

Mr. Roy M. Arrigo
6724 Bellaire Drive
New Orleans, LA 70124

My name is Roy Arrigo, and my home backs up to the 17th Street Canal.

On September 16 of this year, The Times Picayune reported that:

Flood Protection Authority attorneys argued property owners on the canal knew or should have known when they bought their homes that swaths of their land adjacent to the levee toe had to remain free of obstructions that could prevent floodwall and levee inspections.

Today, I would like to address this one inaccurate and disingenious statement that the property owners should or even could have known of this alleged servitude.

I have attached the survey from when I purchased my property. Is there anything on it that would indicate any kind of servitude? Is this the survey that those flood protection attorneys showed you or did they show you a different one?

I have also attached a statement made by Linda Labure, the chief of the Corps' real estate division. She explains why these servitude claims wouldn't show on a survey. She acknowledges that this claimed servitude is not registered with the parish. The parish doesn't know, but the homeowners should?

Link to a recording of Linda Labure's comments:
<http://www.youtube.com/watch?v=YHxPwM62pLA>

Should we have known from observation or experience? When you walk in the back of these properties yes of course there's a levee back there, but there were fences too. This board and its advisors say this alleged servitude was never enforced, on this one point we can agree, because never before have the homeowners along the canal been denied the right to fence in their property on their property lines...that is until this board voted to take away that right for the first time in May of '08. The servitude was never enforced because it never existed, not until a plan was put together to create it in 2007.

From 2005 to June of '07 the Corps, including their real estate department was publicly stating that it was going to need to purchase this land, if the homeowners should have known why didn't the Corps? Please see the attached 'need-to-buy' news article dated 12/05. When the Corps presented this need-to-buy to the levee board, the commissioners didn't claim any servitude; they correctly speculated that the property owners would probably understand if portions of their property needed to be purchased from them in the interest of better flood protection. It's all in the attached levee board minutes. If the homeowners should have known otherwise, why didn't the levee commissioners?

City government didn't know either; I have also attached a page from then City Councilman Jay Batt's website citing the Corps' need to purchase this land.

Why didn't the levee board know in June of 2007? That's when Mr. Bob Turner, on behalf of the levee board, asked the attorney general for an opinion if they could claim servitude where none had been claimed before. It's also attached. If it should have been known otherwise by the homeowners up to that date, why did Mr. Turner have to ask, shouldn't he have known otherwise too?

The real answer is that this new toe plus 6 concept didn't even exist until government lawyers concocted it, or in their own words "unearthed" this old law. Again please see the attached news article. The article also explains that neither Corps lawyers nor state lawyers, wanted to own up to who made the miraculous find that suddenly told them that they no longer needed to buy the land as they had previously claimed they needed to do. Shortly there after the Corps and levee board's mantra as well as the headlines went from 'needing to purchase this land' to 'we found an old law'. See the attached news article. Yet there are those who advise this board that the homeowners should have known all along.

The Corps own engineers, their real estate people, the levee board and it's commissioners, city and parish government, and the local media all knew that this land needed to be purchased from the property owners. Yet your attorneys say that all along the homeowners should have known otherwise. This makes no sense. Unlike those who just throw out that homeowners knew or should have known with nothing to back it up, I would like to point out that every fact that I have presented here is backed by documents that I have attached. Thank You

Attachments include:

1. Survey from when I purchased my property along the 17th St Canal
2. Text of a statement from Linda LaBure-Corps Real Estate Division
3. News paper article about Corps needing to buy this land (only referenced pages)
4. Page from City Councilperson Jay Batt's website reporting the need to purchase.
5. Minutes from OLD board meeting where Corps acknowledges needing to purchase this land and levee commissioners accept that. (Only referenced and related pages from those minutes)
6. Attorney general opinion request from Bob Turner (only cover and last pages showing dates).
7. 'They unearthed a new law' news paper article.

