

MINUTES OF THE HOUSE AGRICULTURE AND NATURAL RESOURCES COMMITTEE

The meeting was called to order by Chairman John Faber at 3:30 P.M. on February 1, 2007, in Room 423-S of the Capitol.

All members were present.

Committee staff present:

Raney Gilliland, Kansas Legislative Research  
Emalene Correll, Kansas Legislative Research  
Jason Thompson, Office of Revisor of Statutes  
Florence Deeter, Committee Assistant

Conferees appearing before the committee:

Representative Tom Sloan  
Mike Beam, Kansas Livestock Association  
David Webb, Board Member, Kansas Livestock Association-Ranchland Trust  
Roxanne Miller, Executive Director, Kansas Land Trust  
Craig Phillips, Branch Chief of Conservation and Restoration, Environmental Division, Fort Riley  
Greg Foley, Executive Director, State Conservation Commission  
Steve Swaffar, Director, Natural Resources, Kansas Farm Bureau  
Tom Thompson, Kansas Sierra Club  
Stanley Rasmussen, Regional Counsel for the U.S. Army's Central Regional Environmental Office  
Mark Schrieber, Westar Energy

Others attending:

See attached list.

**Hearing on HB 2147 - Farm and ranch land protection program.**

Raney Gilliland, Kansas Legislative Research, briefed the Committee on **HB 2147 - farm and ranch land protection program**. He said a similar bill was considered last year by the House Environment and Natural Resources Committee. He stated that the bill creates a program through the State Conservation Commission to protect working farm and ranch land from being converted to other uses by allowing eligible entities to purchase easements. Noting the priority listing in Section 5, which includes proximity to military installations, he said the program would be funded by fees (.015% of fair market value) assessed when any agricultural land is converted to non-agricultural use and fees assessed through a voluntary emissions compensation program, the latter fee program administered through the Kansas Department of Health and Environment (KDHE). A member raised a question as to whether the easement disappears if an eligible non-profit entity purchases the easement, then buys the property.

The Chair opened the hearing on **HB 2147** and welcomed Representative Tom Sloan, who said the bill reflects some Kansas priority issues: the need for buffer zones around military installations such as Fort Riley and the desire of citizens to preserve open spaces (Attachment 1). He recommended two changes in the bill: change the real estate transaction fee from .015% to 1.5%, and strike section nine.

Mike Beam, Kansas Livestock Association, speaking as a proponent for the bill, provided a packet of information regarding existing statutes, which include facts regarding land trusts and conservation easements and data on the USDA's (United State Department of Agriculture) Farm and Ranchland Protection Program (FRPP), the latter which provides matching funds to states that protect agricultural land (Attachment 2). He commented on the rapid increase in agricultural land being absorbed by development and noted KLA's creation of the Ranchland Trust, a qualifying entity to receive funds and purchase easements. He expressed appreciation for funds (\$350,000 each of the past two sessions) appropriated by the Kansas Legislature, and he listed values provided by the proposed bill.

David Webb, Board Member, Kansas Livestock Association's Ranchland Trust, stated that the bill mirrors a national program and urged members to pass the bill favorably, or, failing that, to recommend it as an interim study (Attachment 3).

## CONTINUATION SHEET

MINUTES OF THE House Agriculture and Natural Resources Committee at 3:30 P.M. on February 1, 2007, in Room 423-S of the Capitol.

Roxanne Miller, Executive Director, Kansas Land Trust (KLT), a proponent, said the KLT presently holds 26 easements preserving 4731 acres in Kansas ([Attachment 4](#)). She addressed the potential encroachment of development at Fort Riley, saying KLT has formed a partnership with Fort Riley through the Army Compatible Use Buffer (ACUB) to preserve about 50,000 acres surrounding the installation. Noting the legislative appropriations the previous two years, she expressed hope for a dedicated funding source to continue the ACUB-KLT initiative.

Craig Phillips, Branch Chief of Conservation and Restoration, Environmental Division, Fort Riley, reviewed the encroachment issues facing Fort Riley and spoke of the partnership between ACUB and KLT, noting the value of a buffer providing enhanced training for soldiers, protecting the public from noise and dust, and shielding endangered species ([Attachment 5](#)). He reminded the Committee of the economic benefits of Fort Riley, stating that this bill will help protect Fort Riley's continued presence in Kansas.

Greg Foley, Executive Director, State Conservation Commission, speaking as a proponent, noted the appropriations received by the Commission; he referenced the matching grants provided from federal sources and commented on present contracts with entities to purchase easements ([Attachment 6](#)). He said the agency requested \$311,500 for FY 2008, noting that the Governor added another \$200,000 in her budget for the Commission.

Steve Swaffar, Director, Natural Resources, Kansas Farm Bureau, commenting on the pressures of development diminishing agricultural land, spoke in support of the bill, saying it provides an opportunity to invest in future generations ([Attachment 7](#)).

Tom Thompson, Kansas Sierra Club, said the bill helps farmers and ranchers to protect their land, provides a heritage for the future, and protects the habitat from encroachment ([Attachment 8](#)).

Stanley Rasmussen, Regional Counsel for the U.S. Army's Central Regional Environmental Office, stated that the Army is supporting similar legislation throughout the United States. He observed that Fort Riley is an expanding Fort, and he detailed how that expansion can be accomplished without direct encroachment on the training areas ([Attachment 9](#)). He noted that Congress is providing additional funding for buffer programs, warning that without a buffer zone, development will threaten endangered species and jeopardize training.

Members queried proponents. Conferees responded as follows:

- Mr. Phillips said ACUB had contacted affected town and county officials; none was concerned about a buffer impinging on their plans for development;
- Mr. Phillips replied that he knows of no plans to expand Fort Riley's acreage, so the buffer zone would not be threatened;
- Ms. Miller stated that an easement would not affect eminent domain proceedings. She replied further that if the Land Trust were to purchase the land, the easement would not be extinguished, but the reserve or contingency rights would be transferred to the Army or to the NRCS (USDA's Natural Resources Conservation Services);
- Ms. Miller said the NRCS determines qualified appraisals;

Members discussed how priority rankings were established. Mr. Foley said the priority items are listed clearly in the bill, but are not in any ascending or descending order.

Speaking in opposition to the bill, Mark Schrieber, Westar Energy, said the funding mechanisms were unacceptable to Westar and ultimately to Weststar's customers, since the increased cost would be passed along to consumers ([Attachment 10](#)). He noted that Section 9 of the bill was especially onerous, since Westar currently pays \$1 million to KDHE for emissions, a capped amount, whereas the bill's fees have no maximum.

The Chairman closed the hearing on **HB 2147**.

CONTINUATION SHEET

MINUTES OF THE House Agriculture and Natural Resources Committee at 3:30 P.M. on February 1, 2007, in Room 423-S of the Capitol.

Representative Aurand requested the committee sponsor two proposed bills, one increasing the number of days a concession can operate before obtaining a license, and the other extending for four more years a transferable nonresident deer permit statute. By consensus the Committee accepted both bill requests.

The meeting was adjourned at 5:05 p.m. The next meeting is scheduled for Monday, February 5, 2007.

# HOUSE AGRICULTURE COMMITTEE GUEST LIST

DATE: February 1, 2007

NAME	REPRESENTING
Dave Peterson	Ka Assoc of Wheat Growers
Scott Cook	SCC
Black Heim	SCC
Amy Thornton	KDWP
Tom Thompson	Sierra Club
Roger Hamm	KDOR
Stuart Barn	KDWP
Craig Phillips	US Army - Ft Riley
Dave Webb	Self.
Mike Beam	Ks. Livestock Assn.
Roxanne Miller	Kansas Land Trust
Jeff Keating	US Army - Ft Riley
BILL EASTMAN	WESTAP
Mark Schreiber	Westar Energy
Drew T. [unclear]	SCC
Paul Simpson	KGFA - KARA
Steve Spafford	KFB
Gary Deeter	GET
Charles Sargent	KFB

# HOUSE AGRICULTURE COMMITTEE GUEST LIST

DATE: February 1, 2007

NAME	REPRESENTING
Carol Jordan	KDA
Stan Rasmussen	US ARMY
Pat Lehman	KACD

STATE OF KANSAS

**TOM SLOAN**  
REPRESENTATIVE, 45TH DISTRICT  
DOUGLAS COUNTY

STATE CAPITOL BUILDING  
ROOM 113-S  
TOPEKA, KANSAS 66612  
(785) 296-7654  
1-800-432-3924

772 HWY 40  
LAWRENCE, KANSAS 66049-4174  
(785) 841-1526  
sloan@house.state.ks.us



TOPEKA  
HOUSE OF  
REPRESENTATIVES

COMMITTEE ASSIGNMENTS  
MEMBER: ENERGY AND UTILITIES  
TRANSPORTATION  
GOVERNMENT EFFICIENCY  
AND TECHNOLOGY

Testimony on HB 2147 - Conservation Easements - Agric. & Natural Resources - 2/1/07 -  
Revised

Mr. Chairman, Members of the Committee, HB 2147 strengthens a State Conservation Commission program to preserve farm and ranch land from development encroachment when the landowners voluntarily participate in a partnership with an independent land trust program and the State. Veteran legislators will recall that the 2005 House Agriculture and Natural Resources Budget Committee held hearings on this issue. For a variety of reasons, I opposed that bill, but made a commitment to develop a conservation easement bill that might garner support from a broader array of interests. Such a bill was developed during the 2006 legislative session, but remained a work in progress through the Environment Committee hearings. HB 2147 represents the culmination of those further negotiations last year.

