

## Andrew Boughan

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**From:** Black Hills Audubon - Sam Merrill, Conservation Committee Chair, and Charlotte Persons, Member Conservation Committee <donotreply@wordpress.com>  
**Sent:** Wednesday, December 1, 2021 4:14 PM  
**To:** Andrew Boughan  
**Subject:** [] Comment on the Up Castle Land Use & Rezone Amendment

**Name:** Black Hills Audubon - Sam Merrill, Conservation Committee Chair, and Charlotte Persons, Member Conservation Committee

**Email:** SamMerrill3@comcast.net

**Type of Comment?:** Comment on the Up Castle Comprehensive Plan Amendment proposal.

**Do you support the Up Castle Comprehensive Plan Amendment?:** SEPA Determination comment.

**Comment:** December 1, 2021

Black Hills Audubon Society  
PO Box 2524  
Olympia, WA 98507

Andrew Boughan, Planner  
Thurston County  
2000 Lakeridge Dr. SW  
Olympia, WA 98502

RE: Scoping Comment for the EIS for CP – 19 UP Castle Land Use & Rezone Amendment

Dear Andrew Boughan:

Black Hills Audubon Society is a 1300-member chapter of National Audubon Society. Our region is Mason, Thurston, and Lewis Counties, and our mission includes protecting the environment for both wildlife and humans. We support the Thurston County Determination of significance and the development of an Environmental Impact Statement (EIS) to consider the impacts of the proposed UP Castle rezone and code change on the built and natural environment. We hope that our suggestions in this scoping comment for addressing specific elements to be discussed in the EIS and for alternative code amendment language will be favorably considered in creating the draft Environmental Impact Statement.

Specific Issues for Discussion Elements in the Draft EIS

Case law has established that, for the elements that are analyzed, the EIS must evaluate the impacts of the proposal as it could be developed.

The announcement of the request for scoping comments contains the following quotation that specifies the elements that will be discussed in the EIS:

“The lead agency has preliminarily identified the following for discussion in the EIS: Under SEPA, the EIS will examine the environmental impacts of the Up Castle Land Use & Rezone Amendment proposal. Elements of the environment (WAC

197-11-444) that have been identified for discussion are listed below: ·

Earth (Geology and Soils) ·

Air (Air Quality and Climate) ·

Water (Movement, Quality, Quantity, Runoff/Absorption, Groundwater, Public Water Supplies) · Plants and Animals (habitat and unique species) ·

Land Use (relationship to existing land use plans, shoreline and floodplain) ·

Agriculture Lands ·

Energy and Natural Resources ·

Transportation ·

Public Service and Utilities (water and septic) ·

Historical and Cultural Preservation ·

Noise ·

Light, Glare ·

Economic impacts ·

Aesthetics”

With the lands for the draft EIS more carefully defined, as in our suggested alternatives below for the two code amendments, studies for the draft EIS can address the above list of elements.

To be clear, presuming that both code amendments will be considered as alternatives in the draft EIS and that our alternative code language or something close to it is accepted, those studies will have to cover all lands affected by our version of the October 6 proposed code amendment—the two UP Castle parcels plus the many parcels adjacent to RRI zoning outlined in gold in Figures 5, 6, and 7 in the October 6 staff memo—AND the area described in our version of the October 26 proposed code amendment, e.g., the area south of the Grand Mound UGA, east of I-5, and west of Old Highway 99 SW.

We would like to mention some specifics that should be included in the draft EIS for each element listed above:

\* Earth (Geology and Soils) – Include analysis at full build-out of the affected lands of increased risk for land slides and risk of spills of hazardous materials within industrial sites due to earthquakes, storms, landslides, and other natural disasters; estimate dust during construction of industrial development and from increased traffic to the affected lands;

\* Air (Air Quality and Climate) – Include estimate of increased air pollution from industrial sites and diesel trucks at full build-out of the affected lands; include estimate of increased greenhouse gases at full-build-out;

\* Water (Movement, Quality, Quantity, Runoff/Absorption, Groundwater, Public Water Supplies) – For each affected parcel, analyze all the above. Pay particular attention to critical areas, ponds, streams, rivers, and wetlands within those parcels and neighboring land.

\* Plants and Animals (Habitat and Unique Species) – For each affected parcel, include an estimate at full build-out of the loss of prairie, forest, and wetland habitat that support listed state and federal plants and animals, including species of concern. Evaluate disruption of migratory paths or habitat corridors for all wildlife, not just listed species. Estimate bird collision impacts for industrial buildings on the affected lands at full build-out.

