



## Testimony Overview

Kimberly Gencur Svaty, Public Policy Director

February 18, 2019

In Opposition to House Bill 2273

### **The Advanced Power Alliance stands in opposition to HB 2273.**

The first wind farm was installed in Kansas in 2001 in Montezuma. In 2004, a Kansas Wind Energy Siting Taskforce was assembled to discuss siting guidelines. The taskforce was diverse and comprised of local governments, environmental conservation organizations, environmental groups and a few wind developers. In 2005, the taskforce issued siting guidelines which have served as a baseline template for all involved in siting wind farms. Whether the siting guidelines are policy, local ordinance or executive action, the wind industry has followed the rules of the road.

There are three key components to developing a wind farm in Kansas:

- (1) A great wind energy resource & land use compatibility;
- (2) Community/landowner support;
- (3) Environmental Impacts

These three elements work in tandem. Without one, a wind farm will not be developed in a particular location.

There are significant concerns with HB 2273 which ends the long-standing successful process of siting wind farms in Kansas that gives deference to landowners and local county control. HB 2273 was crafted in a vacuum without any input from the industry it seeks to regulate. The wind energy industry is always willing to talk with stakeholders as evidenced by our work nationally, at the state level and locally to responsibly site wind facilities that are embraced by its community and landowner hosts. The industry works diligently to continue to improve the development process with respect to landowners, county leaders, wildlife and conservation groups, environmental groups, the United States military, the Federal Aviation Administration, policymakers and purchasers of wind power. The wind energy industry cannot support a measure that tramples private property rights, usurps local control, undermines long-standing development policies, attempts to override federal regulations and was crafted to halt wind projects that are in final development stages.

The Advanced Power Alliance represents a diverse cross-section of the world's leading energy companies, energy investors, energy consumers, and energy advocates.

AES  
American Wind Energy Association (AWEA)  
Apex Clean Energy  
Avangrid  
Blackrock  
Blattner Energy, Inc.  
BP  
Capital Power  
Clean Line Energy  
D.E. Shaw and Company  
Duke Energy  
EDP Renewables  
ENEL Green Power  
EDF Renewables  
E.ON Climate and Renewables  
Exelon  
Electric Power Engineers, Inc  
Engie  
General Electric  
Google  
Infinity Renewables  
Invenergy  
Lincoln Clean Energy  
MacQuarie Group  
MAP Energy  
NextEra Energy Resources  
Novatus Energy  
Novus Windpower  
Pattern Energy  
RES  
Sempra  
Siemens Gamesa  
Southern Power  
Third Planet  
TradeWind Energy, LLC  
Vestas-Americas, Inc.



Testimony Provided To

House Energy, Utilities & Telecommunications

Kimberly Gencur Svaty, Public Policy Director

February 18, 2019

In Opposition to House Bill 2273

The Wind Generation Permit & Property Protection Act

Chairman Seiwert, Vice-Chairman Schreiber, Ranking Member Kuether and members of the committee,

This morning I appear before you on behalf of the Advanced Power Alliance and the thirty-six members of our organization which represent a diverse cross section of the world's leading energy companies. Most of these organizations have business interests in Kansas via operating wind farms, wind farms under development, purchase power agreements, development headquarters or manufacturing facilities. TradeWind Energy – a tremendous locally-grown Kansas success story, was the largest developer of wind projects in the nation in 2017. Our member assets in Kansas span the state from the most densely populated to the least, from the fastest growing to those with the most rapid population decline. Since the first wind farm came online in 2001, the wind energy industry has invested more than \$10 billion private dollars in Kansas and created more than 12,000 jobs in both rural and urban Kansas with several billion dollars of new wind farms under construction. We house the nation's first wind turbine technician certification program which has a 100% job placement rate. **The Advanced Power Alliance stands in opposition to HB 2273.**

#### **Wind Farm Siting History**

The first wind farm was installed in Kansas in 2001 in Montezuma. Wind energy leasing across Kansas continued through the early 2000s. In 2004, a Kansas Wind Energy Siting Taskforce was assembled to discuss siting guidelines. The taskforce was diverse and comprised of local governments, environmental conservation organizations, environmental groups and a few wind developers. In 2005, the taskforce issued siting guidelines which have served as a baseline template for all involved in