Conservation easements have been supported by previous Legislatures using State General Fund dollars. HB 2147 establishes that the State Conservation Commission may facilitate the conservation of farm and ranch lands in Kansas through grants to purchase perpetual conservation easements. The criteria for establishing "eligible farm and ranch lands" are defined on page 4, lines 20-25.

The Conservation Commission is authorized to participate in such preservation programs with the United States Department of Agriculture (Farm and Ranch Land Protection Program), Department of Defense (ACUP), or other federal or private entity. Kansas dollars would be part of any necessary matching fund requirements to fully utilize such federal grants. Guidelines for implementing and qualifying for the program are found on page 5, lines 5-8 and New Sections 4 and 5.

Several legislators attended the signing of the first ACUP conservation easement agreement east of Ft. Riley. The Commanding General, Gen. Carter Ham, specifically stated that this dedication was the first of what he and the Dept. of Defense hope will be a strong partnership between the military-land trusts-and the State of Kansas to best ensure that Ft. Riley is able to sustain its training mission. In a subsequent conversation with Gen. Ham, he reiterated that the Department of Defense does not intend to purchase land or use eminent domain powers to acquire buffers around the facilities. They intend to rely on the cooperation between public and private sector partners to acquire conservation easements from willing sellers - thereby protecting the base from encroachment that will reduce its ability to meet its Pentagon-assigned role and protecting the

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farmers' and ranchers' ability to raise crops and livestock while providing them additional income.

Relatively little opposition to the desirability of conserving open space was expressed last year during hearings on the predecessor bill in the Environment Committee. Most legislators recognized that assisting Ft. Riley sustain its training mission through a voluntary conservation easement program would benefit the state. In addition, most legislators identified with aging landowners who did not want their heirs selling the family agricultural land for development purposes at prices that young farmers and ranchers cannot afford.

Questions about how to fund such a program, other than through the SGF, did arise. In developing HB 2147 I made two mistakes. First, the proposed fee on the transfer of land from agricultural use to non-agricultural was supposed to be 1.5 percent or .015 for the sale price (Section 8). The bill calls for .015 percent and the error is mine for not communicating effectively with the Revisors' staff.

The second mistake that I made was in trying to put Kansas and our state's electric utilities in a defensible position regarding anticipated Congressional actions to enact emissions fees for the discharge of carbon dioxide, mercury, and other gases and metals. Several states have imposed state emissions fees and I included language in HB 2147 to create a state administered voluntary emissions fee so that we could attempt to argue that any federal mandates were unnecessary. I notified the utility company representatives of the language in this bill and the reasons for its inclusion. They are adamantly opposed to the language and as I was trying to be supportive of their potential vulnerability and obviously erred, I encourage you to strike Section 9 of the bill.

On the other hand, it is my understanding that the U.S. Army's Central Region Environmental Office (CREO) supports the underlying bill as a potential enhanced partnership between the State and Ft. Riley. CREO staff have been at the Pentagon this week and as I write this I do not know whether they will be present to testify on this bill, but will provide written support after the hearing.

*Funding:* Under the desired language regarding the assessment on agricultural ground sold for non-agricultural purposes, a farm field that sells for \$100,000 for a housing subdivision would have a fee of \$1,500 assessed to help acquire conservation easements on other high priority lands. There are no reliable estimates of how much this minimal fee will raise. Other states have much higher fees. Maryland, for example, has a five percent fee on the sale of 20 acres or more.

*Conclusion:* 1. The core bill expanding the state's partnership can be enacted without a funding source. 2. The proposed fee on lands sold for non-agricultural purposes is a reasonable approach if the objective is to preserve open space, help sustain Ft. Riley's mission, and help young farmers/ranchers affordably acquire land. 3. If the method that is included in the bill is not acceptable, but the goal of preserving farm and ranch lands is, I encourage you to pass HB 2147 with SGF funds as the default funding mechanism.

Some question why the state should be engaged in preserving open space - landowners have the

right to reject purchase offers from developers. HB 2147 recognizes that some landowners need additional revenues to preserve their property (e.g., older farmers without health insurance) or to protect the land from “greedy” heirs. More importantly, the bill provides a means by which the State can partner with Ft. Riley to protect the facility’s training mission from encroachment pressures.

Thank you for your attention to these comments. I will be pleased to respond to questions.





*Since 1894*

## TESTIMONY

To: The House Agriculture and Natural Resources Committee  
Rep. John Faber, Chairman

From: Mike Beam, Kansas Livestock Association (KLA)

Subj: **HB 2147**- Legislation establishing a Kansas farm and ranch land protection program, to be administered by the State Conservation Commission.

Date: February 1, 2007

***Attachments include:***

- *Section by section explanation of HB 2147, with comments*
- *Existing state statutes regarding conservation easements*
- *FAQ's about Land Trusts & Conservation Easements*
- *USDA Farm and Ranchland Protection Program (FRPP) Questions & Answers Fact Sheet*
- *State by state enrollment in FRPP (1996-2006)*

Thank you, Mr. Chairman, for scheduling a hearing on this legislation. The Kansas Livestock Association (KLA) supports efforts to establish a state purchase of development rights program in Kansas. While the legislature has provided funding for conservation easements (approximately \$350,000) the past two sessions, we believe it's time for a dedicated source of funding to assure a long term commitment to the preservation of farm and ranch land in Kansas.

The American Farmland Trust has reported America loses two acres of farm or ranchland each single minute, and from 1992-1997 Americans converted more than six million agricultural acres to developed uses. This equates to an area about the size of the state of Maine.

In Kansas, the USDA Natural Resources Conservation Service reported land users of Kansas converted approximately 230,000 acres of rural land to urban development and transportation corridors between 1982 and 1997.

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**Conservation easements:**

A conservation easement is a contract or covenant, attached to the deed, which stipulates specific uses or activities that may and may not occur on the designated land.

In most instances, the agreement is perpetual.

If a conservation easement is gifted to an eligible private conservation organization the provisions of the easement are negotiated between the landowner and conservation organization (land trust). A gifted easement, that meets requirements of the Internal Revenue Service (IRS), is considered a charitable contribution and federal income tax deduction.

Placing a conservation easement on agricultural land is not a viable consideration for every landowner, but it can be a tool to:

- Leverage the value of the development rights on property without changing the current use (agricultural production).
- Lower the market value to address potential estate tax concerns.
- Preserve the historical farming or ranching tradition of the family.
- Conserve the historical open spaces and scenic view shed of the local community.
- Serve as a tool for passing the farm or ranch to the next generation.

**USDA Farm and Ranchland Protection Program:**

The Farm and Ranchland Protection Program (FRPP) (see attached Fact Sheet) provides matching funds to states, tribal and local governments, and private conservation groups for the purchase of permanent conservation easements that preserve working agricultural lands. Since 1996, this program has benefited the public by permanently preserving over 313,000 acres of farm and ranchland in 48 states. (see state-by-state cumulative summary for 1996-2006). Until recent years, there was very little participation in FRPP among Kansas landowners. The 8 existing contracts have all been completed since 2005.

The primary limiting factor for FRPP participation in Kansas is the requirement that private or non-federal entities must provide a minimum match of 25% of the easement value. The ability of private conservation groups (land trusts) to generate funds to conserve large acreages is quite limited. It appears to us that most of the federal FRPP funds are conserving agricultural land and open spaces in states that have a dedicated source of conservation easement purchase dollars that can match the USDA program.

**FRPP provides 2-1 matching funds:**

It is important to note the federal FRPP dollars are a two to one match to monies provided by states (or any nonfederal dollars). Furthermore, a participating landowner must donate 25% of the conservation easement's value.

For example, if an appraisal determines a proposed conservation easement has a value of \$100,000, USDA pays the landowner \$50,000 if the private entity or state provides \$25,000 and the landowner donates \$25,000. So, in this example a state can participate in a \$100,000 perpetual conservation project for \$25,000!

**Key provision of HB 2147:**

Perhaps the most important policy question presented by this bill is the new funding mechanism in New Section 8. We supported a bill last year (HB 2556) that imposed a one time 1.5% fee on the value of a land parcel when it was converted from agricultural to non agricultural. This is an approach similar to the Maryland state purchase of development rights program used to preserve farmland. We are not suggesting the mechanism, or the rate, provided in HB 2147 is the only method of creating a dedicated source of funding. We do believe, however, this mitigation concept has merit and are willing to work with any interests impacted by this proposal. Furthermore, we welcome a conversation with anyone who has an alternative approach for securing a dedicated source of funding for conservation easements.

**The vision for conservation easements in Kansas:**

In recent years, KLA has responded to concerns from ranchers regarding the suburban residential encroachment in several areas of Kansas. Our members have expressed concern that some of these changing landscapes are occurring in areas that historically have been noted for their large intact ranching and grazing lands that support viable agriculture operations. One step taken is the formation of a land trust, called the Kansas Livestock Association Ranchland Trust, Inc. (KLA-RT). KLA-RT has received its nonprofit-charitable designation from the IRS.

**Opportunity and challenge for the Kansas Legislature:**

Kansans are known for their commitment to conservation. Landowners all across this state have received local, state, and national recognition for their land stewardship practices. The Kansas legislature, each year, appropriates funding for conservation programs that support water quality and soil conservation. These are all worthy projects, but we believe it is time to take another step in voluntary conversation.

Let's act this session, to design a program and a new source of dedicated funds to permanently conserve a small portion of our states agricultural land, our state's rich agricultural heritage, and opportunities for agricultural producers in the future.

Thank you for your time and consideration.

**Section by section explanation and analysis of HB 2147:**

Page 4, no. 10, subsection e, Section 1:

This provision amends the State Conservation Commission (SCC) statutes to provide the agency authority to partner with private conservation groups for the administration and purchase of conservation easements on eligible farm and ranch lands.