\* Land Use (relationship to existing land use plans, shoreline and floodplain) – Analyze relationship of proposed code amendment changes to the goals of the County’s Comprehensive Plan, Climate Mitigation Plan, Shoreline Management Program, Critical Areas Plan, buffers around Parks identified in the Mineral Lands section of the Comprehensive Plan, and other relevant county plans. Analyze effects on floodplains of industrial development for all affected parcels at full build-out and neighboring lands.

\*Agriculture Lands – Analyze and map soils for each affected parcel in terms of the suitability for agriculture. Estimate

loss of agricultural lands at full build-out.

- \* Energy and Natural Resources – Estimate increased need for gasoline, propane, and water of industrial development permitted by each alternative; analyze effects of industrial development on current agricultural or mineral uses of neighboring lands;

- \* Transportation – Traffic analysis should include effects on and costs to expand or maintain access roads, county roads, arterial roads and intersections of increased traffic along roads that access the affected lands at full build-out. Traffic analysis should also include possibility of expanding public transportation and alternative transportation such as bike lanes to meet the needs of employees at full build out of industrial development on affected parcels.

- \* Public Service and Utilities (water and septic) – The current county code specifically precludes providing these services for industrial development in rural areas. However, the EIS should estimate the effects of industrial private wells on the county’s aquifers and impacts of increased stormwater runoff from impervious roofs and parking lots with industrial development of the affected lands.

- \* Historical and Cultural Preservation – Public records, academic studies and history books should be carefully researched to find evidence of cultural and historical areas. Public surveys that reach out to tribes and long-time residents can also find local knowledge of important sites.

- \* Noise – Studies should estimate increase in both traffic and industrial sites’ noise levels and their interference with nearby public amenities such as churches and schools, the health and economic effects on people in adjacent properties, especially agricultural and residential areas, and on wildlife in neighboring parks and reserves, especially those identified in Mineral Lands code.

- \* Light, Glare – Studies should estimate the effects of industrial development at full build-out of affected parcels of light from increased night-time traffic and uncontrollable glare from industrial developments and warehouses at full build-out on both the affected lands and neighboring properties.

- \* Economic impacts – The economic analysis should include increase in tax revenues, jobs and related increased spending for goods and services within the county at full build-out of the affected lands. It should also include increased costs to the county and taxpayers in terms of staff time for planning, permitting, and monitoring planned economic development on affected lands, and of upgrading and maintaining roads, especially county roads, due to increased truck and other vehicle traffic.

- \* Aesthetics – The analysis should include estimated loss of open space in current agricultural land that will become industrial development in the affected lands at full build-out. Also take into consideration loss of territorial views for neighboring properties.

## Alternatives for the Code Amendments

The announcement for the scoping comments contains this quotation:

“Alternatives to the Up Castle Land Use Amendment and Rezone proposal will be determined through the scoping process according to WAC 197-11-440(5)(b). Reasonable alternatives shall include actions that could feasibly attain or approximate the proposal’s objectives.”

BHAS offers the following suggested alternatives to the two proposed code amendments, which we presume will become alternatives in the draft EIS. Our first suggestion is the most crucial because as currently written the code amendment language does not clearly define the lands that should be evaluated in the EIS. This means that no EIS evaluation can begin until that language is corrected.

BHAS Suggestion #1 re “adjacent to industrial development” and “rolling development”: The code language amendment in the Public Draft Chapters: 20.29 TCC, dated October 6, 2021, is quoted below, with the language underlined that was added by UP Castle:

5. For sites that meet all of the locational and performance criteria in subsection (5)(a) below, the uses listed in subsection (5)(b) below are also permitted:

a. Locational and performance criteria:

- i. Located within one-half mile of an Interstate 5 interchange or adjacent to industrial development as of date;
- ii. Vehicular access is from a county arterial or collector road or state highway or adjacent to an existing industrial development utilizing existing county roads and within 500 feet of county arterial or collector road or state highway;
- iii. Proposed use will not require urban services or facilities; and
- iv. Rail access is available to the site

The problems with this language are acknowledged in the Thurston County staff memo of October 6, 2021, and were commented on by BHAS and many others before and during the Planning Commission’s October 6 public hearing.

First, 5.a.i. allows RRI zoning for any property next to “industrial development” within the rural county. In their October 6 staff memo, staff did not attempt to analyze how many parcels would be affected that were next to “industrial development” since mines and other industrial projects are scattered throughout the rural county. Instead, they only looked at parcels next to RRI zones, and came up with 300 to 700 acres affected at three intersections that already have RRI zoning. The true number of affected acres or parcels that would be affected is inestimable because of the words “industrial development”.

