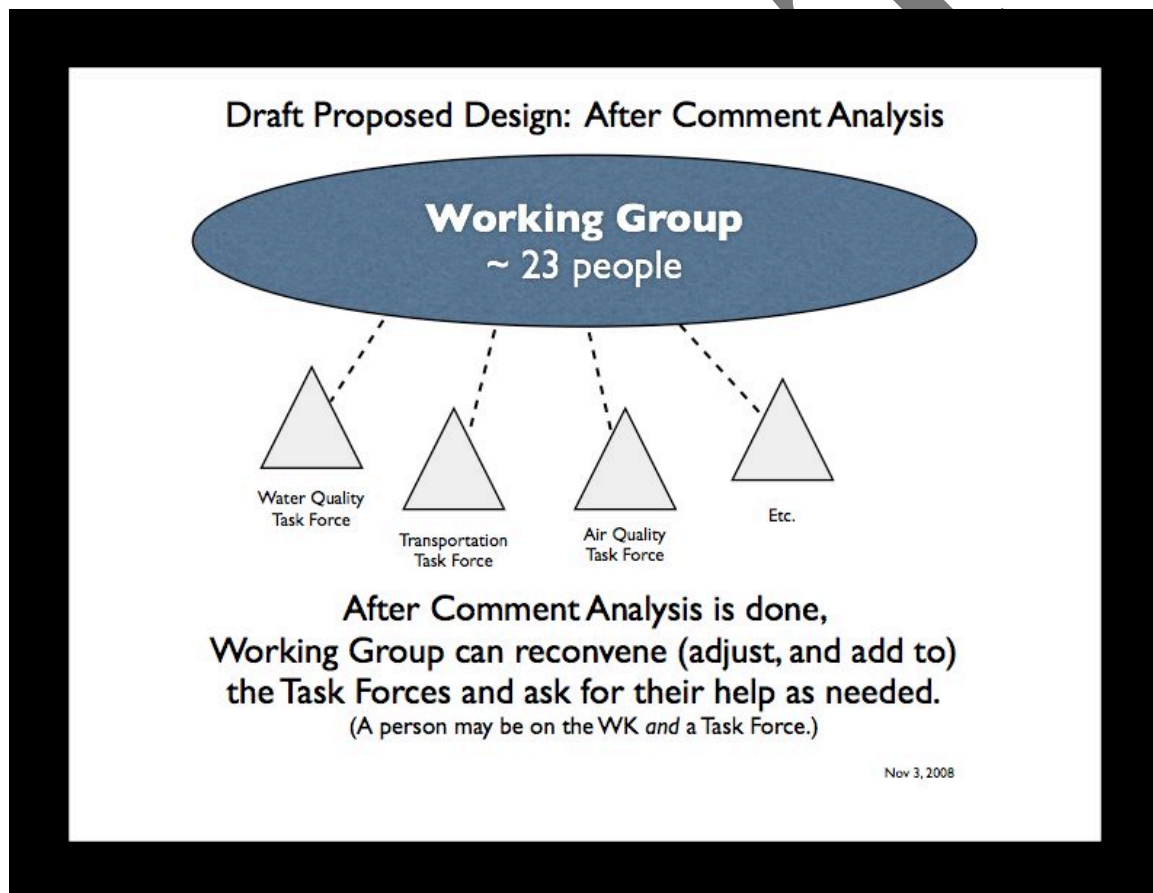
The **meeting locations** will rotate to be as fair as possible to all participants. Meetings will typically be on Saturdays, very occasionally on Sundays. I am learning that driving on 83 at night doesn’t work for many of you—sorry about doing that to you on the 13<sup>th</sup>. I will try to avoid evening meetings in the future.

Having the Working Group and the Comment Analysis Group working concurrently through February or so will be a strain in some ways—a baptism of sorts. I’ve included a

[near-term timeline](#) for the first couple of meetings as a way of helping you to see what that might mean in practice.

After February, things move into a saner phase. The Comment Analysis Group and its subparts dissolve. The focus is on the Working Group.

At any point—issues statements and effects analysis come to mind—the Working Group could ask the water quality folks who worked on the comment subgroup (with some additions) to come together, do some focused work, and report back. So, for instance, as the Working Group develops the Issues Statements for Water Quality, it might make sense to confer with the folks who now have an intimate knowledge of the underlying comments. Or, during the effects analysis, an ad hoc group (perhaps the seeds of which comes from the old comment analysis folks) forms to work on particular questions and reports back to the Working Group.



**Figure 2: Concept of Working Group after Comment Analysis**

You have an amazing depth of expertise in your community, but just because someone is an eminent geologist does not mean that he or she wants to commit to participation in the Working Group. My goal here is to find a way to pull all the resources of the community

in as appropriate and comfortable a way as possible for many of the different levels of interest, personality types, and degrees of tolerance for group process.

The first four steps are, in parallel with NEPA:

- Comment analysis (for those who wish it... )
- Issues Statements (the summaries of the issues, a.k.a. the scope of the effects analysis)
- Alternatives Development
- Effects Analysis

Then the Forest Service will publish a Draft Environmental Impacts statement including its preferred alternative, the public comments again, there is another comment analysis step (this one slightly different), the Forest Service addresses substantive concerns, they publish a final Environmental Impact Statement, there are (almost certainly) appeals, and then there is (almost certainly) litigation. That is one trajectory.