I will gladly provide any of the above shortened documents in their entirety. Please make request to royarrigo@hotmail.com

COUNTRY CLUB ESTATES

10029580

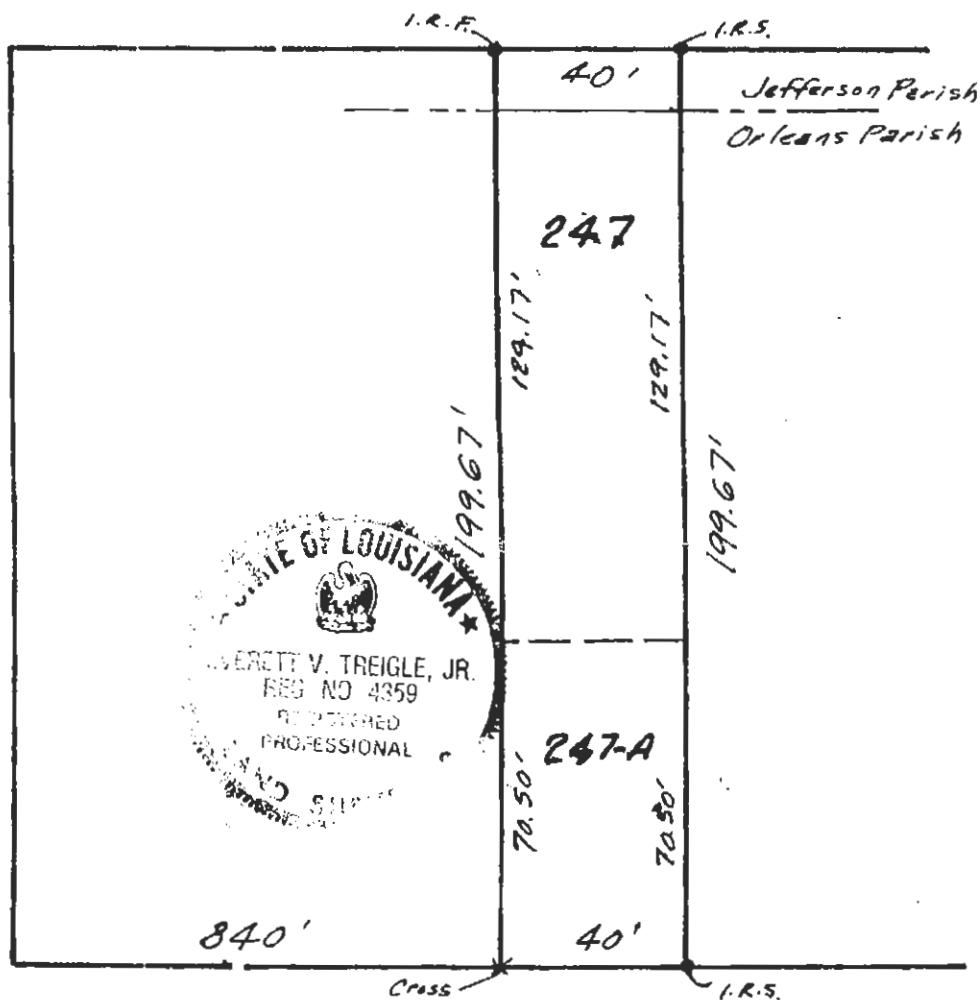
7TH DISTRICT & JEFFERSON PARISH



17TH. ST. CANAL SIDE

FILLMORE AVE.

N.O. HAMMOND HWY. SIDE



BELLAIRE DR.

THE SERVITUDES SHOWN ON THIS PLAT ARE LIMITED TO THOSE FURNISHED TO US. THERE IS NO REPRESENTATION THAT ALL APPLICABLE SERVITUDES ARE SHOWN HEREON. THE SURVEYOR HAS MADE NO TITLE SEARCH OR PUBLIC RECORD SEARCH IN COMPILING DATA FOR THIS SURVEY.

THE FEDERAL INSURANCE ADMINISTRATION FLOOD HAZARD BOUNDARY MAP INDICATES THAT THE ABOVE DESCRIBED PROPERTY IS LOCATED IN FIA ZONE

Lot Angles are 90° per Sub. Plan.

Date: June 12, 2000

Scale: 1" = 40'

This plat represents an actual ground survey made by me or under my direct supervision and control and meets the requirements for the Minimum Standards for Property Boundary Surveys as found in Louisiana Administrative Code TITLE 46:LXI, Chapter 25 for a Class "C" survey.

Made at the request of Roy M. Arrigo & Metro Title Group, L.L.C.