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siting wind farms. The same year, a Kansas county in the Flint Hills banned commercial wind development in the county. A landowner took the County to court and the case went all the way to the Kansas Supreme Court in what became known as the Zimmerman v. Wabaunsee County case. The Supreme Court upheld the county’s decision to ban commercial wind development. In 2006, Governor Kathleen Sebelius issued the “Heart of the Flint Hills” box which effectively halted wind farm development in 16 Kansas counties. Local Kansas utilities agreed to not purchase any wind power from projects developed within the Flint Hills or on native prairie. The Flint Hills box was doubled in sized in May 2011 when Governor Brownback announced the expanded box known as the “Tallgrass Heartland”. All or most of 33 Kansas counties were included in the box which precluded wind development in the areas historically known for native intact prairie. Many wind projects were halted mid-development. Counties that wanted the economic development benefits of wind were overruled and the private property rights of landowners in about one-third of the state were impeded upon. **Whether the siting guidelines are policy, local ordinance or executive action, the wind industry has followed the rules of the road.**

### How Wind Projects are Sited

There are three key components to developing a wind farm in Kansas:

- (1) A great wind energy resource & land use compatibility;
- (2) Community/landowner support;
- (3) Environmental Impacts

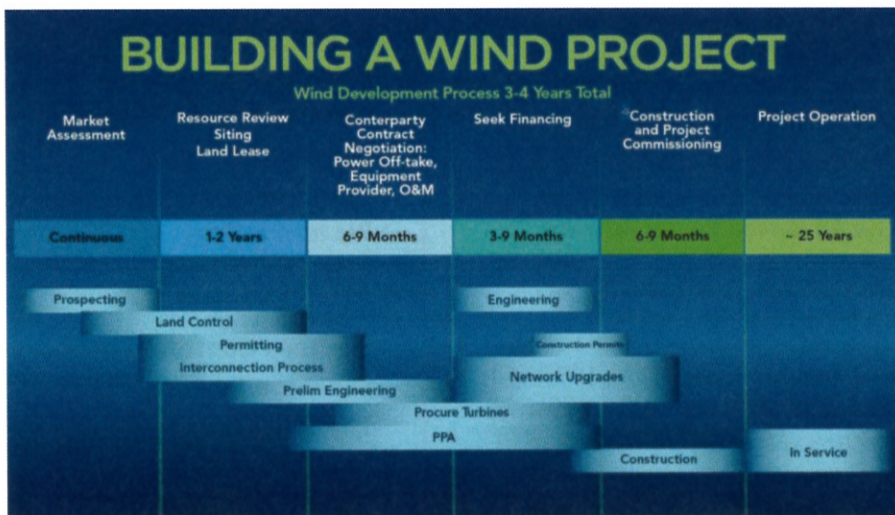
These three elements work in tandem. Without one, a wind farm will not be developed in a particular location. In general, the places most suitable to place wind projects have these features:

- (1) Strong and consistent winds
- (2) Large, open space, such as agricultural land
- (3) Community acceptance
- (4) Minimal risk to wildlife

After a desktop analysis confirms good wind potential and transmission interconnection, a developer approaches landowners about the possibility of hosting a “Met Tower” to secure 2-3 years-worth of wind speed data. If the data is looking positive, landowner outreach begins for potential leasing. In zoned counties, conversations with the County Commission begin for conditional/special use permitting and road maintenance agreements, county contribution agreements and decommissioning. Half of Kansas counties are unzoned. In those counties, the road maintenance agreement, county contribution agreement and decommissioning agreement must be approved by the County Commission.

Leases are negotiated with individual landowners with deference given to landowner preference for tower

placement and setbacks to the best extent possible. Public meetings are held. Landowner meetings are held. In zoned counties, the Planning & Zoning Commission must approve the project before forwarding the project to the County Commission for final consideration along with the three other agreements. Along the way, the project is undergoing separate permitting at the state and federal level related to: FAA permits, watershed, biological, archeological, historical/cultural review to name a few.