The other trajectory is legislative change. I take as a given that these efforts will continue regardless of whether there is a Working Group or not. Since the Working Group is focused solely on the NEPA process, that makes perfect sense. I want to say now, for the record, that there is nothing wrong with people who choose litigation or legislative change. To wage concurrent efforts—working group and legislative change, for instance—is a reasonable strategy. To opt out of the working group is a perfectly respectable position. Such a choice does not make a person (or group) “bad” or uncollaborative. To honor your perspective, here are the reasons that a sensible person who wants to stop the mine might opt out.

- It is too much work, and/or you don't exactly enjoy group work and/or you are already overwhelmed with the mine and other civic activities you are involved in.
- This exercise of separating process from outcome is just too cerebral—in your heart and gut they are one. (This worries me, actually, and if I recommend against the idea, this will be one of the reasons why.) This issue really comes into focus when you ask yourself “if I give to this, and we succeed in helping the Forest Service make a better analysis, and the Forest Service still decides in favor of the mine, how will I feel then?”
- This kind of separation of process and outcome has never been done before. How do we know that it can really work?
- Why help the Forest Service do a better job? A weak process creates litigation opportunities, and you want to win the litigation. (See different perspective below.)
- There are no guarantees about how much the Forest Service will listen to the Working Group's recommendations. (See different perspective below.)
- The fear that Rosemont Copper will say, “you participated in the process, how can you sue?” or “you *didn't* participate in the process, how can you sue?” (See different perspective below) This concern speaks to the question of whether this process should go forward at all.

OK, now the positives I have heard for participating:

- The Working Group will influence the depth of the analysis, in particular *what* the Forest Service studies and *how* they study it.
- The Working Group will create an unparalleled openness in the NEPA process.
- Some people interested in litigation strategies believe that what you lose in procedural grounds you gain in substantive grounds. By “substantive grounds” I mean providing the Forest Service with more robust information on which to base its decision.
- You will learn a great deal by participating.
- The Working Group could gain national attention in a way that a more dispersed dialog might not.
- This process would have a high potential to spur national change in NEPA and mining laws.

This summary is my best attempt to honor the various perspectives I have heard, without burying you with nuance. As you can see, there are no clear answers. A lot depends on how much influence you think the group might have. You will have to decide:

- This process is ok, and I want to be part of it. OR
- This process is ok, but I don't want to be part of it. OR
- This process is not ok; it will harm me in some way whether or not I participate.

Ok, now, if I haven't lost you... here are the things on my mind when I consider whether this process should go forward at all. Some of them are reflective of the points above, some of them are unique:

- Is it humane or realistic to ask you to focus on process when you are so deeply affected by the outcome?
- Would I wrong-foot people who have a perfectly legitimate desire to take a different approach, such as legislation or litigation?
- Can you accept that the Institute and I are not creating an advocacy group—an anti-mine group—but will *only* help you make a better process?
- Many of the participants will have an understandable interest in more, more, more analysis; the group will have little “when does it stop?” counterbalance. Some participants could have a desire to increase the cost or extend the time as an end in itself *or* they could be perceived as such. This is going to be tough to manage.

The one thing I hope for most out of the November 13<sup>th</sup> meeting is help in sorting through these issues.

The question of **expertise** has come up. Many of you have demanded that this process include hiring experts to work separately from the Forest Service and its consultant. I do not know whether this is possible. It seems to me to fit better into an activist model than into a “collaborate about the process” model. I envision the Working Group influencing the choice of experts used by the Forest Service and its consultant, SWCA. I think that



additional leverage points include the methodologies used, understanding where the data comes from, and asking for specificity about precision and variability in the data. The idea of hiring working group experts is not off the table, but I would be lying to you if I said I thought there was a high likelihood of this happening. (I should add that I haven't tested the waters on this yet, and I shall.)

A related question: how will the Forest Service and their consultant integrate with your work? The answer is "closely." Through this process, you would have much greater access to the entirety of the work—yours (of course) and theirs. If this is to succeed, their work will be appreciably influenced by your dialog and recommendations.

And what if you do not have a single recommendation, but rather majority and minority approaches? This will be something the Forest Service will have to sift through. The more united your recommendations, the more powerful they will be. A single voice with a cogent point could, would, should also have influence.

**Confidentiality** is an important element of collaboration, just as it is in journalism. I am already at cross-purposes with Tim Vanderpool at the Tucson Weekly, as well as some of the stakeholders, because I would not reveal whom I have met with. I asked the hosts of the various meetings I have had for permission to share that information. It's presented below.

I need to have the freedom to invoke the **Administrative Dispute Resolution Act**, which allows me to meet with stakeholders in confidentiality. It allows the subgroups I have described to meet privately.

Some people have asked about the **Federal Advisory Committee Act**. This proposed process would be exempt from FACA requirements because neither the Working Group nor the other groups would be under the control and management of the Forest Service.