Gilbert, Kelly & Couturie, Inc., Surveying & Engineering
2121 N. Causeway Blvd., Metairie LA 70001 (504) 836-2121

Linda LaBure, Chief of Real Estate for the Corps Of Engineers acknowledges that they know that their claims are not recorded with the parish.

From public meeting at Saint Dominic's on April 11, 2007

When asked by a homeowner at 5328 Bellaire Drive why no R.O.W. showed on any of his surveys dating back to 1955 when he purchased his property:

LaBure: We noticed both cases, we have seen some deeds where a a surveyor may have acknowledged the presence of the levee----there and some that don't. You have to recognize again this levee was put there and the levee maintained it 's right to, by recorded right with the city or the levee board or the doctrine of unopposed use. So you may not have that on that survey. I, I don't want to advise you what you can, you know, to do with your your particular survey but that's a typical situation where you might see something ahh that's on the survey or not. You typically not going to see things that might have come into being as a virtue of a statutory right or regulatory right. So that would be why wouldn't see that on your ahh survey.

Home Owner: So the survey was useless?

LaBure: Ah, I don't know that it's useless it doesn't acknowledge, it doesn't acknowledge what can be done the um the state law Ok cuz there are recorded rights and there are statutory rights and regulatory rights.

A recording of this comment can be viewed at:

<http://www.youtube.com/watch?v=YHxPwM62pLA>



Times-Picayune Updates

Tuesday, December 06, 2005

Corps: Land needed to rebuild levees

By Mark Schleifstein
and Frank Donze
Staff writers ù

The Army Corps of Engineers will need to buy at least 15 feet, and in some areas, as much as 150 feet of property along some stretches of the 17th Street and London Avenue canals as part of its effort to rebuild stronger levee walls in places that failed during Hurricane Katrina, a corps official said Tuesday.

In the first public indication that levee reconstruction will require a buyout of private property near the breaches, Fred Young, corps project manager for the levee reconstruction program, told an Orleans Levee Board committee that the additional space may be necessary for several alternatives being considered for adding protection to the levee wall system.

"We're only going to take what we require, and then our real estate people in our office will have to take care of that," Young told reporters after addressing the board.

Young also told the board's planning, engineering and construction committee that the corps is designing floodgates to be possibly installed at the ends of both canals that could be closed to block hurricane storm surge, but would normally remain open to let pumped rainwater out of the city. He said a decision on whether to install the gates has not yet been made.

Young said the foremost alternative to reinforce the canal's levees is replacing the present I-wall system — a thin, concrete wall atop sheet pilings — along both canals with a stronger wall that resembles an inverted T.

The T-wall design will be used in permanent repairs of sections of the 17th Street and London Avenue levee walls that were breached during Katrina, Young said, and could be used in replacing other sections of those and other walls in New Orleans and other area parishes.

The design, which includes a wider levee and the addition of a series of long, H-shaped metal or concrete pilings to support sheet piling running under the levee. The wider, concrete base of the wall would help reduce erosion of the levee if water were to pour over the wall.

The corps also is considering simply widening the earthen levee beneath the I wall design for parts of walls not breached, which would use the additional soil to block water from the canal that might seep beneath the wall's sheet pilings.

It's also considering whether a system of wells might be installed that would capture water seeping beneath the pilings without undermining the walls and allow it to be pumped to another part of the city's drainage system. The wells could occupy what is now residential property along the canals.

The 15-foot area to be taken along the 17th Street and London Avenue levees will allow corps and levee board officials access for inspections and maintenance, and was recommended by several forensic investigative teams looking into why the levee walls failed, Young said.

Wider areas may be necessary for the seepage berms or well designs, he said. Young said the corps was attempting to be as judicious as possible in determining what property may be acquired, and that the agency's real estate staff already has begun research aimed at acquiring the 15-foot border.

Acquiring the property also could reduce the chance that construction of a backyard swimming

New Orleans Council District A

THURSDAY, JANUARY 05, 2006

Decisions due on taking private land for levee upgrades

Homeowners along the canals that breached following the Aug. 29 hurricane may learn this month how much private property the U.S. Army Corps of Engineers intends to take over in order to strengthen local flood protection.

