

**CALIFORNIA COASTAL COMMISSION**

South Coast Area Office  
200 Oceangate, Suite 1000  
Long Beach, CA 90802-4302  
(562) 590-5071

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Filed: 3/16/04  
49th Day: 5/4/04  
180th Day: 9/12/04  
Staff: MV-LB  
Staff Report: 5/20/04  
Hearing Date: 6/9-11/04  
Commission Action:

**STAFF REPORT: CONSENT CALENDAR****APPLICATION NUMBER: 5-03-260****APPLICANTS: CHARLES T. ONDREJCKA****AGENT: Jim Tuchscher****PROJECT LOCATION: 16932 Baruna Lane, Huntington Beach, Orange County****PROJECT DESCRIPTION:** Replace existing wooden deck with a new 41 foot long concrete deck cantilevered 5 feet beyond the existing bulkhead.**LOCAL APPROVALS RECEIVED:** City of Huntington Beach Approval in Concept dated 6/5/03**SUMMARY OF STAFF RECOMMENDATION:**

Staff is recommending **APPROVAL** of the proposed project with one special condition which requires that proper construction methods be employed during construction of the cantilevered deck. Special condition No. 1 describes appropriate construction methods to assure protection of water quality.

**SUBSTANTIVE FILE DOCUMENTS:** City of Huntington Beach certified Local Coastal Program (used as guidance in this area of original permit jurisdiction).

**I. STAFF RECOMMENDATION:**

Staff recommends that the Commission **APPROVE** the permit application with special conditions.

**MOTION:** I move that the Commission approve the coastal development permit applications included on the consent calendar in accordance with the staff recommendations.

Staff recommends a **YES** vote. Passage of this motion will result in approval of all the permits included on the consent calendar. The motion passes only by affirmative vote of a majority of the Commissioners present.

**RESOLUTION:**

**I. APPROVAL WITH CONDITIONS**

The Commission hereby **APPROVES** a coastal development permit for the proposed development and adopts the findings set forth below on grounds that the development as conditioned will be in conformity with the policies of Chapter 3 of the Coastal Act and will not prejudice the ability of the local government having jurisdiction over the area to prepare a Local Coastal Program conforming to the provisions of Chapter 3. Approval of the permit complies with the California Environmental Quality Act because either 1) feasible mitigation measures and/or alternatives have been incorporated to substantially lessen any significant adverse effects of the development on the environment, or 2) there are no further feasible mitigation measures or alternatives that would substantially lessen any significant adverse impacts of the development on the environment.

**II. STANDARD CONDITIONS**

1. Notice of Receipt and Acknowledgment. The permit is not valid and development shall not commence until a copy of the permit, signed by the permittee or authorized agent, acknowledging receipt of the permit and acceptance of the terms and conditions, is returned to the Commission office.
2. Expiration. If development has not commenced, the permit will expire two years from the date this permit is reported to the Commission. Development shall be pursued in a diligent manner and completed in a reasonable period of time. Application for extension of the permit must be made prior to the expiration date.
3. Interpretation. Any questions of intent or interpretation of any condition will be resolved by the Executive Director or the Commission.
4. Assignment. The permit may be assigned to any qualified person, provided assignee files with the Commission an affidavit accepting all terms and conditions of the permit.

5. Terms and Conditions Run with the Land. These terms and conditions shall be perpetual, and it is the intention of the Commission and the permittee to bind all future owners and possessors of the subject property to the terms and conditions.

### **III. SPECIAL CONDITIONS**

#### **1. Construction Responsibilities and Debris Removal**

- (a) No construction materials, equipment, debris, or waste shall be placed or stored where it may be subject to wave, wind, or rain erosion and dispersion.
- (b) Any and all construction material shall be removed from the site within 10 days of completion of construction.
- (c) Machinery or construction materials not essential for project improvements shall not be allowed at any time in the intertidal zone.
- (d) If turbid conditions are generated during construction a silt curtain shall be utilized to control turbidity.
- (e) Floating booms shall be used to contain debris discharged into coastal waters and any debris discharged shall be removed as soon as possible but no later than the end of each day.
- (f) Non-buoyant debris discharged into coastal waters shall be recovered by divers as soon as possible after loss.