Page 4, subsection b, New Section 2:

This section includes definitions and refers to a "conservation easement" as the current definition in Kansas statute.

Page 4, subsection c, New Section 2:

Defines an "eligible entity" as one recognized by the Internal Revenue Service as a charitable conservation organization that can accept and administer conservation easements.

Page 4; subsection d, New Section 2:

This subsection provides a definition of eligible farm and ranch lands. *Note: The "eligible farm and ranch lands" definition may need changed to clarify what is eligible and to be consistent with the USDA Farm and Ranchland Protection Program.*

Page 4; subsection a, New Section 3:

The purpose of the act is stated in this subsection, which is to authorize the State Conservation Commission (SCC) to administer a program for the purpose of limiting the loss of agricultural lands.

Page 4, subsection b, New Section 3:

The language in this subsection allows SCC to make grants available, in cooperation with the federal USDA Farm and Ranchland Protection Program or other federal agencies, for permanent conservation easements and associated costs.

Page 4, subsection c, New Section 3:

This subsection authorizes SCC to promulgate rules and regulations to administer the program.

Page 4-5, New Section 4:

This section establishes several guidelines and/or documents eligible entities must provide SCC, including a written agreement prescribing the manner in which the entity will administer SCC funded conservation easements.

Page 5; subsection a, New Section 5:

This subsection lists criteria for evaluating and ranking applications and allows SCC to utilize other factors if necessary.

Page 5, subsection b, New Section 5:

This subsection requires SCC to give priority to conservation easements near military installations first priority in 2008 and 2009. *Note: KLA suggests removing this provision.*

Page 5 & 6, New Section 6:

This section provides for repayment of SCC funds if the conservation easement is not adhered to.

Page 6; subsection a, New Section 7:

Last year the House Environment Committee inserted this eminent domain amendment prior to the 2006 Legislature action on the eminent domain bill. *Note: KLA suggests this subsection be eliminated.*

Page 6, subsection b, New Section 7:

Last session there was concern the state would not recapture invested conservation dollars if the land (under conservation easement) was taken for public use. This subsection is intended to allow the state to recapture its share is warranted.

Page 6; subsection a, New Section 8:

This subsection creates a new dedicated source of funding by imposing a .015% "preservation fee" on agriculture land converted to non-agricultural use. *Note: last years bill established a 1.5% fee, which would generate substantially more revenue than proposed by HB 2147. Furthermore, KLA is unsure the 7-year transfer is wise or necessary (lines 15-16).*

Page 6, subsection c, New Section 8:

This subsection creates a new "agricultural land conservation program" fund.

Page 6 & 7, New Section 9:

New Section 9 appears to create a new voluntary air emission compensation program with emission payments dedicated to the agricultural land conservation program. *Note: KLA is not comfortable with this approach and encourages the legislature to omit this section.*

## Kansas Conservation Easement Law

### 58-3810

#### Chapter 58.--PERSONAL AND REAL PROPERTY PART 6.--MISCELLANEOUSPROVISIONS Article 38.--EASEMENTS

**58-3810. Uniform conservation easement act; definitions.** As used in this act, unless the context otherwise requires:

(a) "Conservation easement" means a nonpossessory interest of a holder in real property imposing limitations or affirmative obligations the purposes of which include retaining or protecting natural, scenic or open-space values of real property, assuring its availability for agricultural, forest, recreational or open-space use, protecting natural resources, maintaining or enhancing air or water quality, or preserving the historical, architectural, archaeological or cultural aspects of real property.

(b) "Holder" means:

(1) A governmental body empowered to hold an interest in real property under the laws of this state or the United States; or

(2) a charitable corporation, charitable association or charitable trust, the purposes or powers of which include retaining or protecting the natural, scenic, or open-space values of real property, assuring the availability of real property for agricultural, forest, recreational or open-space use, protecting natural resources, maintaining or enhancing air or water quality, or preserving the historical, architectural, archaeological or cultural aspects of real property.

(c) "Third-party right of enforcement" means a right provided in a conservation easement to enforce any of its terms granted to a governmental body, charitable corporation, charitable association or charitable trust, which, although eligible to be a holder, is not a holder.

History: L. 1992, ch. 302, § 11; July 1.

### 58-3811

#### Chapter 58.--PERSONAL AND REAL PROPERTY PART 6.--MISCELLANEOUSPROVISIONS Article 38.--EASEMENTS

**58-3811. Same; creation; duration; impairment; conveyance or assignment.**

(a) A conservation easement may be created only by the record owner of the surface of the land specifically stating the intention of the grantor to create such an easement under this act.

(b) Except as otherwise provided in this act, a conservation easement may be created, conveyed, recorded, assigned, released, modified, terminated or otherwise altered or affected in the same manner as other easements.

(c) No right or duty in favor of or against a holder and no right in favor of a person having a third-party right of enforcement arises under a conservation easement before its acceptance by the holder and a recordation of the acceptance.

(d) Except as provided in subsection (b) of K.S.A. 58-3812 and unless the instrument creating it otherwise provides, a conservation easement shall be limited in duration to the lifetime of the grantor and may be revoked at grantor's request.

(e) An interest in real property in existence at the time a conservation easement is created is not impaired by it unless the owner of the interest is a grantor of the conservation easement.

(f) A conservation easement may not be conveyed or assigned by a holder to any entity or person other than a city or county of this state, an entity enumerated by subsection (b)(2) of K.S.A. 58-3810 or the grantor thereof or such grantor's heirs.

**History:** L. 1992, ch. 302, § 12; July 1.

## **58-3812**

### **Chapter 58.--PERSONAL AND REAL PROPERTY PART 6.--MISCELLANEOUS PROVISIONS Article 38.--EASEMENTS**

**58-3812. Same; judicial actions; who may bring action affecting conservation easement; modification or termination by court.** (a) An action affecting a conservation easement may be brought by:

- (1) An owner of an interest in the real property burdened by the easement;
- (2) a holder of the easement;
- (3) a person having a third-party right of enforcement; or
- (4) a person authorized by other law.

(b) This act does not affect the power of a court to modify or terminate a conservation easement in accordance with the principles of law and equity.

**History:** L. 1992, ch. 302, § 13; July 1.

## 58-3813

### Chapter 58.--PERSONAL AND REAL PROPERTY PART 6.--MISCELLANEOUS PROVISIONS Article 38.--EASEMENTS

**58-3813. Same; validity of conservation easement.** A conservation easement is valid even though:

- (a) It is not appurtenant to an interest in real property;
- (b) it can be or has been assigned to another holder;
- (c) it is not of a character that has been recognized traditionally at common law;
- (d) it imposes a negative burden;
- (e) it imposes affirmative obligations upon the owner of an interest in the burdened property or upon the holder;
- (f) the benefit does not touch or concern real property; or
- (g) there is no privity of estate or of contract.

**History:** L. 1992, ch. 302, § 14; July 1.

## 58-3814

### Chapter 58.--PERSONAL AND REAL PROPERTY PART 6.--MISCELLANEOUS PROVISIONS Article 38.--EASEMENTS

**58-3814. Same; application of act.** (a) This act applies to any interest created after its effective date which complies with this act, whether designated as a conservation easement or as a covenant, equitable servitude, restriction, easement or otherwise.

(b) This act applies to any interest created before its effective date if it would have been enforceable had it been created after its effective date unless retroactive application contravenes the constitution or laws of this state or the United States.

(c) This act does not invalidate any interest, whether designated as a conservation or preservation easement or as a covenant, equitable servitude, restriction, easement or otherwise, that is enforceable under other law of this state.

**History:** L. 1992, ch. 302, § 15; July 1.



## 58-3815

### Chapter 58.--PERSONAL AND REAL PROPERTY PART 6.--MISCELLANEOUSPROVISIONS Article 38.--EASEMENTS

**58-3815. Same; uniformity of application and construction.** This act shall be applied and construed to effectuate its general purpose to make uniform the laws with respect to the subject of the act among states enacting it.

**History:** L. 1992, ch. 302, § 16; July 1.

## 58-3816

### Chapter 58.--PERSONAL AND REAL PROPERTY PART 6.--MISCELLANEOUSPROVISIONS Article 38.--EASEMENTS

**58-3816. Same; certain utility and water district easements not impaired.** Nothing in this act shall be construed so as to impair the rights of a public utility or city with respect to the acquisition of rights-of-way, easements or other property rights, whether through voluntary conveyance or eminent domain, upon which facilities, plants, systems or other improvements of a public utility or city are located or are to be located or so as to impair the rights of a watershed district under K.S.A. 24-1201 *et seq.* and amendments thereto with respect to rights-of-way, easements or other property rights upon which watershed structures are located or are to be located.

**History:** L. 1992, ch. 302, § 17; July 1.

## 58-3817

### Chapter 58.--PERSONAL AND REAL PROPERTY PART 6.--MISCELLANEOUSPROVISIONS Article 38.--EASEMENTS

**58-3817. Same; short title.** This act shall be known and may be cited as the uniform conservation easement act.

**History:** L. 1992, ch. 302, § 18; July 1.



## Frequently Asked Questions about Land Trusts and Conservation Easements

### **What is a Land Trust?**

Land trusts are private, non-profit organizations with a primary mission to conserve land and open spaces. In most instances, the Internal Revenue Service (IRS) expressly recognizes a land trust as a charitable organization.

### **How do Land Trusts conserve land?**

While land trusts may own title to land, they more commonly hold, manage, and administer *conservation easements* from landowners who desire to preserve the conservation values and open spaces of their land.

### **Are there many Land Trusts?**

According to the Land Trust Alliance (LTA), some trusts organized over 100 years ago. Today, LTA estimates over 1,200 local and regional land trusts protect over 6.2 million acres in the United States.