Second, as the October 6 staff memo acknowledges, this proposed version of 5.a.i. would permit RRI zoning “spanning away” from any industrial development land. As each parcel would become eligible for RRI, all parcels around it could also become RRI. This “rolling” re-zoning also makes the number of affected parcels inestimable.

Both problems with the amendment’s language mean that it is not possible for studies for a draft EIS to even begin. The lands covered in the EIS cannot be defined.

We suggest that 5.a.i. instead have this alternative language that will correct those two problems:

5.a.i. Located within one-half mile of an Interstate 5 interchange or adjacent to a parcel zoned RRI as of the date of adopting this ordinance. No other parcels may be zoned RRI because of adjacency to RRI zoned parcels.

We make no pretense that our above suggested alternative is correct legal language – we urge the proponent to seek legal advice to hone our suggestion.

We believe that with the above correction, the October 6 code amendment will apply only to the parcels outlined in gold in Figures 5, 6, and 7 in the October 6 staff memo and the two parcels owned by UP Castle. Studies for the draft EIS can then address only those well-defined parcels. At least that is our intent.

Since this alternative language would apply to the two 33-acre parcels owned by UP Castle, it would accomplish their objective of rezoning those parcels to RRI. Because the other requirements would be met for RRI intensive uses, UP Castle could meet their stated objective of building warehousing on the two parcels.

Whether RRI zoning for the two UP Castle parcels and the parcels outlined in gold in Figures 5, 6, and 7 of the October 6 staff memo is a good idea is different question, and one that BHAS reserves the right to comment on after publication of the draft EIS.

BHAS Suggestion #2 re “Federal Opportunity Zone”: Here is the proposed code language proposed by UP Castle in their public comment dated October 26, 2021, also proposed as draft code and dated November 10, with new language

beginning with the word "or" in each case:

5. For sites that meet all of the locational and performance criteria in subsection (5)(a) below, the uses listed in subsection (5)(b) below are also permitted:

a. Locational and performance criteria:

- i. Located within one-half mile of an Interstate 5 interchange, or within a Federal Opportunity Zone, South of the Grand Mound UGA, west of I-5, and east of Highway 99;
- ii. Vehicular access is from a county arterial or collector road or state highway; or, if also situated within a Federal Opportunity Zone, access may be from any county road;
- iii. Proposed use will not require urban services or facilities; and
- iv. Rail access is available to the site.

One problem with this proposed code language was expressed by County Commissioner Edwards when he asked during the BoCC meeting of November 10 whether the code would permit RRI in other Federal Opportunity Zones (or other parts of the one referred to in this code amendment). His second question was whether approving this code amendment for the property described in 5.a.i. would create a precedent for other applicants to ask for RRI zoning for their properties within Federal Opportunity Zones.

BHAS offers this solution to both concerns: Eliminate all reference to Federal Opportunity Zones. This will ensure that the amendment will apply only to a 344-acre area that includes the two UP Castle parcels.

Here is the suggested BHAS language:

5. For sites that meet all of the locational and performance criteria in subsection (5)(a) below, the uses listed in subsection (5)(b) below are also permitted:

a. Locational and performance criteria:

- i. Located within one-half mile of an Interstate 5 interchange, or an area south of the Grand Mound UGA, west of I-5, and east of Highway 99;
- ii. Vehicular access is from a county arterial or collector road or state highway; or, if also situated within the area south of the Grand Mound UGA, west of I-5, and east of Highway 99, access may be from any county road;
- iii. Proposed use will not require urban services or facilities; and
- iv. Rail access is available to the site.

The proponent will have to get legal advice to ensure that our above offered language is the proper legalese.

Our alternative language would apply to a 344-acre area that would include the two 33-acre parcels owned by UP Castle. This alternative would accomplish their objective of rezoning their parcels to RRI with intensive industrial uses, and they could build warehousing on their two parcels.

Again, BHAS will not comment on whether it is a good idea to up-zone to RRI the area described in 5.a.i. above or the two UP Castle parcels within it—until publication of the draft EIS.

Black Hills Audubon Society recognizes that we have not offered suggestions for all the impacts that should be considered in the draft EIS, nor all the legal requirements, such as considering alternative uses for the affected areas. We believe UP Castle will follow normal practice and contract a third party to prepare the draft EIS. We presume this third party will be highly professional both in their evaluation for the EIS and in writing the draft EIS, and that County staff and the Washington State Department of Ecology will help guide the process. We look forward to commenting on the draft EIS.

Sincerely,

Sam Merrill  
Conservation Chair

Charlotte Persons  
Conservation Committee

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Time: December 2, 2021 at 12:13 am

IP Address: 67.168.0.7

Contact Form URL: <https://thurstoncomments.org/comment-on-the-up-castle-land-use-rezone-amendment/>

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