

Planning Commission Draft Cherry Point Amendments

November 10, 2016

Major Industrial Urban Growth Area / Port Industrial

Cherry Point

The Cherry Point Urban Growth Area (UGA) contains approximately 7,000 acres of industrial land. The land has long been planned and designated by Whatcom County for industrial development and is currently the site of three major industrial facilities including two oil refineries and an aluminum smelter. Together, these three existing industries own about 4,400 acres of the total Cherry Point industrial lands.

Because of the special characteristics of Cherry Point, including deep water port access, rail access, and proximity to Canada, this area has regional significance for the siting of large industrial or related facilities. General Petroleum constructed the Ferndale Refinery in 1954, Alumax/Pechiney/Howmet constructed the Aluminum Smelter in 1966, and the Atlantic Richfield Company constructed the Cherry Point Refinery in 1971.

Cherry Point is also important historically and culturally to the Coast Salish people, and part of the usual and accustomed fishing area for five treaty tribes, reserved under the Treaty of Point Elliot of 1855. The Lummi Nation and Western Washington University have identified an ancestral village dating back over 3,000 years ago in this area. The Cherry Point UGA contains sites of primary archeological and cultural significance.

Since the designation of this area for industrial development years ago, newer scientific study of the shoreline ecology has identified Cherry Point's unique function as part of the Fraser River/Georgia Strait and greater Salish Sea ecosystem and the associated Cherry Point Aquatic Reserve has been designated by the state Department of Natural Resources to recognize the ecological importance of the aquatic lands in this area.

Since adoption of earlier versions of this Comprehensive Plan there has been an increasing recognition of the impacts that fossil fuel use and transportation has on human health, and both the local and global environment. The Cherry Point UGA contains the second-largest emitter of carbon air pollution in Washington State (Ecology, June 2016). Because of the large acreage demands of the types of industries likely to locate there, the remaining undeveloped acreage at Cherry Point will likely be absorbed during the 20-year planning period.

Environmental

The Cherry Point shoreline **also** has great importance to the fisheries and ecology of Northern Puget Sound because it provides essential spawning habitat for what once

1 was the largest herring stock in Washington State. This herring stock has supported
2 important commercial fisheries in the past and provides forage for salmonids and
3 other important marine species. In 2000 and again in 2010, the State Lands
4 Commissioner ordered the Cherry Point tidelands and bedlands withdrawn from the
5 state's general leasing program and designated them as the "Cherry Point Aquatic
6 Reserve." The following DNR Use Authorizations were exempted from withdrawal:
7 Lease application numbers 20-A09122 (British Petroleum), 20-A11714 (Phillips 66),
8 20-A08488 (Intalco Aluminum Corporation), 20-013265 (Gateway Pacific
9 Terminals), and 20-010521 (Birch Bay Water and Sewer District). In December
10 2010, the DNR recognized the need to "protect the significant environmental
11 resource of aquatic lands at Cherry Point" (CPAR Management Plan p. 1), and
12 completed the Cherry Point Environmental Aquatic Reserve Management Plan and
13 ~~designated the Cherry Point Aquatic Reserve~~ to ensure long-term environmental
14 protection of the areaAquatic Reserve. The ~~r~~Reserve extends from the southern
15 boundary of Birch Bay State Park to the northern border of the Lummi Indian
16 Nation Reservation. ~~The site excludes three existing aquatic land leases (BP,~~
17 ~~Intalco, Phillips 66 shipping piers) and one proposed aquatic land lease.~~

18
19 The overall purpose of the Cherry Point Aquatic Reserve (AR) is to ensure long-term
20 environmental protection for local habitats and species (CPAR MP p. 1). Specific
21 goals include protection and recovery (as applicable) of Cherry Point herring,
22 Nooksack Chinook salmon, ground fish, marine mammals, seabird/duck and
23 shorebird communities, Dungeness crab, and submerged native aquatic vegetation
24 (CPAR MP p. 2). Another goal is to cooperate with other stakeholders "to minimize
25 and reduce identified impacts of human activities on the species and habitats within
26 the Reserve" (CPAR MP p. 2).