### **What or who is KLA-Ranchland Trust?**

This entity is a non-profit organization founded by the Kansas Livestock Association (KLA) in 2003. The Kansas Livestock Association Ranchland Trust (KLA-RT) is an affiliate of KLA, and is recognized by the Kansas Secretary of State and IRS as a separate, stand-alone organization with its own articles of incorporation, bylaws, budget/checking account, and Board of Directors.

### **What is the purpose of KLA-RT?**

The mission of the KLA Ranchland Trust is to preserve Kansas' ranching heritage and open spaces for future generations through the conservation of working landscapes. To fulfill this mission, KLA-RT is authorized in its bylaws and IRS filings to acquire, own, hold, protect and defend conservation easements.

### **Why did KLA sponsor a land trust?**

KLA leaders in the Flint Hills expressed interest in forming a land trust in 2001 to provide a rancher-landowner governed organization to assist landowners who are considering *conservation easements* on their working ranchlands. The ranchers and landowners involved in forming the KLA-RT believe the vast acres of open-spaced ranch lands of Kansas will be under more intense developmental pressure in the future. These leaders believe many landowners will prefer voluntary conservation easements as an economic alternative to development, especially if the easements could be held and administered by a qualified and competent agricultural land trust.

**Have other agricultural organizations formed land trusts?**

Yes, in fact KLA-RT is a member of a coalition of land trusts that are affiliated with seven state livestock producer organizations. This group, called the Partnership of Rangeland Trusts, collectively holds 843 conservation easements on over 1 million acres of working agricultural lands.

**What is a Conservation Easement?**

A conservation easement is a legally recorded agreement or contract, between the landowner and a land trust, which limits a property's uses to protect its conservation values. These agreements are entered into on a voluntary basis.

**How does a conservation easement impact ownership and land management?**

A landowner who donates or sells a conservation easement retains title to their property and continues to determine who may have access to their property. A conservation easement runs with the title to the property regardless of changes in future ownership.

**What activities are prohibited or restricted with a conservation easement?**

Each conservation easement is tailored to the conservation desires of the owner(s) and grantee, but usually restricts (a) sub-division for residential or commercial purposes; (b) construction of non-agricultural buildings; and (c) surface mining.

**What activities are allowed under a conservation easement?**

Most conservation easements on agricultural land expressly authorize a continuation of farming and ranching activities. KLA-RT's purpose is to preserve working agricultural land for subsequent generations.

**Are there any economic incentives for donating a conservation easement on my property?**

The donation of an easement may qualify as a charitable contribution for federal income tax purposes. (Conservation Easements donated in 2007 may be subject to an enhanced tax benefit!)

Furthermore, a conservation easement may reduce estate and gift taxes.

**Can I receive a payment for placing a conservation easement on my farm or ranch?**

Funds to purchase conservation easements in Kansas are currently limited. In 2005 and 2006 the Kansas Legislature appropriated money to match USDA Farm and Ranchland Protection funds for a few purchased conservation easements. The USDA Grassland Reserve Program (GRP) has provided money to purchase conservation easements on 17,000 acres of grazing lands in Kansas. Additional GRP dollars may be available if the program is reauthorized in the 2007 Farm Bill. Securing a sustainable source of state funds for the purchase of conservation easements is a long term goal of KLA-RT.

**Why would anyone consider placing a conservation easement on their property?**

A conservation easement is not for every landowner, but it is a tool that many are using to preserve their land and their legacy for future generations.

## Questions and Answers

September 2004

## *Farm and Ranch Lands Protection Program*

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**Q. What is the Farm and Ranch Lands Protection Program (FRPP)?**

- A. FRPP is a voluntary Federal program that helps farmers and ranchers keep their land in agriculture. The program provides matching funds to State, Tribal, and local governments and non-governmental organizations with existing farm and ranch land protection programs to purchase conservation easements. The Natural Resources Conservation Service (NRCS) is designated as the lead agency in implementing this program.

**Q. What are the major changes to FRPP in the 2002 Farm Bill?**

- A. The Farm Security and Rural Investment Act of 2002 (Farm Bill) expands the program beyond state and local governments to include non-governmental organizations as eligible entities. It also makes farm and ranch land containing historical and archaeological sites eligible. The 2002 Farm Bill also allows a State, Tribal, or local government or non-governmental organization to supplement its share of the easement cost through a landowner's donation.

**Q. What is a conservation easement?**

- A. A conservation easement is an interest in land, as defined and delineated in a deed, whereby the landowner conveys specific rights, title, and interests in a property to a State, Tribal, or local government or non-governmental organization. The landowner retains those rights, title, and interests in

the property which are specifically reserved to the landowner in the easement deed, such as the right to farm.

**Q. What is a purchase of agricultural conservation easement (PACE) program?**

- A. A PACE program, sometimes referred to as a purchase of development rights program, is a voluntary farmland protection program that compensates landowners for voluntarily limiting future development of their land for non-agricultural uses. PACE programs, which are generally operated by Federal, State, and local governments or non-governmental organizations, enable landowners to sell development rights on their land to a government agency or non-governmental organization, such as a land trust, while retaining full ownership.

**Q. How does a landowner participate in FRPP?**

- A. A landowner submits an application to an entity—a State, Tribal, or local government or a non-governmental organization—that has an existing farm or ranch land protection program. In exchange for payment, participating landowners agree not to convert their land to non-agricultural uses and to develop and implement a conservation plan for any highly erodible land. The NRCS State Conservationist, with advice from the State Technical Committee, awards funds to qualified entities to conduct their farm and ranch land protection programs. These

entities acquire perpetual conservation easements from landowners.

**Q. How is the value of a conservation easement determined?**

A. The value of a conservation easement usually is determined through a professional appraisal. A qualified appraiser assesses the difference between the fair market value of the property, often using comparable sales, and its restricted value under the easement.

**Q. What restrictions are found in a typical easement?**

A. The easements generally restrict non-farm development and subdivisions. Some farm-related housing may be allowed. Generally, there are few restrictions on improvements and construction related to the farming operation. The easements become part of the land deed and are recorded in the local land records.

**Q. Are all agricultural conservation easements the same?**

A. The basic purpose and structure of all agricultural conservation easements are the same. However, each easement is tailored to the specific farm being protected. Exact language in the easement may reflect future expansion plans of the landowners, including the needs of their heirs.

**Q. How do the easements affect other rights of ownership?**

A. The landowner controls the land and use of the land according to the agricultural conservation easement. The land still is owned by the landowner and can be transferred, deeded, or sold, just as any other property. The easement does not require any provisions for public access, unless such access was negotiated as part of the easement purchase transaction.

**Q. Does a conservation easement affect a farmer's ability to borrow money?**

A. A farm loan usually is based on the ability of the farm operation to carry the loan. Therefore, a conservation easement, which only affects non-farm development activities, not the farm operation, should not have a bearing on the farmer's ability to borrow operating funds. If a lending institution holds a lien on a property, it must review the sale of the conservation easement just as it would need to approve any transaction on the property.

**Q. What are the local property tax implications of protecting farmland with conservation easements?**

A. Because the landowner still owns the property, he or she still is responsible for paying any associated property taxes. Since many states have programs that tax farmland based on its use or farm value, the net effect of the easement on local property tax revenues is little to none.

**Q. How are the proceeds from the sale of a conservation easement treated for tax purposes?**

A. The easement sale proceeds are treated as any other capital gain for Federal, State, and local income tax purposes. Some State or local programs have provisions that allow for installment purchases or have used securable tax-exempt bonds as a method of payment.

**Q. What is the role of the Federal, State, Tribal, and local governments and non-governmental organizations?**

A. Cooperating governmental or non-governmental organizations process the easement acquisition, hold, manage, and enforce easements. A Federal contingent right interest in the property must be incorporated in each easement deed to

protect the Federal investment if the cooperating entity terminates, defaults, or divests itself from the easement.

**Q. How much is a State, Tribal, or local government or non-governmental organization required to contribute?**

- A. The NRCS share of the conservation easement cannot exceed 50 percent of the appraised fair market value of the conservation easement. As part of its share of the cost of purchasing a conservation easement, a cooperating entity may include a charitable donation by the landowner not to exceed 25 percent of the appraised fair market value of the conservation easement. As a minimum, the cooperating entity shall provide, in cash, 25 percent of the appraised fair market value or 50 percent of the purchase price of the conservation easement.

**Q. Could the Adjusted Gross Income provision of the 2002 Farm Bill impact my participation in FRPP?**

- A. Yes, if you are an individual or entity that has an average adjusted gross income exceeding \$2.5 million for the three tax years immediately preceding the application year, you are not eligible to receive program benefits or payments. However, an exemption is provided in cases where 75 percent of the adjusted gross income is derived from farming, ranching, or forestry operations.

***For More Information***

If you need more information about FRPP, please contact your local USDA Service Center, listed in the telephone book under U.S. Department of Agriculture, or your local conservation district. Information also is available on the World Wide Web at: <http://www.nrcs.usda.gov/programs/farmbill/2002/>



Visit USDA on the Web at:  
<http://www.usda.gov/farmbill>

**Note:** This is not intended to be a definitive interpretation of farm legislation. Rather, it is preliminary and may change as USDA develops implementing policies and procedures. Please check back for updates.