### **IV. FINDINGS AND DECLARATIONS:**

The Commission hereby finds and declares:

#### **A. PROJECT LOCATION AND DESCRIPTION**

The applicant proposes to replace an existing wooden deck with a new 41 foot long concrete deck cantilevered 5 feet beyond the existing bulkhead. The subject site is located at 16932 Baruna Lane in Huntington Harbor in the City of Huntington Beach. The nearest public access in the area is at Bolsa Chica State Beach, located approximately ½ mile to the southwest).

The proposed deck would cantilever over the waters of Huntington Harbor. In this area of Huntington Harbor, the water area is owned by the City of Huntington Beach. The applicant retains wharfage rights to the water area. Wharfage rights allow boating related uses such as boat docks. However the wharfage rights do not address patio uses within the area. The City of Huntington Beach, as the owner of the area over which the proposed deck will cantilever, was invited to join as a co-applicant in a letter dated April 27, 2004. To date, no response from the City has been received. The California State Lands Commission has indicated, in a letter received by Coastal Commission staff on March 16, 2004, that the "project does not appear to be inconsistent with Public Trust needs of the area." (See exhibit D)

The applicant has proposed a drainage plan that would direct drainage from the proposed cantilevered deck back onto the lot. No drainage from the cantilevered deck will enter directly into the harbor waters.

The subject site is in an area of the Commission's original permit jurisdiction. However, the City's certified Local Coastal Program may be used as guidance. The proposed development is consistent with the City's certified LCP Implementation Plan, specifically Chapter 210, which provides standards for cantilevered decks in Huntington Harbor.

Most of the existing residences that front along the waters of Huntington Harbor have cantilevered decks. The proposed deck is similar in function to the other cantilevered decks associated with residential development within Huntington Harbor. The proposed development is consistent with past Commission actions in the area. Thus the proposed deck will have no adverse impact on coastal access or resources in the project vicinity, and is consistent with the Chapter 3 policies of the Coastal Act.

#### **B. PUBLIC ACCESS**

The proposed development will not affect the public's ability to gain access to, and/or to use the coast and nearby recreational facilities. Therefore, the development, as conditioned, conforms with Sections 30210 through 30214, Sections 30220 through 30224, and 30252 of the Coastal Act.

#### **C. WATER QUALITY**

The proposed development has a potential for a discharge of polluted runoff from the project site into coastal waters. The development, as proposed and as conditioned, incorporates design features to minimize the effect of construction and post construction activities on the marine environment. These design features include, but are not limited to, the appropriate management of equipment and construction materials, reducing runoff through the use of permeable surfaces, the use of non-invasive drought tolerant vegetation to reduce and treat the runoff discharged from the site, and for the use of post construction best management practices to minimize the project's adverse impact on coastal waters. Therefore, the Commission finds that the proposed development, as conditioned, conforms with Sections 30230 and 30231 of the Coastal Act regarding the protection of water quality to promote the biological productivity of coastal waters and to protect human health.

#### **D. LOCAL COASTAL PROGRAM**

Coastal Act section 30604(a) states that, prior to certification of a local coastal program ("LCP"), a coastal development permit can only be issued upon a finding that the proposed development is in conformity with Chapter 3 of the Act and that the permitted development will not prejudice the ability of the local government to prepare an LCP that is in conformity

with Chapter 3. An LCP for the City of Huntington Beach was effectively certified in March 1985. However, the proposed development is occurring within an area of the Commission's original permit jurisdiction, due to the project location seaward of the mean high tide line. Consequently, the standard of review is the Coastal Act and the City's LCP is used only as guidance. As conditioned, the proposed development is consistent with Chapter 3 of the Coastal Act and with the certified LCP for the area.