What is the **role of the Forest Service**? I have heard from you that you want the Forest Service at the meetings as a resource, but not as a member. That works. Reta Laford would be the point person, bringing in other Forest Service staff as appropriate.

What is the **role of Congresswoman Giffords' office**? I believe that they intend to attend most or all Working Group meetings, and I am immensely thankful. I do not yet know the role of Congressman Grijalva's office.

I started with a bias in favor of **including the Rosemont Mining Company** in the working group and have, over time, become certain that they need to be. This is paradoxical, because most of you do not want that at all, and my method is to build a design from what I hear from you. How could this be?

To me, the inclusion of the mining company makes sense if this is a collaborative (not a consensus, not a majority rule, but a collaborative) approach to process. Including the mine does *not* make sense if you are trying to build an even stronger advocacy group.

The Institute and I cannot support an advocacy group. Therefore, inclusion of the mine proponent gives you fair notice of what this is really about, and lets you respond accordingly. Don't forget, too, that everyone can sue on this process if they feel it is unfair. This is definitely a "what's sauce for the goose is sauce for the gander" process. (If you want to know the possible distribution of pro- and anti-mine folks, [skip here](#).)

Assuming this goes forward, **how will I choose the Working Group members?** For the Working Group positions taken by a formal group, I'll leave it to that group to choose their representative. For the other positions—the citizens-at-large, or informal representatives of unincorporated areas, or informal representatives of cities that do not wish to be involved for one reason or another—I'll make the choice in consultation with the associated communities.

No doubt about it, this will be hard.

**Criteria for Working Group membership:**

- An extraordinary level of commitment
- Good people skills
- If you are a representative of a community (formally or informally), you have the skill and commitment to be the liaison between your community and the Working Group;
- If you are on the Council because of your unique expertise, you enjoy a great deal of respect among the stakeholders;
- If you are on the Council because of your unique perspective, it is a perspective that is relevant but otherwise missing and/or you help to balance the table.

I am not looking to have an even balance between pro- and anti-mining people, but I do see a special need to bring in Councilors who are neutral or pro-mining—not just blindly so but with a reasoned basis that will add resonance to the Council's discussion.

**Preliminary Ideas on Positions for the Working Group** (keep in mind that this is only my initial thinking and is not an indication of whether they will *choose* to participate):

Tohono O'odham Nation  
Geographic Communities  
Vail  
Patagonia  
Sonora  
Green Valley  
Corona de Tucson  
Hilton Ranch Road  
Sahuarita  
Rosemont Copper  
Arizona Department of Mines and Minerals  
AMIGOS (trade organization for those who provide services to the mining industry)  
Union (Steelworkers?)

Society of Mineral Engineers  
FICO  
Cultural/Environmental Organizations  
    environmental  
    cultural  
    recreational  
    Empire Mountain Action Alliance  
    Save the Scenic Santa Ritas  
    other  
Pima County  
Santa Cruz County  
Sahuarita Well Owners  
Citizen at large  
Citizen at large  
Citizen at large

Last and probably least, I want to talk about my own **workload**. Connecting with you is a big job. I am making my way through and hoping to do it with as few stumbles and delays as possible. The alternative would have been to use a team for the assessment, but the disadvantage is that it is so difficult to convey the richness of the information... I think I just have to be there. On the other hand, as we move into the next phases I will have a lot more support—and this is fantastic news—from a cadre of volunteers from the Institute. After I gave a report to the Institute about the assessment, four Institute staff members came up to me and asked, “can we work with you on this?” I was so happy. I don’t know that we can draw on this volunteer group throughout the process, but they will certainly help at least through the first, most labor-intensive phase, from November 13<sup>th</sup> and through the comment analysis.

They’ll help. You’ll help (as you already have, so generously). I hope this information provides you with a fair opportunity to mull over the ideas and to discuss and improve on them on November 13<sup>th</sup>.

## Appendix A

**Near-term-timeline** for upcoming meetings (very, very coarse):

Nov 3	I post these notes
Nov 3- 15	You send comments if you wish
Nov 13	Public meeting to talk about the concepts presented here
Nov 14-Dec 3	Three different sessions of the same one-hour “webinar” explaining how we will support the comment analysis process
Nov 19	Post revision to the concepts (including conclusion that this is not a go, if applicable)
Nov 22	Deadline for letting me know whether you want to be on one of the groups

Dec 6 Working Group meeting (4 hrs), then lunch, then Comment Analysis meeting (4 hours)  
Dec 7 Comment Analysis Meeting (4 hours)  
Dec 13-14 Optional comment analysis meeting days

## **Appendix B**

### **Hosts of Groups I have met with:**

Nan Walden, FICO  
Sandy Whitehouse, Santa Rita Foothills Community Association  
Elizabeth Webb, Vail  
Kim Beck, Save the Scenic Santa Ritas  
Jamie Sturgess, Rosemont Copper  
Jimmy Pepper, Mountain Empire Action Alliance  
Nancy McCoy, Patagonia  
Coronado National Forest  
Pima County  
Santa Rita Abbey  
Ron Barber, Congresswoman Giffords' Office  
Joyce Finkelstein, Green Valley Community Coordinating Council

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