Frederick Young, the corps manager of the levee repair and upgrading projects now under way, told a committee of the Orleans Levee Board today that an evaluation of land needs along the canal floodwalls is in process. He said the repair and restoration of three damaged levees is 40 percent complete and said the corps intends to complete the restoration of the levees to pre-Hurricane Katrina strength by June 1.

Young's comment on the need to acquire private property came in response to a question by homeowner Danielle Miller, who said her Lakewood South home, which was damaged by the flooding, lies adjacent to the 17th Street Canal.

We've gutted our house, but were waiting to find out if you're going to take any of our property before we start renovations, she said.

Young said the corps is looking at the need to acquire more land on either side of the 17th Street, and London Avenue canals in order to provide better access for levee maintenance and Sewerage and Water Board personnel, among others.

Within two to three weeks we're going to know where we have to go, he said.

In an update to the Levee Board committee, Young said the seven contracts under way on repairs to the Inner Harbor Navigation Canal, also known as the Industrial Canal, are 40 percent complete. Most involve T-wall construction to bolster the existing levees, he said.

Initial repairs to the 17th Street and London Avenue canals are complete and the final phase of construction on those canal improvements will begin in the next two weeks, he said.

Young said the corps has not yet made final decisions on protective structures to be built at the lake ends of the 17th Street, Orleans and London Avenue canals. He previously has said that some type of gate will be the likely short-term solution to protecting the canals from storm surges from the lake.

In response to a question by Levee Board member Darrel Saizan on how the corps will handle acquisitions of private property, Young said the corps will seek help from the city.

We will go to the mayor and ask the mayor (for) assistance in obtaining the property, he said.

About Me



Name:
Jay Batt
Location:
New Orleans, LA

[View my complete profile](#)

In The News

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- [City Council Meets - Baton Rouge Advocate](#)
- [What Lies Ahead for Lakeview? - BizNewOrleans](#)
- [Lakeview Article - Mobile Register](#)
- [Batt Urges Suspension of NOPD Residency Rule - BizNewOrleans](#)

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THE BOARD OF COMMISSIONERS
ORLEANS LEVEE DISTRICT

JOINT MEETING OF THE
PLANNING, ENGINEERING AND CONSTRUCTION
AND FINANCE COMMITTEES

HELD ON TUESDAY, DECEMBER 6, 2005

12:00 P.M.

AT

LAKE VISTA COMMUNITY CENTER
6500 SPANISH FORT BOULEVARD, 2ND FLOOR
NEW ORLEANS, LOUISIANA

AGENDA ITEM "A"
PRESENTATION BY USAGE ON TASK FORCE GUARDIAN

ORIGINAL

1 have, so that we can prepare for the
2 future.

3 On all of these canals, we are
4 taking a look at seepage berms,
5 relief wells, stability berms,
6 T-walls. Okay. T-walls mostly for
7 the breach areas.

8 What we are looking at possibly,
9 a multitude of alternatives and some
10 of those alternatives are not going
11 to set well, because some of them
12 cause -- cost property. They are
13 going to take property if we use
14 them, if those are the best
15 alternatives at this point.

16 A seepage berm could be as far as
17 a hundred and fifty feet wide.
18 Stability berms could range from
19 forty feet depth to greater than
20 that, additionally on all of the
21 canals when we are done.

22 It has been recommended by
23 A.S.C.E. and I-PAC, which is our
24 independent testing and forensic
25 people, that we take fifteen feet

1 from the levee toe or the toe of the
2 berm, so that we insure ourselves
3 that we don't have a situation where
4 we have swimming pools, trees,
5 anything else affecting the
6 engineering integrity of our flood
7 protection.

8 So, that is something we are
9 looking at on all of the canals.

10 MS. WILLARD-LEWIS:

11 When do you think you will
12 have those recommendations firmed
13 up?

14 MR. YOUNG:

15 Well, we are firming them up
16 today. That is why I was late,
17 like I said. We have eight people
18 in from outside of town. We have
19 two or three firms that are working
20 on these specific canals, working on
21 them. We have a multitude of
22 alternatives as of today. We are
23 going to price them out. We are
24 going to start looking at how it
25 affects property.

1 We have already taken a look at
2 the real estate that we might take,
3 all right, and I know that is -- you
4 know, "take" is a very nasty word to
5 anybody, but I want to make sure you
6 know that we are looking at all of
7 the alternatives.