**E. CALIFORNIA ENVIRONMENTAL QUALITY ACT**

As conditioned, there are no feasible alternatives or additional feasible mitigation measures available that would substantially lessen any significant adverse effect that the activity may have on the environment. Therefore, the Commission finds that the proposed project, as conditioned to mitigate the identified impacts, is the least environmentally damaging feasible alternative and can be found consistent with the requirements of the Coastal Act to conform to CEQA.



Subject Site

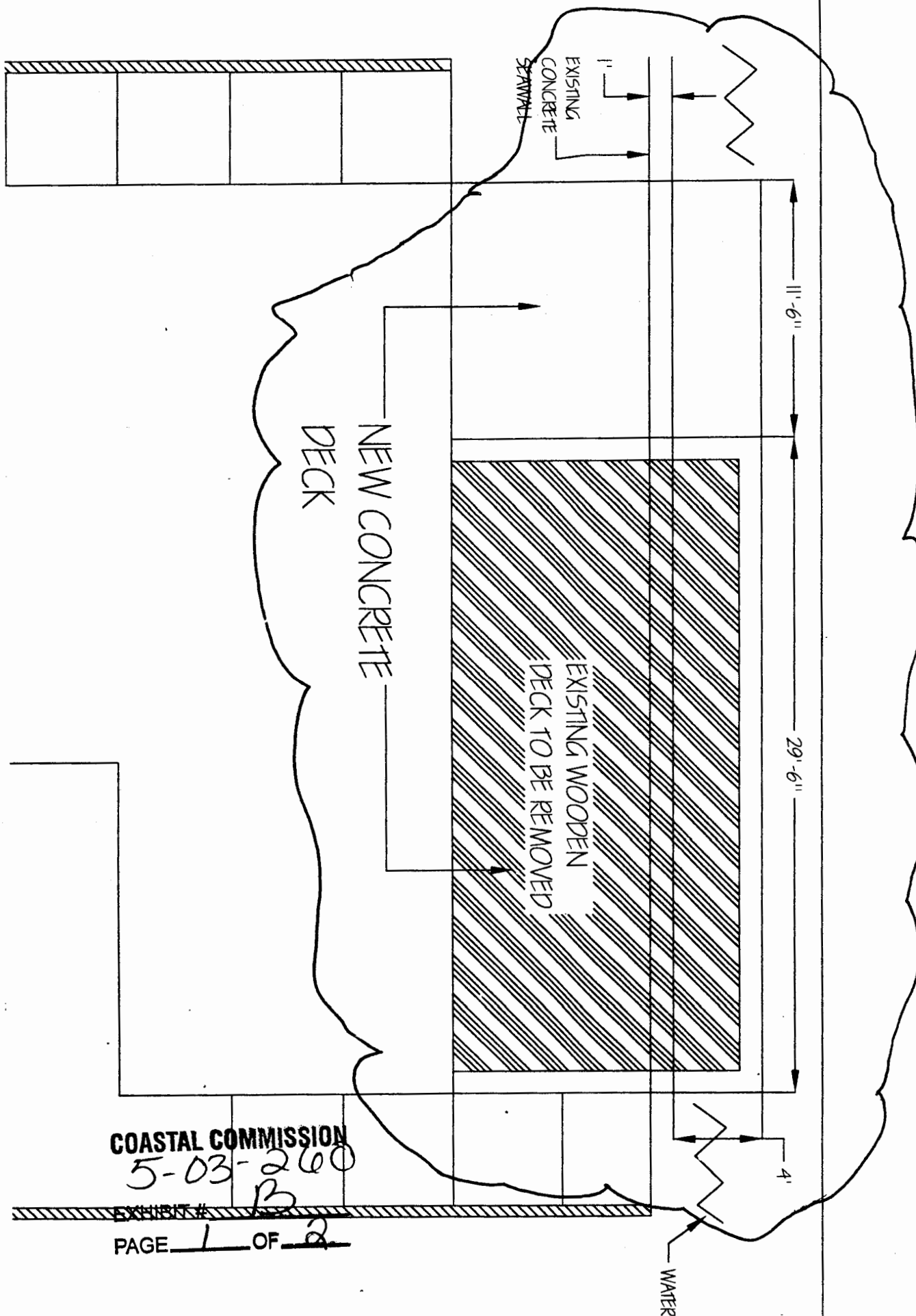
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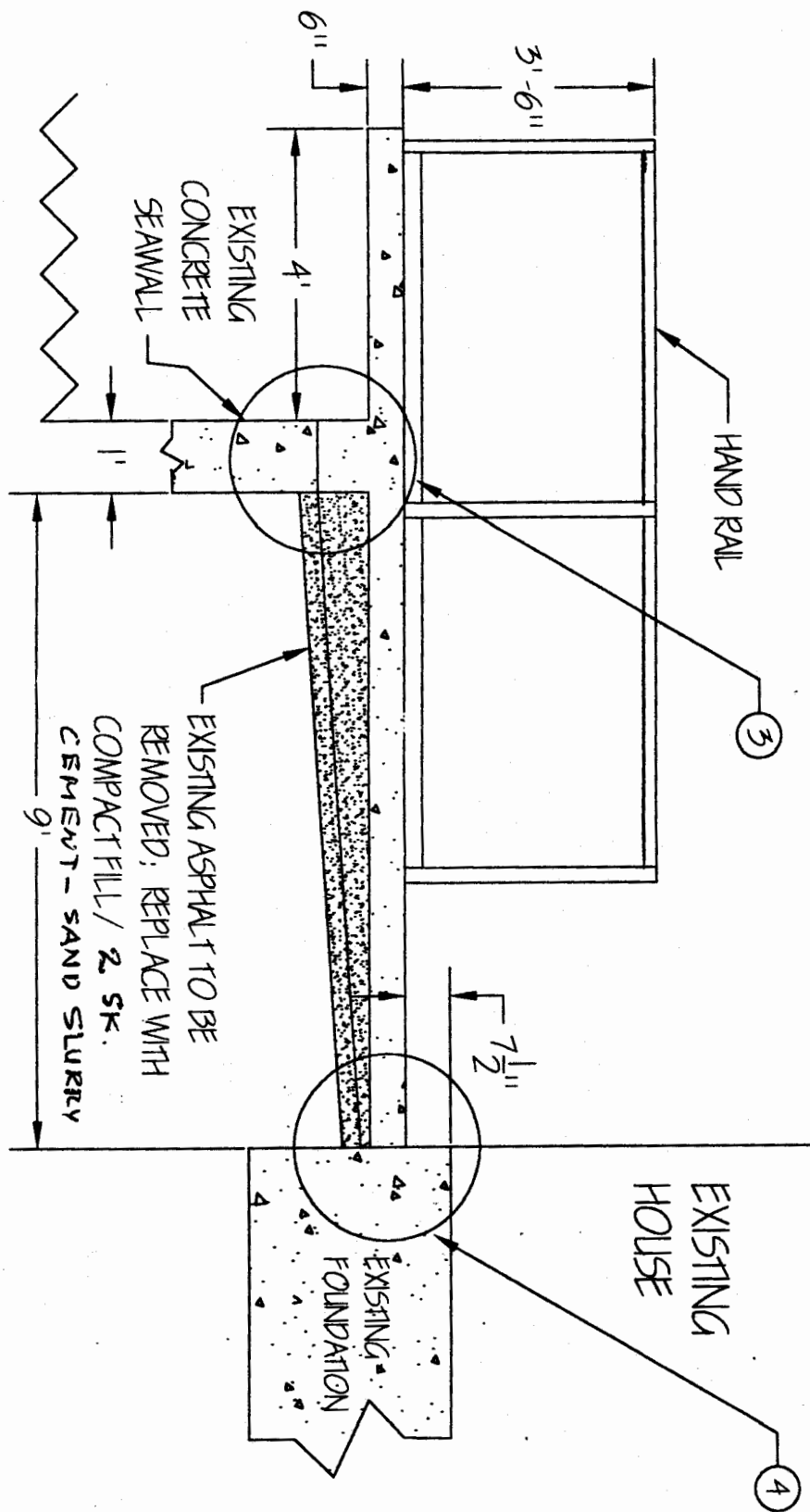
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**CALIFORNIA STATE LANDS COMMISSION**  
100 Howe Avenue, Suite 100-South  
Sacramento, CA 95825-8202