FRPP Fiscal Year 1996-2006 Cumulative Summary<sup>1</sup>

State	Financial Assistance Cumulative Allocations	Easements Acquired		Easements Pending	
		Number	Acres	Number	Acres
Alabama	\$3,845,852	6	622	6	1,669
Alaska	\$0	0	0	0	0
Arizona	\$2,413,956	2	2,300	1	48
Arkansas	\$153,572	0	0	1	246
California	\$21,843,126	29	8,989	13	16,180
Colorado	\$18,048,480	60	25,300	16	6,235
Connecticut	\$15,887,506	43	4,811	22	1,607
Delaware	\$18,893,099	84	15,157	40	475
Florida	\$14,669,977	10	12,514	8	3,769
Georgia	\$5,937,882	5	801	12	2,155
Hawaii	\$3,915,138	0	0	3	273
Idaho	\$2,544,289	6	2,556	7	1,289
Illinois	\$8,472,123	14	2,283	7	1,059
Indiana	\$999,919	0	0	1	131
Iowa	\$2,682,311	6	1,765	17	2,065
Kansas	\$1,286,887	8	5,512	2	2,341
Kentucky	\$16,425,491	110	18,310	18	4,865
Louisiana	\$27,000	0	0	1	41
Maine	\$5,525,846	16	1,834	9	2,626
Maryland	\$29,064,491	167	21,100	78	12,062
Massachusetts	\$20,826,802	91	6,509	38	2,200
Michigan	\$16,579,439	44	6,005	28	3,134
Minnesota	\$4,469,505	8	805	12	1,165
Mississippi	\$0	0	0	0	0
Missouri	\$2,849,903	1	102	11	1,347
Montana	\$8,351,513	13	17,404	10	11,806
Nebraska	\$653,534	1	524	2	429
Nevada	\$3,269,820	0	0	6	4,566
New Hampshire	\$14,580,797	55	4,087	31	2,154
New Jersey	\$25,728,639	111	12,375	81	6,894
New Mexico	\$2,759,067	6	175	3	109
New York	\$17,684,050	49	10,156	41	10,074
North Carolina	\$12,944,365	38	5,554	27	4,616
North Dakota	\$1,881,605	3	226	1	68
Ohio	\$13,019,559	62	12,006	23	5,508
Oklahoma	\$4,043,466	4	517	28	2,806
Oregon	\$11,972,500	4	15,575	0	0
Pennsylvania	\$25,216,020	166	26,347	104	12,319
Rhode Island	\$13,955,279	24	1,582	18	1,031
South Carolina	\$7,484,039	21	3,099	2	762
South Dakota	\$267,900	0	0	1	374
Tennessee	\$1,940,494	1	420	2	401
Texas	\$5,950,796	4	2,484	1	292
Utah	\$4,211,997	8	2,411	2	186
Vermont	\$19,336,168	150	35,256	78	15,939
Virginia	\$6,945,120	11	2,962	12	2,537
Washington	\$10,058,087	39	3,720	29	2,226
West Virginia	\$6,799,965	29	3,079	20	2,947
Wisconsin	\$11,737,137	48	5,923	31	4,594
Wyoming	\$3,510,907	4	8,445	5	9,778
Pacific Basin	\$0	0	0	0	0
Puerto Rico	\$0	0	0	0	0
Total	\$441,665,418	1,558	313,672	882	171,059

<sup>1</sup> Easements acquired through September 30, 2006.

**Dave Webb  
Stilwell, Kansas 66085  
913-681-8600  
www.dlwebb.com**

February 1, 2007

Mr. Chairman & members of the House Ag. & Natural Resources committee.

Thank you for your time and commitment to the State of Kansas and its natural resources. My name is Dave Webb of Stilwell, Kansas. I am an auctioneer and appraiser by profession, and a former member of this body. Among other volunteer items of interest, I am a member of the KLA Ranchland Trust board.

I appear today in support of the concept of HB 2147. I have been an advocate of a dedicated source of funding for natural resources conservation for many years. This is a measure that is long overdue in our state, many of our neighboring states i.e. Missouri and Colorado have great programs in place, as well as other states throughout our nation address this issue with very positive results.

However that funding structure needs to be broader based for all users and contributors. We can do that as well.

I do however understand the process of education this takes. Both within the government framework and throughout our state with property owners and various groups of interest.

I would like to see this concept enacted into law this year or for that matter ten years ago. However I am practical and understand this process. With the vast amount of work on your plates this year, I'm not sure that can happen during this session.

I would recommend to this committee that this issue be the topic of an interim study. This is for the purposes of finding common ground we all can agree on, to move forward for a dedicated source of conservation funding that will be state of the for our State, and generations of Kansan's to come.

Thank you for your time and consideration.

Sincerely,

Dave Webb





**Kansas Land Trust**

**MEMORANDUM TO:** House Agriculture & Natural Resources Committee  
Rep. John Faber, Chairperson  
**DATE:** February 1, 2007  
**FROM:** RoxAnne Miller  
**RE:** House Bill No. 2147

The Kansas Land Trust supports the voluntary conservation easement purchase program in Kansas as presented in House Bill No. 2147. KLT holds 26 conservation easements preserving 4,731 acres in Kansas. Four of these conservation easements were purchased with funding provided by a combination of sources, including the USDA/NRCS Farm & Ranch Lands Protection Program (FRPP), the Army Compatible Use Buffer Program and funds from the State Conservation Commission's Conservation Easement Program. Last year I spoke with you about the Kansas Land Trust partnership with Ft. Riley to preserve approximately 50,000 acres of important land surrounding the military installation, through the Army Compatible Use Buffer (ACUB) program.

- The Kansas Land Trust will provide willing landowners in the buffer area the opportunity to sell a permanent conservation easement.
- Landowner participation will be entirely voluntary.
- Ft. Riley's goal is to limit encroachment related issues:
  - Minimize neighbor conflicts over military activities,
  - Reduce or eliminate potential for military training and testing restrictions,
  - Maximize the army's training on the military land, and
  - Support conservation objectives for open space and species habitat.
- The Kansas Land Trust's goal is to preserve important agricultural land in the buffer.
  - Approximately 45% of the buffer land is native tallgrass prairie.
  - Approximately 55% of the buffer land includes prime agricultural soils.
- The Army will have no right to use or access the buffer land.

Historically, Kansas has not had matching funds to access the federal funding. Every year between 2002 and 2005 Kansas turned back money to the FRPP program because there were no matching funds available.<sup>1</sup> The ACUB program also requires a funding match. In FY2006 and FY2007, the State Conservation Commission (SCC) budget provided conservation easement matching funds of \$31,500 and \$311,500, respectively. The SCC budget appropriation allowed us to utilize the federal funds. We appreciate the state funding.

Because the FRPP and ACUB programs are expected to continue for many more years, it would be very beneficial to the state and rural landowners if we had a dedicated funding source for conservation easements. Currently, 22 states have passed conservation measures using a variety of finance mechanisms, collectively approving over \$18 billion dollars.<sup>2</sup>

We appreciate your consideration of this bill and would be happy to respond to any questions from the Committee.

<sup>1</sup> In 2003 Kansas turned back \$239,087 of FRPP funds, in 2004 \$735,500, and in 2005 \$824,933.

<sup>2</sup> Bonds (\$12.681 billion), sales tax (\$3.2 billion) and other finance mechanisms including lottery revenue, motor vehicle tax, real estate transfer tax, oil and gas drilling revenues (\$2.4 billion).

**Jane Laman Conservation Easement Property  
269 acres native tallgrass prairie**

Major General Carter Ham, Commanding General of Fort Riley and Jane Laman, property owner at the signing ceremony on November 8, 2006.



Laman property October 25, 2006.



**Jane Laman Conservation Easement Property  
269 acres native tallgrass prairie**

Greg Foley, Executive Director of the Kansas Conservation Commission; Harold Klaege, State Conservationist, NRCS; Col. Thomas T. Smith, Garrison Commander of Ft. Riley; Bev Worster, President of Kansas Land Trust; Jane Laman, property owner after signing the document placing a conservation easement on Laman's land.



Laman conservation easement property, 269 acres native grass, Riley County.



**Carolyn Otto conservation easement property  
63 acres, Riley County.**

View of the native grassland on the Otto property



View of Otto property from Ft. Riley



View of the native grassland on the Otto property





# Fort Riley ACUB and Conservation Easements

1 February 2007





# ACUB\* Encroachment Noise Issues



5-2

## Noise Zones reflect annualized noises

- **Zone II** – Significant noise, limit use to non-sensitive activities (industrial, agricultural)
- **LUPZ (Land Use Planning Zone)** - During active training, noise level may be as high as Zone II