8 I have been to the canal. I went
9 to a meeting with St. Dominic's Men's
10 Club the other night and I just
11 happened to be out at the canal and
12 saw a man cleaning his house. I
13 talked to him there and I told him
14 the same thing I am telling you now,
15 there is a possibility that -- and
16 people need to know that there might
17 be land having to be taken in order
18 to fortify the system.

19 That includes, you know, the --
20 even if we have the structures up
21 front, you know, there are areas that
22 have been breached that we might have
23 to, at those breach areas, take
24 property, even if we put the
25 structures up front, temporary

1 recommendations, and we are trying to
2 assess and impact which are the most
3 effective, and then, from there, you
4 know --

5 MR. YOUNG:

6 Not only to build -- but, not
7 only to build, but people who live
8 near the canals have to know what we
9 are going to do, also, so they can
10 get into their houses if we are not
11 going to touch them, okay, right
12 next to the canals and if we are
13 or how much we are going to take
14 out of their yard if we have it,
15 like, if they go to a hundred and
16 ninety-nine feet at most lots on
17 17th Street. If we take forty
18 with a one on four slope at the end,
19 of that, does that affect their
20 property?

21 They need to know that before
22 they go and spend time, money and
23 everything else. So, it is
24 important for us to finish, so they
25 can start.

1 structures up front.

2 MR. _____:

3 Has Katrina changed the nature of
4 the soil permanently?

5 MR. YOUNG:

6 No. The nature of the soil isn't
7 changed permanently. What happens
8 is, it affects the structure that is
9 there. A levee is a structure. An
10 I-wall along the levee section is a
11 structure. A T-wall is a structure.
12 Okay. Some portions of the canal
13 have obviously been affected, okay,
14 and we have to -- we are inspecting
15 all of those and we are trying to
16 determine a remedy for those areas.

17 Other areas don't seem to have a
18 lot of problems and held up well
19 during the storm. Orleans Canal, you
20 won't see me talking about Orleans
21 Canal right now, because Orleans
22 Canal came out of this pretty darn
23 good, no movements of walls that have
24 perceived, yet. Okay.

25 The T-walls on the side in

1 MS. WILLARD-LEWIS:

2 Now, I think you said one of the
3 most important things in addition to
4 levee protection being finished by
5 June of '06 is the fact that people
6 need to know and the fact that you
7 guys are working expeditiously, so
8 that that can be resolved in
9 individual's minds, if indeed we are
10 talking about stability and
11 reliability and integrity of our
12 levee systems, folks who live right
13 up next to the levee systems, I
14 think, understand that, you know,
15 their properties may be involved.

16 They just need to know to what
17 degree, because everyone is
18 talking better, safer and more
19 comprehensive and the citizens
20 definitely want that for our
21 wonderful city. The individuals just
22 need the information to make their
23 decisions.

24 So, you know, I am glad you
25 said that. The people are ahead of

1 you on that and they want a part in
2 moving it forward.

3 MR. YOUNG:

4 That's true.

5 MS. WILLARD-LEWIS:

6 That has been my sense of the
7 community's feeling.

8 MR. MCCROSSEN:

9 Thank you, Mr. Young, and
10 thank the General for us, will
11 you?

12 MR. YOUNG:

13 No problem, the Colonel.

14 MR. MCCROSSEN:

15 Colonel. I thought you said
16 General.

17 MR. YOUNG:

18 No.

19 MR. MCCROSSEN:

20 Tell him --

21 MR. YOUNG:

22 Colonel Wagner and General
23 Crear.

24 MR. MCCROSSEN:

25 Well, thank them both.

September 5, 2006
OPINION NUMBER 06-0168

Robert A. Turner
Executive Director
Lake Borgne Basin Levee District
6136 East St. Bernard Hwy
P.O. Box 216
Violet, LA 70092

46-1 EXPROPRIATION
63 LEVEES, DRAINAGE DISTRICT & FLOOD
CONTROL

La. R. S. 13:5111
La. R. S. 19:1 et seq.
La. R.S. 19:14
La. Const. Art. 1, Sec. 4

Levee District can rely on R.S. 19:14 to establish acquisition of rights of use necessary to construct, operate, maintain, repair and rehabilitate, including the removal of obstructions and encroachments, on the levees it has constructed and maintained for over 30 years.