27
28 ~~The Management Plan acknowledges that the existing industries, complying with~~
29 ~~laws and regulations, do not conflict with the Aquatic Reserve although their~~
30 ~~activities may pose risks for the Aquatic Reserve. Indeed, the industries' need for~~
31 ~~buffer space and their compliance with shoreline management requirements means~~
32 ~~that m~~Much of the Aquatic Reserve shoreline is in substantially natural riparian
33 vegetation and bluff processes proceed without interference. Existing shoreline and
34 upland stream and wetland functions and values are of continuing importance to
35 the recovery and protection of species identified in the Aquatic Reserve
36 Management Plan. The area includes one of the last undeveloped intertidal
37 wetlands of any size in Northern Puget Sound, with importance to juvenile salmon
38 and other species. Existing industries can serve the Aquatic Reserve's objectives so
39 long as they are managed according to the Plan and so long as the lessees actively
40 work to further goals for the Reserve (CPAR MP p. 2).

41
42 The County and industrial users have long recognized that the Cherry Point area
43 exhibits a unique set of characteristics that makes land there not only locally but
44 regionally important for the siting of major industrial developments. Based on the
45 public record developed during this plan review and best available science in the
46 record, the County no longer supports construction of additional export docks or

1 piers at Cherry Point due to environmental and treaty right concerns related to: (a)
2 physical interference with shoreline functions and values; (b) physical interference
3 with traditional, historic and commercial fishing and shellfish harvesting at the
4 Cherry Point shoreline; and (c) the increased risk of catastrophic and cumulative
5 small oil and fuel spills from increased large vessel traffic, potential collisions with
6 tankers and other vessels serving the existing three piers at Cherry Point, and
7 related barge traffic and support vessels (see Policy 2CC-10).

8 ~~_especially where deep water access for shipping is a critical locational factor.~~
9 ~~These characteristics were articulated in the Overall Economic Development Plan~~
10 ~~(OEDP) for Whatcom County adopted by the Whatcom County Council of~~
11 ~~Governments in May, 1993, in the 1997 Property Counselors Report on supply and~~
12 ~~demand for industrial land in Whatcom County and at Cherry Point, the 2002~~
13 ~~Greater Whatcom Comprehensive Economic Development Strategy, the 2003~~
14 ~~Whatcom County Industrial Land Study, and the 2015 Whatcom County~~
15 ~~Comprehensive Economic Development Strategy.~~

16
17 The United States Congress approved the “Magnuson Amendment” in 1977 in order
18 to restrict tankers carrying crude oil in the Puget Sound area. Congress found that
19 Puget Sound and the adjacent shorelines were threatened by the increased
20 possibility of vessel collisions and oil spills. Therefore, Congress restricted federal
21 agencies from issuing federal permits as follows:

22
23 . . . no officer, employee, or other official of the Federal Government shall, or
24 shall have authority to, issue, renew, grant, or otherwise approve any
25 permit, license, or other authority for constructing, renovating, modifying, or
26 otherwise altering a terminal, dock, or other facility in, on, or immediately
27 adjacent to, or affecting the navigable waters of Puget Sound, or any other
28 navigable waters in the State of Washington east of Port Angeles, which will
29 or may result in any increase in the volume of crude oil capable of being
30 handled at any such facility (measured as of October 18, 1977), other than
31 oil to be refined for consumption in the State of Washington.

32
33 Whatcom County does not enforce the Magnuson Amendment through the local
34 permitting process. However, the County can encourage federal agencies to
35 enforce the Magnuson Amendment and may, if necessary, seek to enforce the
36 Magnuson Amendment through the court system.

37 38 **Cherry Point UGA Features**

39
40 The characteristics that make Cherry Point unique as a site for major industrial
41 developments include the following:

42 43 Port Access—

44
45 The marine waters off Cherry Point provide deep water access for shipping. Deep
46 water access for shipping was a major siting consideration for the three major

1 industries currently located at Cherry Point ~~and for the industrial/shipping facilities~~
2 ~~currently being proposed.~~

3 4 5 Rail Access – 6

7 Cherry Point is served by a branch line of the Burlington Northern Santa Fe
8 mainline serving western Washington from Blaine to Portland. Rail service is
9 considered to be vital to statewide as well as local interests for the competitive
10 movement of freight. Rail service is particularly important in relation to water borne
11 commerce. The Cherry Point area has the rail access to support marine terminals
12 and industrial users in the area. The ~~BP refinery at~~ Cherry Point Refinery uses the
13 railroad to ship calcined coke to U.S. markets and to other port facilities for
14 transshipment to foreign markets. Both the Cherry Point Refinery and the Ferndale
15 Refinery~~BP and Phillips 66 refineries~~ receive crude oil shipments by rail.