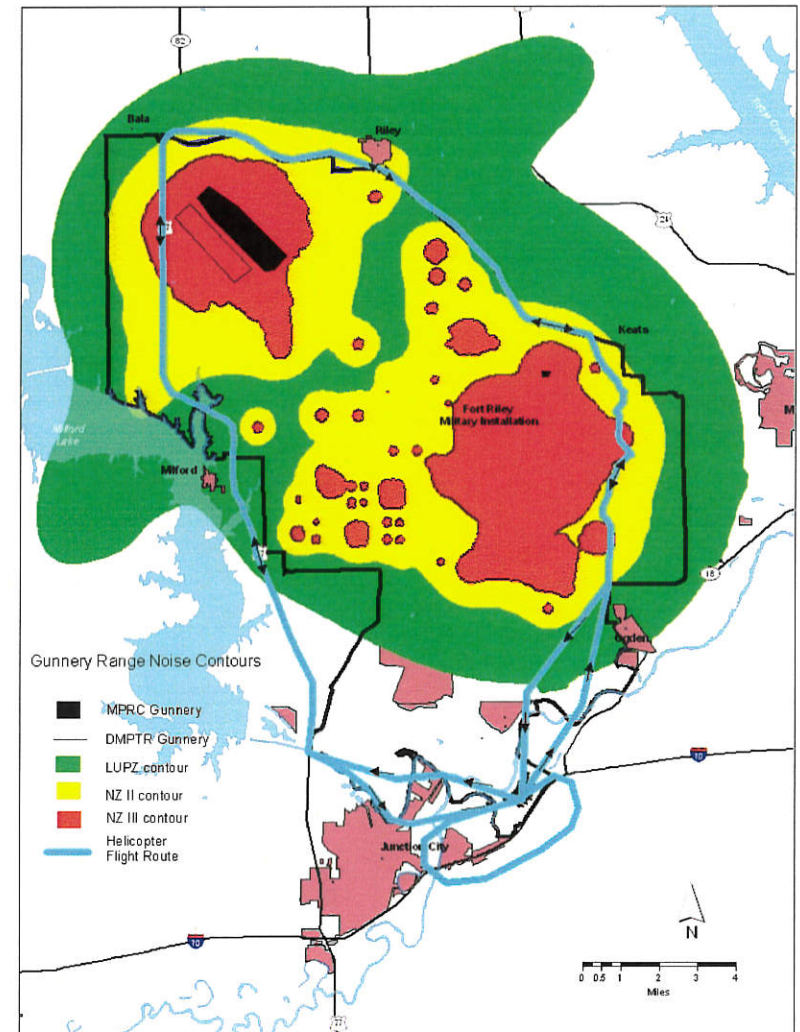
## Helicopter traffic increases

## Fort Riley IGPBS/BRAC gains accelerates residential development

- Project 22,280 new citizens in region
- Manhattan and Riley expand westward
- Junction City and Ogden expand northward
- Milford expands eastward
- Country homes on western, southern boundaries

## Concern—Increasing pressures restrict training

- Mission-related complaints (noise, smoke, dust)
- Rare habitat losses



\* ACUB-Army Compatible Use Buffer



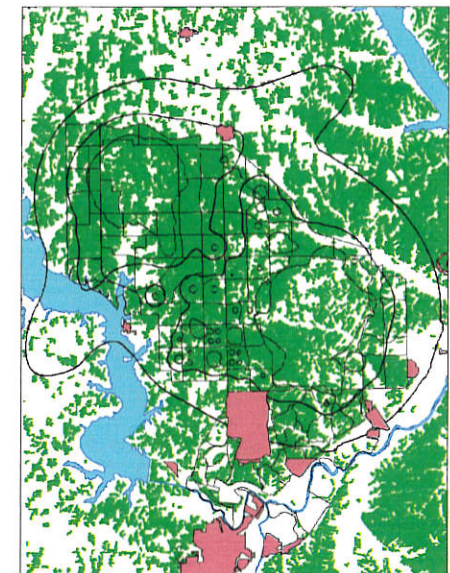
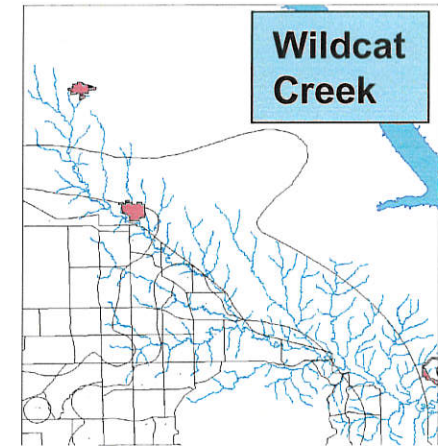


# ACUB Encroachment Conservation Issues



5-3

- **Topeka Shiner** (Endangered Species)
  - Wildcat Creek off-post drainage > 50% of habitat
  - Possible training restrictions if development reduces Topeka shiner numbers in Wildcat Creek
- **Regal Fritillary Butterfly** (Species of Concern)  
**Henslow's Sparrow** (Species of Concern)  
**Greater Prairie-Chicken**
  - Require extensive tallgrass prairie landscapes
  - Fort Riley has major breeding populations
  - Development is removing prairie parcels north and west of Fort Riley
  - Potential training restrictions, if even one species is listed as threatened or endangered:
    - Restrict firing at ranges
    - Restrict incendiary devices
    - Restrict cross-country vehicle movements

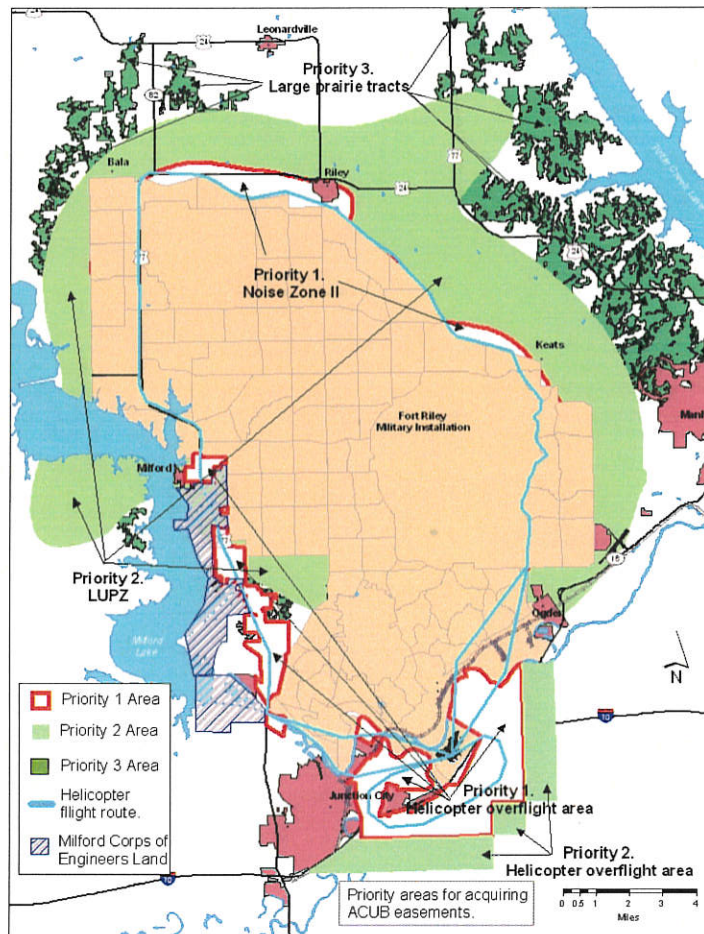




# ACUB SOLUTION



5-4



Buy conservation easements (CE) to buffer lands around Fort Riley

- Partnership between Fort Riley and the Kansas Land Trust (KLT)
- KLT approaches landowners and performs real estate transactions
- Willing landowners only
- Army neither owns nor trains on land
- Maximizes capability of existing lands
- Supports objectives for open space and species habitat conservation
- Requires Partner Match
- Kansas CE funds qualify as match







# Fort Riley Economic Impact in Kansas



5-5

- Pre-IGPBS/BRAC Gains (FY2005)
  - Payroll \$ 709,744,022
  - Supplies/Services/Contracts \$ 77,856,139
  - Construction \$ 82,577,869
  - Primary/Secondary Education \$ 11,205,923
  - Other \$ 57,585,834
  - **Total Economic Impact \$ 938,969,787**
- Post-IGPBS/BRAC Gains (Projected)
  - **Total Economic Impact \$1,225,000,000**
- Will there be another BRAC round?





Greg A. Foley, Executive Director

**KANSAS**  
State Conservation Commission

Kathleen Sebelius, Governor

**Testimony on the HB 2147**  
**concerning an Act relating to Conservation Easements**  
**to**  
**The House Committee on Agriculture and Natural Resources**  
**By**  
**Greg Foley**  
**Executive Director**  
**State Conservation Commission**

**February 1, 2007**

Chairperson Faber and members of the committee, thank you for the opportunity to provide testimony on HB 2147. The empowering statute for the State Conservation Commission (SCC) is conservation District Law, K.S.A. 2-1901 et seq. The proposed HB 2147 amends K.S.A. 2-1904. House Bill 2147 would establish the farm and ranch land protection program and establish an emissions compensation program.

The proposal would *“facilitate the conservation of private working farm and ranch lands in Kansas through grants to eligible entities for the administration and purchase of perpetual conservation easements, or other interests, of eligible farm and ranch lands.* HB 2147 would charge the State Conservation Commission with the administration of the Kansas farm and ranch land protection grant program for the *“purpose of limiting loss of agricultural lands to nonagricultural purposes.”* The SCC has the ability to implement this program if HB 2147 is passed and funds appropriated providing the SCC is not tasked with the actual contracting, maintaining or holding the easement and has the authority of using necessary appropriation for legal consultation in the processing of conservation easements.

The SCC has facilitated the state funding of three conservation easements in 2006 working with the Kansas Land Trust. One contract with the USDA Farm and Ranchland Protection Program (FRPP) and two contracts with the Department of Defense Army Compatible Use Buffer Program (ACUB) in conjunction with the USDA FRPP. The SCC received \$311,500 for FY 2007 to use as a match to the Army Compatible Use Buffer (ACUB) Program and the USDA, NRCS Farm and Ranchlands Protection Program funds of up to \$1,500,000. ACUBs establish buffer areas around Army installations to limit effects of encroachment and maximize land inside the installation that can be used to support the installation's mission. Under the FRPP, the Natural Resources Conservation Service (NRCS) may provide up to 50 percent of the appraised fair market value of the conservation easement; the cooperation entity provides the other 50 percent. Landowner donations up to 25 percent of the appraised fair market value of the conservation easement may be considered part of the entity's matching offer. For the entity, two cost-share options are available when providing its matching offer. One option is for the entity

Mills Building, 109 SW 9<sup>th</sup> Street, Suite 500, Topeka, KS 66606  
785-296-3600 Fax 785-296-6172 www.accesskansas.com

**HS AGRICULTURE AND NATURAL  
RESOURCES COMMITTEE**  
2-1-2007  
ATTACHMENT 6

to provide, in cash, at least 25 percent of the appraised fair market value of the conservation easement. The second option is for the entity to provide, in cash, at least 50 percent of the purchase price of the conservation easement. The SCC has requested \$311,500 for FY 2008 to use as a match to the Army Compatible Use Buffer (ACUB) Program and the USDA, NRCS Farm and Ranchlands Protection Program funds of up to \$1,500,000. The Governor has recommended \$511,500.