Dear Mr. Turner:

You have requested an opinion from this Office regarding the application of La. R.S. 19:14 (commonly referred to as the "St Julien doctrine" or the "doctrine of unopposed use") to levees within the Lake Borgne Basin Levee District (hereinafter "levee district"). Specifically, you ask whether the levee district can rely on R.S. 19:14 to establish that it has acquired all rights of use necessary for the ongoing operation, maintenance, repair and rehabilitation of its levees, including the right to remove obstructions and encroachments from its levees. In short, we believe the levee district can rely on R.S. 19:14 to show that it has acquired all rights of use necessary for these activities, as will be discussed below.

Before beginning our legal analysis, we note that the term "**right of way**" is a common law term not found in the Louisiana Civil Code. It is similar to the term "**right of use**", which is used in Louisiana law and jurisprudence and is defined in Civil Code Articles 639 - 645. Civil Code Art. 639 defines a "**right of use**" as a "personal servitude which confers in favor of a person a specified use of an estate less than full enjoyment". Wherever the term "**right of way**" appears in this opinion, it should be assumed that it refers to the personal servitude of "**right of use**" as defined by Louisiana law and jurisprudence.

Expropriation and the History of La. R.S. 19:14

Expropriation, or the taking of private property without the consent of the owner, is permitted by Louisiana Constitution Art. 1, Sec. 4, provided the taking is for a public purpose or use and just compensation is paid to the owner of the property. Title 19 of the La. Revised Statutes,¹ provides specific requirements and procedures an entity must follow to expropriate private property, such as timely providing specific information to owners and filing an expropriation petition in district court. The property owner is

¹ 19:1 et seq., Expropriation

OPINION NO. 06-0168

**46-1 EXPROPRIATION
63 LEVEES, DRAINAGE DISTRICT & FLOOD CONTROL**

La. R. S. 13:5111
La. R. S. 19.1 et seq.
La. R.S. 19:14
La. Const. Art. 1, Sec. 4

Levee District can rely on R.S. 19:14 to establish acquisition of rights of use necessary to construct, operate, maintain, repair and rehabilitate, including the removal of obstructions and encroachments, on the levees it has constructed and maintained for over 30 years

DATE REQUESTED: June 16, 2006

DATE RELEASED: September 5, 2006

REQUESTED BY: Robert A. Turner
Executive Director
Lake Borgne Basin Levee District
6136 East St. Bernard Hwy.
Post Office Box 216
Violet, LA 70092

AUTHOR: Megan K. Terrell
Assistant Attorney General
Civil Division



Everything New Orleans

The Times-Picayune

The following article is part of our archive

London Canal trees on the chopping block Many will be cut for safety reasons

Friday, September 22, 2006

By Sheila Grissett

East Jefferson bureau

The Army Corps of Engineers is taking its tree-removal campaign onto private property for the first time, with about 350 trees along the London Avenue Canal set to be cut next month, the agency announced Thursday. A majority of the trees are on the backyard fringes of 264 properties abutting the levee. Although a few of the offenders are located in the levee proper, most are growing within six feet of the levee toe, which the corps says must be maintained as a safety zone.

Government lawyers recently unearthed a state law that specifies property within six feet of a levee toe is a safety zone that must remain free of trees or woody shrubs that could undermine levee stability if uprooted during a tropical storm or hurricane.

But officials available late Thursday couldn't confirm whether the law was discovered by attorneys for the corps, which builds federal levees, or the state Department of Transportation and Development, which provides engineering services to local levee districts.

In either case, the law is being used to clear a six-foot corridor along all New Orleans outfall canals, starting along London Avenue sometime next month.

Before the cutting begins, notices will be posted on the doors of affected residents' homes, and the corps is working to set up a neighborhood meeting through the Gentilly Improvement Association, said landscape architect Michael Stout, corps project manager for tree removal.

Stout said the government has the legal right to maintain levee integrity and has asked the Orleans Levee Board to grant the corps a right of entry that will allow them to cut the trees.

Corps contractors began cutting several dozen trees this week along the lakefront in New Orleans and at the Orleans Avenue Canal, and now that a six-foot tree-free corridor is being cleared at the three canals, Stout said, a few additional trees may also be cut at Orleans....

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