16 17 Proximity to Canada, Alaska and Foreign Ports— 18

19 Cherry Point occupies a unique location for the siting of industry because of its close
20 proximity to Canada and because of its shorter travel distance than other regional
21 port facilities for shipping to and from Alaska and to other Pacific Rim locations. The
22 large acreage, good rail access and proximity to Washington State and Canadian
23 ports makes the remaining upland area at Cherry Point suitable for commercial or
24 industrial production with emphasis on major sustainable clean energy
25 manufacturing or production (see Policy 2CC-2). The Cherry Point industrial area
26 benefits from proximity to Canada, as trade between the U.S. and Canada grows in
27 response to the lifting of trade barriers under the Free Trade Agreement. Canadian
28 exports to the U.S. are expected to increase and Canadian firms exporting to the
29 U.S. are expected to seek locations in the U.S. as a way of improving access to U.S.
30 markets. Compared to other port facilities in Washington and Canada, Cherry Point
31 is not constrained by extensive upland development or vessel draft limitations.
32 ~~Additionally, just as other port facilities in Washington are constrained by lack of~~
33 ~~extensive upland areas to support major industrial development, Canadian port~~
34 ~~facilities are likewise constrained. There are limited expansion sites available at~~
35 ~~Roberts Banks and in the Vancouver Harbor, and development sites further up the~~
36 ~~Fraser River are constrained by limitations on vessel draft. Marine terminals at~~
37 ~~Cherry Point could serve a portion of the potential growth in Canadian marine~~
38 ~~cargo.~~

39 40 **Presence of Necessary Utilities and Infrastructure** 41

42 Cherry Point is a major industrial area in Whatcom County. The ~~Phillips 66~~ Ferndale
43 Refinery was constructed in 1954, the ~~Alcoa Intalco Works~~ Aluminum Smelter in
44 1966, and the ~~BP~~ Cherry Point Refinery in 1971. The infrastructure to support these
45 industries and future industrial users at Cherry Point is in place and includes the
46 following:
47

1 Electric Power:

2
3 Electric Power is available from three providers in the Cherry Point area: Puget
4 Sound Energy, Public Utility District #1 (PUD #1), and Bonneville Power
5 Administration.

6
7 Puget Sound Energy owns two electrical generating facilities at Cherry Point. The
8 electricity generated by these two facilities can be transmitted outside the region
9 into the grid for supply to Puget's customers or some of it can be consumed by
10 Cherry Point customers through interties with the PUD #1. Puget Sound Energy
11 also acquires power from outside the region and transmits it via their transmission
12 grid into Cherry Point. The ~~BP~~ Cherry Point Refinery purchases electrical supply on
13 the market and pays Puget Sound Energy to transmit the power and operate
14 distribution systems to provide that power to the refinery.

15
16 PUD #1 purchases electricity from the Bonneville Power Administration and takes
17 ownership of that power at the Bonneville substation in Bellingham and then
18 transmits it over its transmission line to Cherry Point to serve the ~~Phillips-66~~
19 Ferndale Refinery.

20
21 PUD #1 and Puget Sound Energy have interties at Cherry Point allowing the
22 transmission of power in and out of Cherry Point depending on the amount of power
23 generated and consumed at Cherry Point.

24
25 The Bonneville Power Administration supplies power directly to the ~~Alcoa-Intalco~~
26 ~~Works~~ aluminum production facility.

27
28 Water:

29
30 Whatcom County Public Utility District #1 currently provides industrial process
31 water to all major industrial facilities at Cherry Point and has additional water
32 available contracts-in-place to provide process water to properties that are currently
33 undeveloped. PUD # 1 also operates a small system to provide potable water to
34 one industry (Praxair). Birch Bay Water and Sewer District provides potable water
35 to the ~~BP~~ Cherry Point Refinery. The other industries operate their own water
36 treatment facilities to provide potable water for their facilities. Existing industries
37 consume large quantities of water, in many cases drawn from the Nooksack River.
38 It is the County's policy to support renewed efforts to reduce both water
39 consumption levels and the quantity of discharges, in favor of recycled water use.