The management and administration of such a program would require expertise of a legal nature. Such expertise is not available within current SCC staff. Prior experience for the agency in the administration of conservation easements has been in the area of acting as a pass-through facilitator with the function of handling the third party matching fund requirements for applicable federal programs. Once the agricultural land conservation program fund called for in HB 2147 has been established in the state treasury, necessary program costs for the administration of the program will be taken from such fund. The agency estimates that approximately 10% of the cost of the easement will be necessary for administration purposes. Administration costs would include such items as the possible development of rules and regulations, and legal consultation fees associated with review and processing of all easement applications and required documentation as called for in the bill.

Mr. Chairman, I would like to thank you for the opportunity to provide testimony on H.B. 2147. I will stand for questions at the pleasure of the committee.

***Kansas Farm Bureau***  
**POLICY STATEMENT**

**House Agriculture and Natural Resources Committee**

**Re:HB 2147 an act establishing the farm and ranchland  
protection program and emissions compensation program**

**February 1, 2007**  
**Submitted by:**  
**Steve M. Swaffar**  
**Director of Natural Resources**

---

Chairman Faber and members of the committee, thank you for this opportunity to provide testimony today on House Bill 2147. I am Steve Swaffar, Director of Natural Resources for the Kansas Farm Bureau (KFB). KFB stands in favor to HB 2147.

KFB policy supports both state and federal voluntary, incentive-based, cost-share conservation programs, and just this fall our members adopted policy specifically to support programs offering conservation easements. Some of you may recall KFB supported similar measures to HB 2147 during the 2005 (HB 2517) and 2006 (HB 2556) legislative sessions. We continue to support the need for a program like the one proposed in HB 2147.

Development around urban centers that takes agriculture land out of production is concern for many of our members farming and ranching close to these areas. Escalating land values create market competition for land for those farmers and ranchers trying to expand their operations. In some cases, the prices are driven up so high that they are way beyond the means of farmers and ranchers. In some cases land sales prices are high enough that production agriculture simply would not be profitable because payments on the loan would be greater than the profits from grain or livestock production. Farmers and ranchers have few mechanisms to preserve valuable farm and ranch lands when developmental pressures drive prices to unrealistic levels. For this reason we support the concept of a conservation easement program that works in concert with the federal Farm and Ranchland Protection Program (FRPP) to preserve some of these areas for production agriculture.

HB 2147 is very similar to the amended version HB 2556 heard before the House Environment Committee last year. KFB worked with Representative Sloan, Kansas Livestock Association and the State Conservation Commission to revise that bill to a point where we had agreement. The primary difference between the two bills is new section 9 in HB 2147, creating an air quality emissions trading program. KFB is unsure of the impact of this new section of the conservation easement program, but it appears it may add an unneeded level of complexity to the original proposal. Therefore we would request the committee take up this issue in separate bill or future discussions.

KFB supports a program for voluntary conservation easements with the appropriate funding made available to all Kansas farmers and ranchers. Thank you for this opportunity to provide testimony.

**Testimony before the House Agriculture and Natural  
Resources Committee  
February 1, 2007  
Supporting H.B. 2147**

Chairperson Faber and Honorable Members of the Committee:

My name is Tom Thompson and I represent the Kansas Chapter of the Sierra Club. I have come today to speak in support of H.B. 2147.

H.B. 2147 sets up a system of grants to purchase and administer conservation easements in Kansas. These would be available to eligible farmers and ranchers.

Kansas is well known for its wide-open spaces. However, even Kansas's wide-open spaces are shrinking as a result of various kinds of development. Giving farmers and ranchers the opportunity to protect their land now and in the future helps protect our states heritage. It can also help protect habitat from ever expanding development.

The Sierra Club supports H.B. 2147.

Thank you for this opportunity and your time.

Sincerely

Tom Thompson  
Sierra Club



DEPARTMENT OF THE ARMY  
U.S. ARMY ENVIRONMENTAL CENTER  
CENTRAL REGIONAL ENVIRONMENTAL OFFICE  
647 FEDERAL BUILDING  
KANSAS CITY, MISSOURI 64106-2896

February 1, 2006

Army Central Region Environmental Office

Re: House Bill 2147

Honorable John Faber  
Chairman, Committee on Agriculture and Natural Resources  
State Capitol Building  
Topeka, KS 66612

Dear Representative Faber:

I am writing you in support of the proposed legislation contained in House Bill 2147, which is currently before your committee. As the Acting Department of Defense, Regional Environmental Coordinator for Standard Federal Region VII, which includes the State of Kansas, I appreciate the opportunity to provide comments to this important legislation. Attached for your review, is a copy of our testimony concerning House Bill 2147.

Passage of House Bill 2147 would benefit military installations in Kansas by providing a tool to assist the Department of Defense in protecting its installations from incompatible development through the creation of conservation easements and other buffer areas. As such, the bill could enhance the long term sustainability and viability of Kansas military installations.

I welcome this opportunity to work with you and your committee on any matters that may affect Defense installations and agencies in the state of Kansas. If you have any questions, please feel free to contact me by telephone at (816) 983-3445, or e-mail at [stephen.c.scanlon@us.army.mil](mailto:stephen.c.scanlon@us.army.mil). I thank you for the opportunity to voice my support for House Bill 2147 and would appreciate it if you would share this letter with members of your committee.

Sincerely,

A handwritten signature in cursive script that reads "Stephen C. Scanlon".

Stephen C. Scanlon  
Acting DoD Regional Environmental  
Coordinator Region VII

**Department of Defense**  
**Regional Environmental Coordinator, Region VII Testimony**  
**House Bill 2147**  
**An Act to Facilitate Conservation of Private Working Farm and Ranch Lands in**  
**Kansas**

Mister Chairman and members of the committee, I am very pleased to have this opportunity to speak to you in support of House Bill 2147. This bill addresses an issue that is critical to the military, and its passage is supported by the Department of Defense.

Increasing incompatible land use around military installations is impeding the way the military can train its Soldiers, Airmen and Sailors. The Department of Defense refers to this issue as encroachment. Encroachment is becoming, and in some places has already become, a significant national security problem affecting the long-term viability of U.S. military installations. Although most military installations were intentionally sited in remote, sparsely populated areas, population growth, demographic shifts and urban sprawl have gradually brought incompatible development to the doorstep of our facilities. Many installations are no longer insulated from the effects of sprawl. For example:

- Encroachment stops night training when light from nearby shopping centers or other development interferes with Soldiers' night vision equipment.
- Encroachment stops parachute training when new housing developments are built near drop zones.
- Encroachment stops artillery and flight training due to noise complaints from nearby residences.
- Encroachment shrinks training areas when endangered species are forced to migrate inside military installation fence lines to the only natural habitat remaining for them.

The convergence of these encroachment trends occurs in an unplanned and often unanticipated way. This creates a problem for the U.S. military that manifests itself at the local level, but is national in scope and consequences. Mitigation of these impacts takes cooperation and teamwork between the military, state and local governments, and the local community.

As the military transforms its forces for the 21<sup>st</sup> century, it is likely that the mission of a given installation will also evolve to accommodate modern tactics, weapon and support systems. As you may already be aware, the Department of Defense is in the process of relocating the Army's First Infantry Division back to Ft. Riley. We do not want to see serious encroachment issues arise for our Kansas installations and especially at Ft. Riley. Accordingly, as a part of the Army Compatible Use Buffer



(ACUB) program, Ft. Riley is working to create conservation easements and to secure development rights around the fort.

In November 2006, the Office of the Secretary of Defense (OSD) signed a partnership with the Natural Resource Conservation Service and the U.S. Department of Agriculture (USDA) to share resources and combine efforts to protect farm and ranch lands. The Army leads the way in this effort, with Fort Riley and their partner The Kansas Land Trust, already receiving USDA funding to assist in protecting agricultural lands as buffers around the Fort. Because HB 2147 will provide direct assistance to the Department of Defense, we support this legislation.

I thank you for taking the time to consider our comments on this bill. For your reference, I have enclosed a number of informative attachments concerning encroachment at military installations in my written testimony for the record. I thank you again, and I am pleased to respond to your questions.

Attachments:

1. Press Release of the U.S. Army Environmental Command entitled "Riley Makes Sustainable Home for First Infantry."
2. Department of Defense Economic Contribution to the State of Kansas in Fiscal Year 2004.



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## ENVIRONMENTAL UPDATE

**Winter 2007**

This is an archived article.  
Facts and links are current  
as of publication date.

### RILEY MAKES SUSTAINABLE HOME FOR 1ST INFANTRY

By Kristin Miller

*U.S. Army Environmental Command*

The Army built Fort Riley, Kan., to protect travelers on the Oregon and Santa Fe trails more than 150 years ago. Last year, the 1st Infantry Division made its home on the 100,000-acre installation. To make certain its relevance to the Army will endure, Fort Riley relies on cultural and natural resources management innovation and new cleanup strategies.

Most recently, Fort Riley, private conservation group Kansas Land Trust, and landowner Jane Lamien signed an agreement this fall to create a 269-acre agricultural buffer on the northeast side of the installation. This agreement gave Fort Riley its first Army Compatible Use Buffer (ACUB). Installation officials expect more landowners to join the program soon.