## Concerns with HB 2273

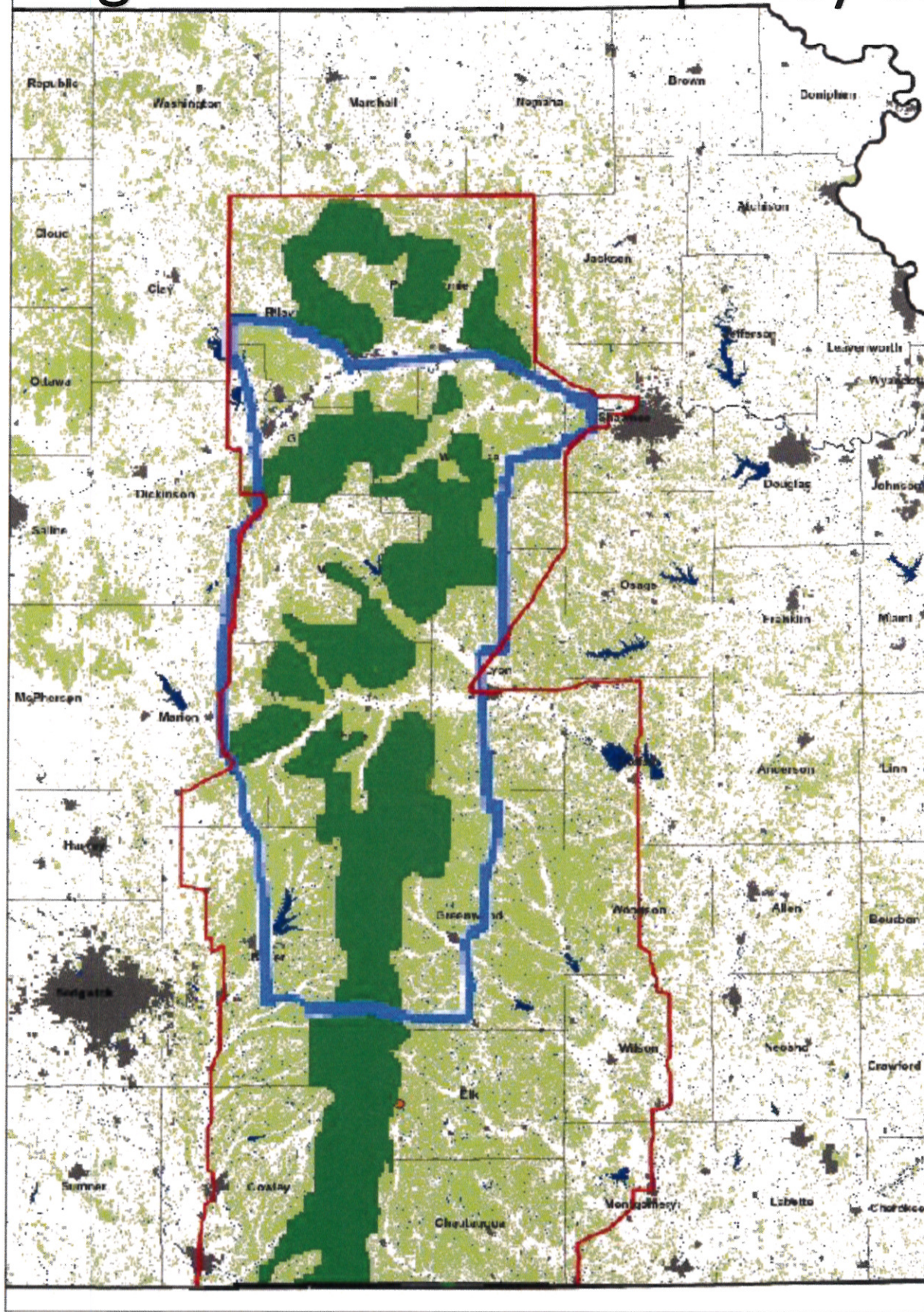
- HB 2273 ends the long-standing successful process of siting wind farms in Kansas which gives deference to landowners and local county control.
- Counties have instituted setback guidelines or other “rules of doing business” for all forms of business and industries after community consideration and deliberation.
- General industry standard setbacks are 1.1x TTH (1,000 feet) (tip turbine height) from property lines, and 3-4x (1,500 feet) TTH from non-participating residences is typical. HB 2273 prescribes setback requirements at 12x TTH (7,920 feet) from residences, 3x (1,500 feet) TTH from property lines, 20x (15,840 feet) TTH from airports, 20x (15,840 feet) TTH from wildlife or hunting areas.
- Wind companies spend considerable time and money on title search during the land leasing process. Under the bill, the wind company would be required to notify a landowner within the setback distances necessitating title searches within a three-mile radius.
- Can an unzoned county require a permit/tacit zoning for a wind facility?
- Application shall be approved by the Board if the applicant complies with items detailed in the bill, in addition to any other reasonable requirements imposed by the board by resolution, without respect to whether such requirements are imposed as part of any zoning regulation. “Reasonable requirements” is undefined in the bill. How can a developer comply with unknown requirements?
- Section 1 (1) (3) requires ADLS technology (unless waived by local board) but fails to mention the Federal Aviation Administration (FAA) requirements.
  - o The FAA has a process for evaluating obstruction and turbines need to get Determination of No Hazard for each tower. Those evaluations are based on approach and take-off patterns (among other things), so any appropriate “distance from airport” is embedded in that process (that is, the closer you are to an airport, the more likely you are to penetrate obstruction surface. It is a function of distance, but also direction). It is not clear why the Legislature would need to apply additional measures to air traffic and, are they even allowed to do so, given the federal jurisdiction?
- Wildlife or hunting area is not defined in the bill. There is no scientific data supporting a setback from such areas. Further, a landowner could designate his/her ground as a wildlife or hunting area to stop wind development.
- Local park is undefined in the bill. A landowner opposed to a wind project could donate a small portion of ground to create a “pocket park” (similar to those lining Kansas Avenue in downtown Topeka). At that point, the landowner has imposed a 3-mile setback requirement further impeding the property rights of his/her neighbors.
- Also troubling is (f)(c), which would prohibit developers from adding confidentiality clauses to non-participating landowner agreements.
- Under the provisions of HB 2273, wind energy development will continue only if a project is on the contiguous acreage of one supportive landowner. There is only one area of the state left with vast tracts of unfragmented acreage - the Flint Hills. The industry has agreed to not develop in the Flint Hills to protect viewshed and the world’s last stand of native Tallgrass Prairie. Otherwise, as the bill is written, the county shall deny a wind project application if the Board finds the developer failed to properly obtain landowner waivers from any applicable setback distances. The bill doesn’t require potentially affected landowners to return documentation to the developer either waiving or not waiving the setback. An opposing landowner could not return a waiver and in the application process, the county commission shall deny the permit. Further, for all those landowners who want to have turbines on their ground that are in the swath of the setback requirement of the singular landowner could be denied the opportunity to develop their ground as they so choose.
- Wind energy leases are signed by willing landowners. They are voluntary. The landowners may sign the lease because of financial benefit, they may sign the lease for environmental concern, they may sign the