40
41 Sewer:

42
43 Sewer service is not typically required for large industrial developments. Most of the
44 existing industrial users provide their own on-site sewage treatment and waste
45 water treatment. Sewer service for domestic wastewater is provided to the ~~BP~~
46 Cherry Point Refinery by the Birch Bay Water and Sewer District. If and when sewer
47 service should become necessary for other industries, service could be provided on

1 a contractual basis with the Birch Bay Water and Sewer District, which borders the
2 Cherry Point industrial area on the north.

3
4 Natural Gas:

5
6 Natural gas is currently available at Cherry Point.

7
8 All-weather Roads:

9
10 Grandview and Slater roads, the major east-west connectors between Cherry Point
11 and Interstate-5, provide all-weather road access to Cherry Point.

12
13 **Use Compatibility and Land Use Designation**

14
15 The industries currently located at Cherry Point are a substantial part of the
16 economic base of Whatcom County and the region and the economic welfare of the
17 county is strongly tied to the health of these industries and their ability to flourish
18 and expand as opportunities present themselves. These industries need to be
19 protected from the inappropriate encroachment of incompatible uses; particularly
20 residential uses that could affect their ability to expand. at the same time, the
21 expansion of these industries needs to be done in ways that do not significantly
22 impact the ecology of the Salish Sea or encourage expanded export of crude oil,
23 coal, and natural gas. The best means for protecting these industries from
24 incompatible adjoining uses and to assure their continued regulatory conformity is
25 to maintain the industrial land use designation of these lands and adjoining
26 properties currently designated for industrial development. The Cherry Point
27 industrial lands have been designated for industrial development and as a direct
28 result of the industrial designation, incompatible and inappropriate residential
29 development has been curtailed.

30
31 **Goal 2CC: Maintain Cherry Point as an unincorporated urban growth**
32 **area based on its unique location and characteristics and**
33 **its significant contribution to the overall industrial land**
34 **supply and Whatcom County's tax base.**

35
36 Policy 2CC-1: Designate Cherry Point as a major industrial Urban Growth Area
37 to accommodate major users that need to be located away from
38 concentrated urban residential areas and that can manage their
39 activities in such a way that they do not conflict with the goals
40 of the Aquatic Reserve Management Plan.

41
42 Policy 2CC-2: Ensure that developments in the Cherry Point UGA maintain
43 management plans to accomplish the goals of the Aquatic
44 Reserve Management Plan.

1 Policy 2CC-3: Encourage that future developments or expansions within the
2 Cherry Point UGA are consistent with the following:

- 3 • Clean and low carbon emitting technology;
- 4 • Avoidance of estuaries and near shore wetlands;
- 5 • Archeological review; and
- 6 • Water recycling technology to minimize water use.

7
8 Policy 2CC-~~43~~: Assure that Cherry Point's unique features of large parcelization,
9 port access, and transportation availability are maintained and
10 protected from incompatible development.

11
12 Policy: 2CC-~~54~~: Require the master planning of each large parcel in advance of
13 any development or subdivision at Cherry Point.

14
15 Policy: 2CC-~~65~~: Require the designation and site plan for a major user (generally
16 40 acres or more) before the development of accessory or
17 supporting uses to assure that accessory or supporting uses are
18 compatible with and will not interfere with the major industrial
19 user.

20
21 Policy: 2CC-~~76~~: Specify 160 acres as a minimum area for planning, prior to the
22 commitment of a parcel for a major user (40 acres or more,
23 singularly or as a cluster or group).

24
25 Policy: 2CC-~~87~~: Permit support activities, warehousing, shipping, machine repair
26 and service, educational services, food service and
27 conveniences, to locate on a parcel only after the completion of
28 a master plan, and the identification and site plan approval for
29 the major user.

30
31 Policy 2CC-~~98~~: Exclude Cherry Point as part of any future incorporation of Birch
32 Bay.