**PAUL D. THAYER, Executive Officer**  
(916) 574-1800 FAX (916) 574-1810  
California Relay Service From TDD Phone 1-800-735-2922  
from Voice Phone 1-800-735-2929

Contact Phone: (916) 574-1879  
Contact FAX: (916) 574-1925

MAR 16 2004

RECEIVED  
Your Honor's Office

File Ref: SD 2004-02-26.1

Jim Tuchscher  
T Concrete Structures  
P.O. Box 90576  
Long Beach, CA 90809

COASTAL COMMISSION

Dear Mr. Tuchscher:

**Subject: Project Review – Proposed Rebuilding of Cantilevered Dock and Deck Section over Channel Area Waterward of Residence at 16932 Baruna Lane, Huntington Harbour, Huntington Beach, Orange County**

This is in response to your request on behalf of your client, Tom Ondrejcka, for a determination by the California State Lands Commission (CSLC) whether it asserts a sovereign title interest in the property that the subject project will occupy and whether it asserts that the project will intrude into an area that is subject to the public easement in navigable waters.

The facts pertaining to your client's project, as we understand them, are these:

Your client proposes to remove and replace an existing wooden cantilevered deck, which extends over the channel area waterward of the residence at 16932 Baruna Lane, Lot 06, Tract 5264, in Huntington Harbour. The proposed project extends onto an artificial, navigable channel referred to as Lot C. It appears that Lots 2 to 29 inclusive of Tract 5264 have private "wharfage rights in a defined area of Lot "C" as shown" on the Assessor's Parcel Map 178-31. The Orange County Assessor's records indicate that the artificial channel, Lot C of Tract 5264, APN 178-315-51, is owned by the Huntington Harbour Corporation, excepting the referenced "wharfage" rights, which appear to be a 100% vested interest to the City of Huntington Beach (City).

Based on the site plan dated June 9, 2003, submitted by you and prepared by T Concrete Structures, the proposed replacement concrete cantilevered deck appears to be in conformance with the required set backs and the 5 feet maximum dock/decking limit waterward of the existing bulkhead as required by the City of Huntington Beach.

**COASTAL COMMISSION**

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EXHIBIT # D

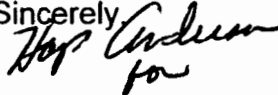
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You submitted a copy of an application with the City of Huntington Beach for a building permit application for this project. The City of Huntington Beach has verified that permit #BO91137 has been issued for repairs to the adjacent residence. However, the City was not able to verify that a permit has been issued for the proposed cantilevered deck.

With regard to the jurisdiction of the CSLC, pursuant to two agreements entered into in 1961 and 1962, BLA 18 and SLL 34, the CSLC settled certain property (boundary and title) ownership issues with the Huntington Harbour Corporation involving Huntington Harbour. The CSLC's area of leasing jurisdiction extends over the State's fee title ownership including the areas that are referred to as the Main and Midway Channels. The State retains a Public Trust easement over much of the remaining area within Huntington Harbour.

Accordingly, the CSLC presently asserts no claims that the project intrudes onto State-owned fee lands. As to the retained Public Trust Easement, based on our review, your project does not appear to be inconsistent with Public Trust needs of the area. This conclusion is without prejudice to any future assertion of state ownership or public rights, should circumstances change, or should additional information come to our attention.

If you have any questions, please contact, Susan Young, Public Land Management Specialist, at (916) 574-1879.

Sincerely,  


Robert L. Lynch, Chief  
Division of Land Management

cc: J. Smith- CSLC  
S. Young - CSLC  
California Coastal Commission  
City of Huntington Beach

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