

MINUTES OF THE SENATE FEDERAL AND STATE AFFAIRS COMMITTEE

The meeting was called to order by Chairman Pete Brungardt at 10:30 a.m. on February 24, 2010, in Room 144-S of the Capitol.

All members were present.

Committee staff present:

Jason Long, Office of the Revisor of Statutes
Dennis Hodgins, Kansas Legislative Research Department
Connie Burns, Committee Assistant

Conferees appearing before the Committee:

Representative Tom Hawks
Representative Sharon Schwartz
David Snodgrass, Office of the Assistant Secretary of the Army, Installations and Environment
Colonel John Dvoracek, Deputy Garrison Commander for Transformation, Fort Riley
Colonel Wayne Green, Garrison Commander, Ft. Leavenworth
Michael Kearns, Riley County Commissioners
Monty Wedel, Planning and Special Projects, Riley County
Clancy Holeman, Riley County Counselor
Randy Mettner, Kansas National Guard
Sandy Jaquot, Kansas League of Municipalities
Melissa Wangemann, Kansas Association of Counties

Others attending:

See attached list.

HB 2445 - Land uses adjacent to military installations

Chairman Brungardt opened the hearing on **HB 2445**.

Staff provided an overview of the bill.

Representative Tom Hawks, appeared in favor of the bill. (Attachment 1) It is critical to embrace, protect and continue to develop this economic generator for our state economy, and the bill helps to strike a fair balance on the issue of military and local government communication on encroachment.

Representative Sharon Schwartz appeared neutral on the bill. (Attachment 2) Representative Schwartz knows that it is important to promote communication and cooperation between the two entities and believes that this has happened in previous years without any formal documents such as this bill.

David Snodgrass, Deputy Director, Office of the Assistant Secretary of the Army, Installations and Environment, spoke in favor of the bill. (Attachment 3) The bill addresses an increasingly critical issue to the military. Incompatible development around military installations threatens not only the way soldiers, sailors, airmen and marines train, but also jeopardizes the long term viability and huge capital investments of installations around the country. Mr. Snodgrass included a letter from Stephen C. Scanlon, DoD Regional Environmental Coordinator, Region VII.

Colonel John Dvoracek, Deputy Garrison Commander for Transformation, Fort Riley, testified in favor of the bill. (Attachment 4) The bill could help secure the value of Fort Riley for preparing our nation's Army and other military services to defend our great nation long into the future.

Colonel Wayne Green, Garrison Commander, Ft. Leavenworth, appeared as a proponent of the bill. (Attachment 5) While currently not an issue for Fort Leavenworth, encroachment has been recognized as an issue of national importance; any encroachment could disadvantage the ability to train the growing number of military policeman for their deployment, restrict support to the mission, and hinder the ability to preserve the quality of life for our families.

2/24

CONTINUATION SHEET

Minutes of the Senate Federal and State Affairs Committee at 10:30 a.m. on February 24, 2010, in Room 144-S of the Capitol.

Michael Kearns, Chairman, Board of Riley County Commissioners, spoke in favor of the bill. (Attachment 6) The Riley County Commissioners encourage the committee to act favorably on the bill and to pass **HB 2445** in its current form, out of respect for the tremendous efforts that have been expended in producing legislation which respects the long-term interests of the military, while safeguarding local control over land use and development surrounding military bases.

Monty Wedel, Director Planning and Special Projects, Riley County, appeared in favor of the bill. (Attachment 7) The bill fosters a cooperative and collaborative environment in which local communities and military installations can mutually address encroachment issues without state control of private land use. Most importantly the bill requires communities to:

- notify the military installation of critical development proposals that may effect the military mission
- consider and evaluate with each such development proposal a very specific set of factors to determine what impact the development may or may not have on the military mission

These two points are very critical in order to have a good sound planning process for proper decision making at the local level and requires all affected communities to analyze and evaluate these same factors in all development situations.

Clancy Holeman, Riley County Counselor, spoke in favor of the bill. (Attachment 8) The bill is a stellar example of what can happen when those local citizens and governmental entities affected by legislation are given sufficient time to weigh in with their comments and concerns; and is the end product of a national and regional effort by the military to address "encroachment" on military installations by surrounding residential, commercial and agricultural development.

Randy Mettner, Assistant to Adjutant Tod Bunting, Kansas National Guard, appeared as a proponent of the bill. (Attachment 9) The specific terms of the bill directs and encourages the communication between the local communities and military installations in Kansas.