- 33 • to protect interests of the property owner in terms of
- 34 taxation and urban regulations;
- 35 • to preclude urbanism near "smokestack" industries;
- 36 • to preserve county government tax base.

37
38 Policy 2CC-~~109~~: Continue to work with service providers that serve Cherry Point
39 to ensure the delivery of services and to allow it to develop to
40 its fullest potential, consistent with other County policies
41 supporting energy and water conservation.
42

Policy 2CC-~~1110~~: It is the continuing policy of Whatcom County to support a limit on the number of industrial piers at Cherry Point, consistent with:

- existing vested rights, approvals or agreements granted under Whatcom County's Shoreline Master Program;
- continued agency use of best available science;
- Whatcom County's application of the Shoreline Management Act, the Whatcom County Shoreline Master Program, Whatcom County Comprehensive Plan, Whatcom County Critical Areas Ordinance and other applicable local plans, laws and regulations including, without limit, the fire, mechanical and electrical codes adopted by Whatcom County;
- state agencies' application of state laws and regulations including without limit the State Environmental Policy Act, Washington Indian Graves and Records Act, the Washington Archaeological Sites and Resources Act, the state Energy Facility Site Location Act, limitations imposed by the Cherry Point Aquatic Reserve Management Plan; and the federal Clean Water Act as delegated to the State of Washington; and
- federal agencies' application of federal laws, regulations, and treaties including without limit the National Historic Preservation Act, Clean Water Act, Clean Air Act, Endangered Species Act, U.S. Coast Guard regulations regarding vessel operations, and the Magnuson Amendment to the Marine Mammal Protection Act.

~~by establishing a development moratorium. Notwithstanding the above, this moratorium shall not affect, nor otherwise apply to, any proposed pier that Whatcom County approved under its Shoreline Management Program prior to adoption of the moratorium.~~

Policy 2CC-~~1211~~: RCW 36.70A.365 requires the implementation of Traffic Demand Management (TDM) programs for the designating of a Major Industrial Urban Growth Area. Any employer in the Cherry Point Urban Growth Area that employs one hundred or more full-time employees at a single worksite who begin their regular work day between 6:00 am and 9:00 am on weekdays for at least twelve

continuous months during the year are required to meet the TDM requirements of WCC 16.24.

Policy 2CC-~~1312~~: Work with the Cherry Point industries to maximize public access to the Cherry Point beaches without compromising industrial security.

Policy 2CC-~~1413~~: Cooperate with the DNR and existing industries to monitor the effects of industrial activities on water quality and habitat functions in and adjacent to the Cherry Point Aquatic Reserve.