*Anna Merlock*

Soldiers from the 70th Engineer Battalion train at Fort Riley for their coming deployment to Afghanistan.

The buffer is intended both to preserve the Kansas prairie and to keep land from being developed near the installation. This will reduce training restrictions for Soldiers in a grassland environment and, in the long run, sustain the training mission at Fort Riley.

"This partnership will allow us to continue to train the way our country expects us to," said Maj. Gen. Carter Ham, Fort Riley commander.

The ACUB program sets up partnerships with local conservation groups to purchase development rights from private landowners. This benefits everyone involved: The Army, because it is sustaining its training mission; the private landowner, because it protects their land from developers; and the private conservation group, because it fulfills their conservation mission, according to Jeff Keating, partnership biologist for Fort Riley.

The timing of this agreement is key, said Keating. "We are in a time crunch for this program. The recent Base Realignment and Closure (BRAC) will make Riley double in size, which will result in a push for development outside the installation."



# U.S. Army Environmental Center Central Regional Environmental Office

601 E. 12th Street, Suite 647  
Kansas City, MO 64106-2896

Contact: Larry Becker  
Regional Environmental Coordinator  
(816) 983 3447

<http://www.denix.osd.mil/denix/State/Partnering/REC/rec.html>



## DoD Installation Sustainability in the State of Kansas



### Key Military Facilities

- Fort Leavenworth
- Fort Riley
- McConnell Air Force Base
- US Army Reserve, 89th Regional Support Command
- Kansas Army Ammunition Plant
- 73 National Guard Facilities and 37 Reserve Training Centers

- Personnel (Military and Civilian): 37,043\*
- DoD Expenditures: \$2,966,580,000\*
- Kansas is home to:
  - Fort Leavenworth, the primary school for training military officers who will lead the Army in the future and the location of the only disciplinary barracks for the Department of Defense .
  - Fort Riley, the Headquarters for the 24th Infantry Division (Mechanized); host to the 1st Brigade Combat Team, 1st Infantry Division, 3rd Brigade Combat Team, 1st Armored Division and the 937th Engineer Group (Combat); headquarters for the 6th Brigade, 25th Infantry Division (to be established in FY2006); and host to a "Top of the Line" Battle Simulation Center that utilizes "State of the Art" equipment used to conduct Brigade/Battalion Battle Simulation exercises.
  - McConnell Air Force Base, the home to one of only three supertanker wings that provide global reach to the Air Force.
- Highlights
  - Federal facilities are subject to all applicable federal and state environmental laws and regulations.
  - DoD is implementing Environmental Management Systems at all appropriate installations.
  - The Army has mandated that all new construction will be to the "gold" criterion for green construction.
  - DoD has been reducing waste streams for approximately 10 years and is continuing to do so.
- Issues
  - Sustainability of installations.
  - Land use and local planning

\* Data are for 2004. For more details see the back of this page.

## DoD Economic Contribution to Kansas and Population Growth

Personnel/Expenditures (000) Fiscal Year: 2004		Total	Army	Navy & Marine Corps	Air Force	Other Defense Activities	
I. Personnel		37,043	28,210	1,421	7,058	354	
Active Duty Military		16,294	13,041	156	3,097	0	
Civilian		6,048	4,570	1	1,123	354	
Reserve and National Guard		14,701	10,599	1,264	2,838	0	
II. Expenditures in Thousands of Dollars		\$2,966,580	\$1,639,480	\$110,670	\$1,114,031	\$102,398	
A. Payroll Outlays - Total		\$1,528,992	\$1,062,776	\$83,050	\$368,804	\$14,362	
Active Duty Military Pay		675,828	521,640	6,673	147,515	0	
Civilian Pay		274,001	205,562	30	54,047	14,362	
Reserve & National Guard Pay		152,876	131,115	1,967	19,794	0	
Retired Military Pay		426,287	204,459	74,380	147,448	0	
B. Contracts - Total		1,411,862	552,175	26,859	744,805	88,023	
Supply/Equipment Contracts		712,611	111,125	13,412	515,130	72,944	
RDT&E Contracts		150,331	46,567	2,496	94,968	6,300	
Service Contracts		420,021	267,646	10,951	132,645	8,779	
Construction Contracts		109,600	107,538	0	2,062	0	
Civil Function Contracts		19,299	19,299	0	0	0	
C. Grants		25,726	24,529	761	422	13	
Expenditures (\$000) Major Locations	Total	Payroll Outlays	Grants/Contracts	Military & Civilian Personnel Major Locations	Total	Active Duty Military	Civilian
Wichita	\$890,560	\$73,435	\$817,125	Fort Riley	12,922	10,730	2,192
Fort Riley	657,723	517,355	140,368	Fort Leavenworth	4,295	2,582	1,713
Fort Leavenworth	348,714	204,421	144,293	McConnell AFB	3,739	2,835	904
McConnell AFB	202,232	181,623	20,609	Forbes Field	306	0	306
Leavenworth	86,540	43,129	43,411	Wichita	306	49	257
Topeka	80,521	40,293	40,228	Topeka	301	25	276
Arkansas City	65,137	1,825	63,312	Lawrence	70	42	28
Manhattan	41,514	30,111	11,403	Olathe	59	1	58
Olathe	38,742	15,643	23,099	Salina	44	3	41
Forbes	37,982	28,446	9,536	Manhattan	36	10	26
Prime Contract Awards (\$000) (Prior 7 Fiscal Years)	Total	Army	Navy & Marine Corps	Air Force	Other Defense Activities		
2003	\$1,222,006	\$459,095	\$61,671	\$632,270	\$68,971		
2002	1,222,936	448,721	31,402	684,209	58,604		
2001	930,042	324,832	27,889	515,396	61,926		
2000	890,728	291,884	21,894	466,961	109,989		
1999	887,380	266,966	6,627	528,875	84,912		
1998	1,007,244	342,877	43,209	542,191	78,967		
1997	688,413	251,228	7,768	367,464	61,953		
Projected Population by County Years, 2005 to 2027	2005	2010	2015	2020	2025	2027	
Johnson	486,585	548,580	584,983	616,379	644,803	656,166	
<b>Sedgewick</b>	464,612	481,730	497,988	515,403	531,939	538,659	
Shawnee	170,875	171,346	170,949	170,080	169,154	168,806	
Wyandotte	156,724	148,421	150,525	156,366	163,312	165,853	
<b>Douglas</b>	103,025	107,967	110,970	113,533	115,568	116,394	
<b>Riley</b>	61,999	63,210	62,992	62,608	62,076	61,870	
Reno	62,832	57,877	55,877	54,982	54,455	54,276	
Butler	62,403	74,565	79,925	83,312	86,046	87,132	
<b>Saline</b>	54,381	55,027	54,923	54,648	54,206	54,028	
Montgomery	35,221	32,780	31,686	31,124	30,796	30,694	

Source for Economic Data: Department of Defense, Directorate for Information Operations and Reports (DIOR), Statistical Information Analysis Division (SIAD), [http://web1.whs.osd.mil/MMID/L03/fy04/ATLAS\\_2004.pdf](http://web1.whs.osd.mil/MMID/L03/fy04/ATLAS_2004.pdf).

Source for Population Data: Kansas Division of the Budget, Kansas Population Data: <http://da.state.ks.us/budget/ecodemo.htm>. Bold type for certain counties denotes that the county is the location of a key DoD facility or training location.

**Testimony of Mark Schreiber**  
**Director Government Affairs, Westar Energy**  
**On House Bill 2147**  
**February 1, 2007**

Chairman Faber and members of the committee, my name is Mark Schreiber. I am the Director Government Affairs for Westar Energy. Westar Energy opposes HB 2147. Our specific objection is with new sections 8 and 9.

New section 8 proposes an increase in the ad valorem tax when real property is reclassified from agricultural to another use. Last year we announced the development of our Emporia Energy Center northeast of Emporia. We submitted a rezoning request to the Lyon County Zoning Board. Our request was to rezone the land from agricultural to industrial. The request was granted and we are planning a groundbreaking soon. Like any business, Westar Energy ultimately recovers its property taxes through prices charged to customers. If new section 8 had been enacted last year, our customers would have to pay slightly higher rates due to the rezoning.

New section 9 creates a slippery slope for utilities, manufacturers and any business that have emissions regulated by the Kansas Department of Health and Environment (KDHE). We currently pay the state approximately \$1 million annually into the emissions fee fund, which has been in place several years. The fee is based on the amount of emissions from our facilities and is capped at a maximum tonnage. New section 9 establishes a voluntary payment of between \$10 and \$100 per ton of emissions. This payment is on top of the already existing emissions fee fund. The voluntary payment is then credited to the agricultural land conservation program.

I cannot imagine any industry making such a voluntary payment, so this provision of the bill would not likely produce any revenue. If this bill becomes law, however, I can imagine that it could be further amended in the future to make voluntary payments mandatory. At that point, all industries across the state with regulated emissions would be impacted. We would seek recovery of this tax through our rates. No benefit will be derived from a statutory provision for voluntary payments because it is very unlikely to raise any money. A lot trouble could come of it in the future.

The balance of HB 2147 appears to provide property tax fees or payments from industries to purchase perpetual conservation easements to limit losses of agricultural land to non-agricultural uses. Westar could be in a situation where we would be paying money to the state to buy land, which we would then not be able to use to site new generation, new transmission or new substations. Westar has a long history of preserving large portions of its power plant properties for such public recreation as fishing, hunting, and hiking. Much of the buffer areas around our power plants are models for good conservation and land management. It has not taken a law for Westar to practice responsible land management. HB 2147 is not necessary.

Westar Energy opposes HB 2147. Thank you for the opportunity to address the committee today. I will be glad to stand for questions at the appropriate time.