lease as a gift to their children. The State cannot be in the business of judging whether one person's resistance is more worthy, heart-felt or valid than the support of another.

- Lastly, the setback distances shall only be waived if an owner of any such property waives the setback. If the property owner is opposed to the project and doesn't waive the setback requirement, the property owner would by default control the property rights of other landowners within a minimum 1.5-mile radius, with 4,521 acres or a 3 mile radius, which is 18,086 acres – just shy of a full township. Imagine if we added oil wells, cell phone towers, and even homes to these setback requirements?
- It has been said that the bill protects landowner rights. This bill flies in the face of a founding principle of our state which fiercely holds tight to the private property rights of the landowners. This is the reason Kansas is last in the nation for state-owned land. This bill does not protect private property rights. It impedes them and usurps local control along the way.

HB 2273 was crafted in a vacuum without any input from the industry it seeks to regulate. The wind energy industry is always willing to talk with stakeholders as evidenced by our work nationally, at the state level and locally to responsibly site wind facilities that are embraced by its community and landowner hosts. The industry works diligently to continue to improve the development process with respect to landowners, county leaders, wildlife and conservation groups, environmental groups, the United States military, the Federal Aviation Administration, policymakers and purchasers of wind power. The wind energy industry cannot support a measure that tramples private property rights, usurps local control, undermines long-standing development policies, attempts to override federal regulations and was crafted to halt wind projects that are in final development stages.