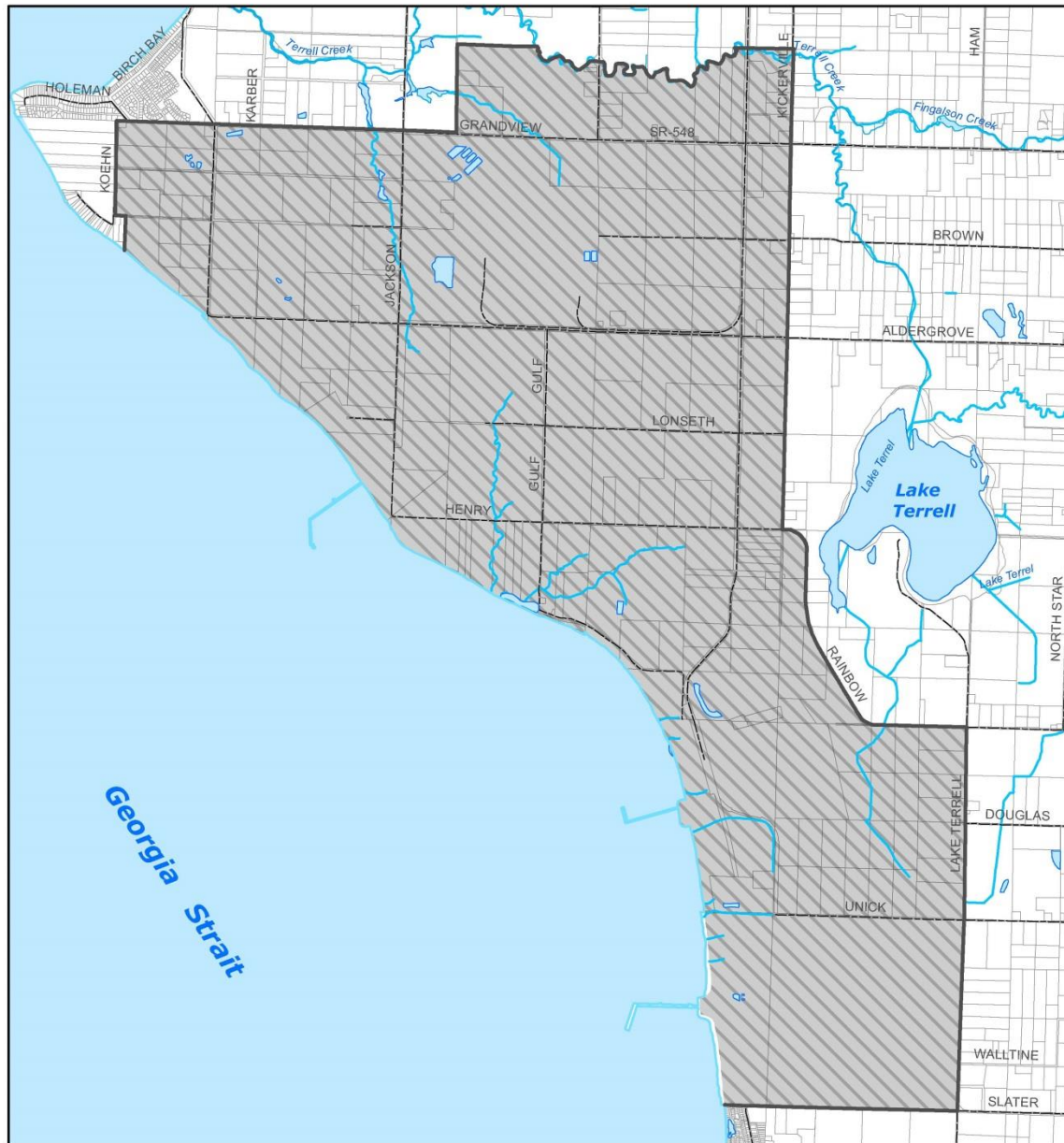
Policy 2CC-15: Whatcom County will encourage federal agencies, including the U.S. Army Corps of Engineers, to enforce the provisions of the Magnuson Amendment (33 USC Sec. 476). If necessary, Whatcom County may initiate legal action to enforce the provisions of the Magnuson Amendment.

Policy 2CC-16: The County shall undertake a study to be completed by December of 2018 to examine existing County laws, including those related to public health, safety, development, building, zoning, permitting, electrical, nuisance, and fire codes, and develop recommendations for legal ways the County can work to limit crude oil, coal, and natural gas exports from the Cherry Point UGA above levels in existence as of July 5, 2016. The study shall review and analyze any legal advice freely submitted to the County by legal experts on behalf of a variety of stakeholder interests, and make that advice public as part of the study report.

- Based on the above study, develop proposed Comprehensive Plan amendments and associated code and rule amendments for Council consideration as soon as possible.
- Until the above mentioned amendments are implemented, the Prosecuting Attorney and/or the County Administration should provide the County Council written notice of all known pre-application correspondence or permit application submittals and notices, federal, state, or local, that involve activity with the potential to expand the export of fossil fuels from Cherry Point.

Whatcom County | Comprehensive Plan

Map UGA-10



- Cherry Point Urban Growth Area

 Major Port/Industrial UGA

USE OF WHATCOM COUNTY'S GIS DATA IMPLIES THE USER'S AGREEMENT WITH THE FOLLOWING STATEMENT:

Whatcom County disclaims any warranty of merchantability or warranty of fitness of this map for any particular purpose, either express or implied. No representation or warranty is made concerning the accuracy, currency, completeness or quality of data depicted on this map. Any user of this map assumes all responsibility for use thereof, and further agrees to hold Whatcom County harmless from and against any damages, loss, or liability arising from any use of this map.

0 0.25 0.5 1 Miles