# Tallgrass Heartland Map May 2011



 USFWS Legacy Conservation Area

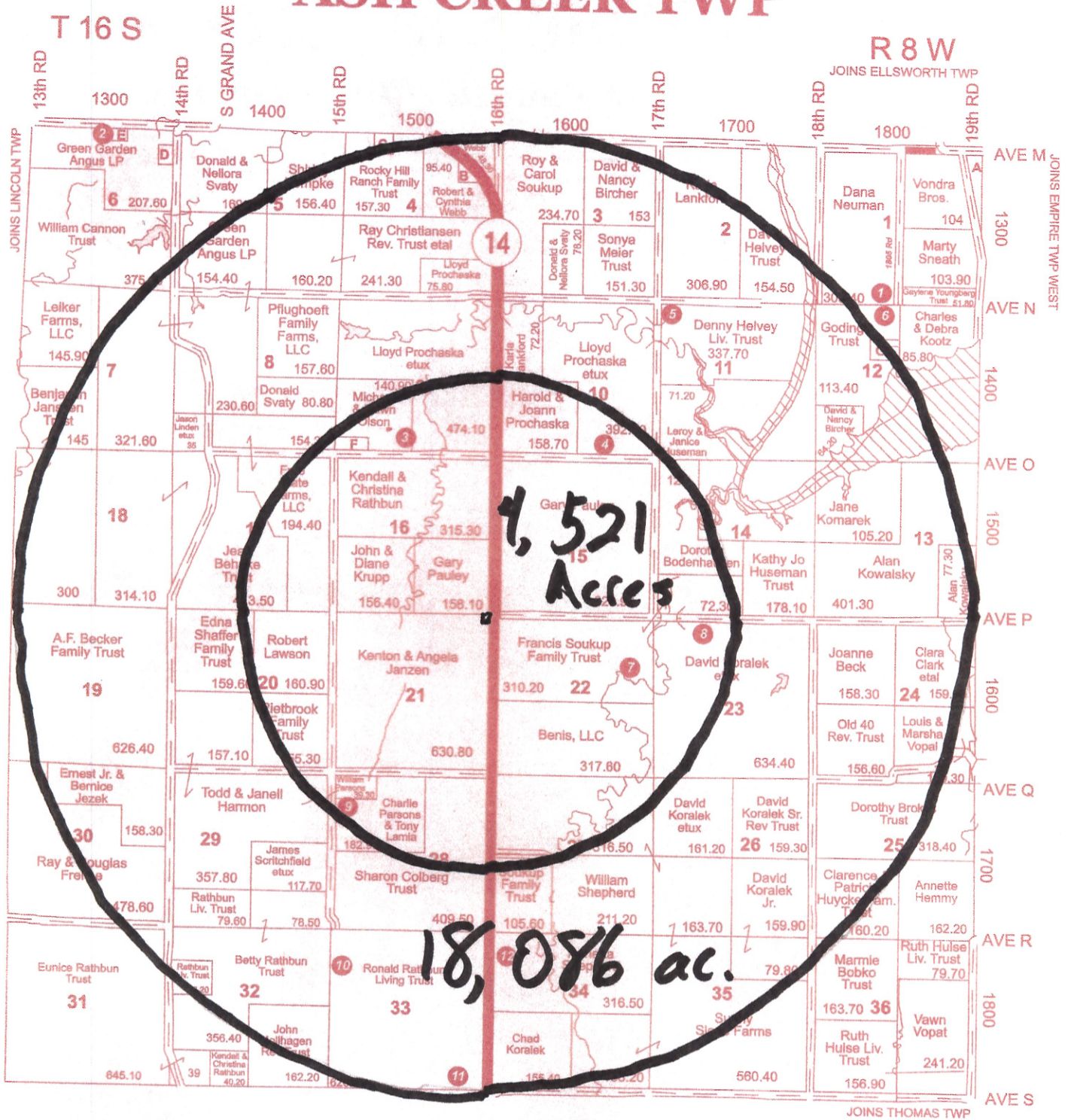
 Original Flint Hills Moratorium Area

 New Flint Hills Conservation Area

# ASH CREEK TWP

T 16 S

R 8 W



**Resident Locations**

- 1 Joye Neuman - 1396
- 2 Richard Janssen - 1356
- 3 Mike Olson - 1545
- 4 Lloyd Prochaska - 1675
- 5 Larry Wemer - 1716
- 6 Donald Kempke - 1428
- 7 Francis Soukup - 1696
- 8 Dave Koralek - 1736
- 9 Bill Parsons - 1725
- 10 Ronald Rathbun - 1506
- 11 Larry Beagley - 1876
- 12 Willian Shepherd - 1813

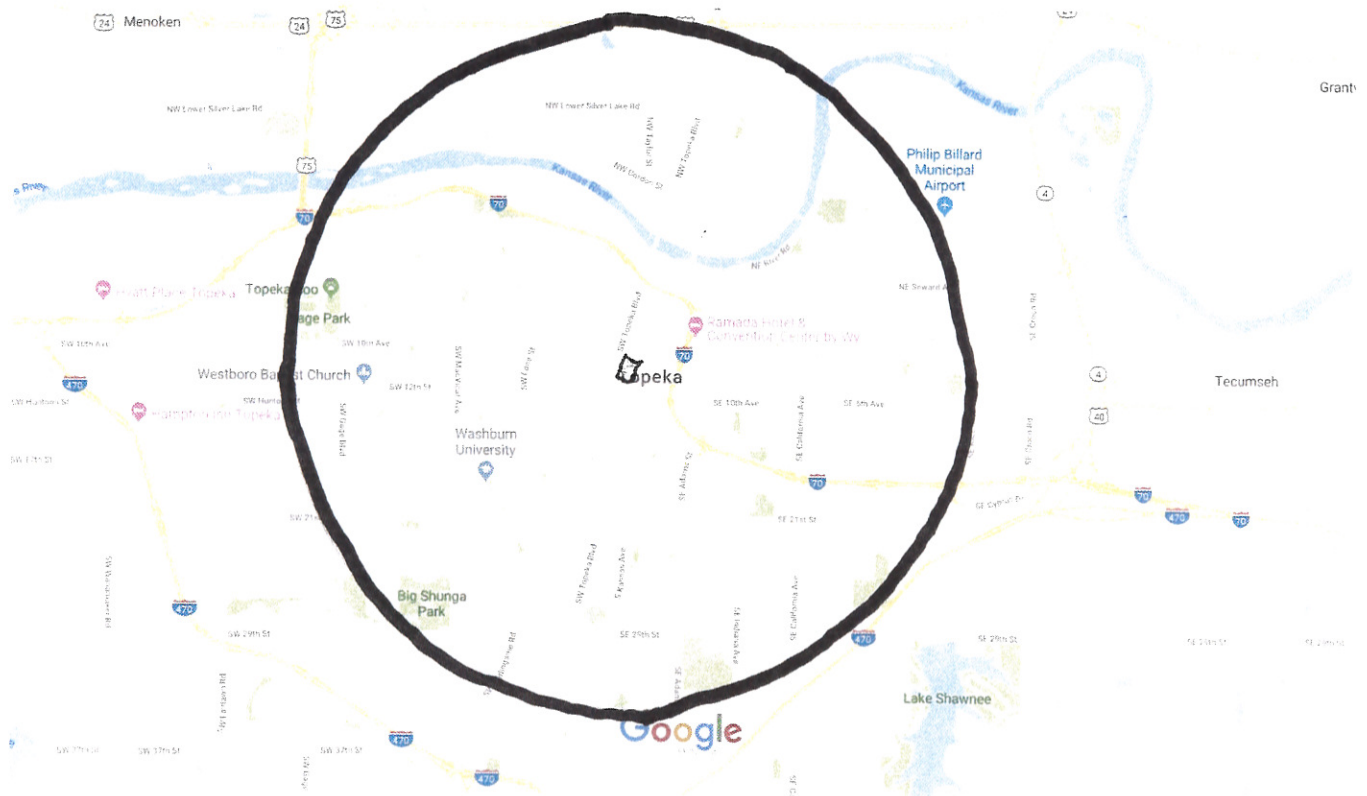
**Small Tracts**

- Section 1 A Michael & Dawnde Bunch - 17.50
- Section 4 B Joshua Webb - 7.80
- C Patricia Ruetz - 12.70
- Section 6 D Brian & Lynne Keener - 9.80
- E Richard Janssen - 10.30
- Section 9 F Allyson Britton - 19.50
- Section 12 G Donald & Ellen Kempke - 20.50

R 10 W	R 9 W	R 8 W	R 7 W	R 6 W	
WILSON	COLUMBIA	SHERMAN	GARFIELD	MULBERRY	T 14 S
NOBLE	BLACK WOLF	ELLSWORTH	CLEAR CREEK	CARNEIRO	T 15 S
PALACKY	LINCOLN	ASH CREEK	EMPIRE West	EMPIRE East	T 16 S
VALLEY	GREEN GARDEN	THOMAS	TRIVOLI	LANGLEY	T 17 S

ELLSWORTH CO. LAND OWNER & RURAL RESIDENT MAPS

Google Maps Topeka



Map data ©2019 Google 1 mi