Sandy Jaquot, League of Kansas Municipalities, spoke in favor of the bill. (LKM) (Attachment 10) The bill does put in place additional notice requirements and mandates on cities when zoning in the vicinity adjacent to military installations, LKM has checked with the cities affected by these requirements and the cities do not believe the additions will be problematic.

Melissa Wangemann, Kansas Association of Counties, (KAC) testified in favor of the bill. (Attachment 11) KAC supports this bill as a balanced approach for local government and the military; it addresses the concerns raised by the military without infringing on local government planning and zoning abilities.

Written testimony received in favor of the bill:

Colonel Ron Lankford, Commander 22nd Operations Group, McConnell Air Force Base,
(Attachment 12)

Thomas Manning, Department of the Air Force, Regional Environmental Coordinator, Region VII,
(Attachment 13)

John Armbrust, Executive Director of the Governor's Council, (Attachment 14)

Bob Strawn, Mayor, City of Manhattan, Kansas, (Attachment 15)

Norman E. Steen, Brigadier General, Kansas National guard, Commander, Great Plains Joint Training Center (Attachment 16)

Dion P. Avello, Mayor, City of Derby, Kansas, (Attachment 17)

Representative Larry Powell, provided written testimony as neutral, with amended language on the bill. (Attachment 18)

Chairman Brungardt closed the hearing on **HB 2445**.

The next meeting is scheduled for February 25, 2010. The meeting was adjourned at 11:20 a.m.

SENATE FEDERAL AND STATE AFFAIRS COMMITTEE

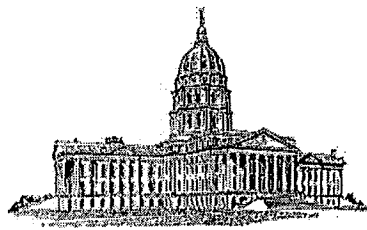
GUEST LIST

DATE 2-24-10

NAME	REPRESENTING
DICK CARTER	CITY OF MANHATTAN
MIKE KEARNS	RILEY COUNTY
SANDY JACQUET	LHM
CHERYL KELLER	RILEY COUNTY
MELISSA WANGEMAN	KAC
BOB SEWELL	Rep Myers - Vet Milt & HLS Comm
SHAWN BLUMBERG	Rep 1st Dist
DAVID SHOVER	City of Riley
TOM HAWK	Manhattan/Ogden District 67
MONTY WEDER	RILEY COUNTY
TED HEDLEY	CS
Self Boltzler	KS Speedway
Randy Melner	Adjutant General
Aaron Isaacson	Adjutant General
COL JOHN DVORACEK	US ARMY GARRISON, FORT RILEY
HERB ABEL	"
TRACI SCOTT	"
Kerry Taylor	KS Nat'l Guard
SCOTT DODD	KS Nat'l Guard
Dick Steyer	Hy-Vee Inc

Chair

Tom Hawk
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STATE CAPITOL BUILDING
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STATE OF KANSAS

TOPEKA

HOUSE OF
REPRESENTATIVES

COMMITTEE ASSIGNMENTS

MEMBER:

Tax (M-F, 9 AM, Docking 785)
Social Services Budget (M-T, 3:30 PM, D783)
State Employee Pay Plan Oversight

RANKING MINORITY:

Vision 2020 (M,W; 1:30 PM, D783)

Chairman Brungardt and Committee Members. It is an honor for me to testify before your committee in support of HB2445.

I have been involved the past two years in helping to strike a fair balance on the issue of military and local government communication on encroachment. The initial bills proposed tended to be more prescriptive and less permissive. My own county and its Board of County Commissioners have been leaders in trying to look for a compromise that stressed the issue of communication processes and not a prescriptive approach to avoiding encroachment around our military installations.

There have been several opportunities for many of us in the legislature to see what has happened in states where formalizing this "communication process" has not occurred. On an NCSL trip to San Antonio in September of 2008, several of us worked with Texas legislators and saw the problem of encroachment on Camp Bullis in their area.

Last year HB2169 was introduced and was shared with legislators representing state military and guard installations. It has some serious flaws that were addressed by a community group in Riley County. Through the work of the DoD, representatives of our military installations, the TAG, the Governor's Military Council's Executive Director, the Riley County Counselor and our Commissioners, along with the involvement of Representative Tafanelli and Representative Sloan, a win-win compromise was made. In a meeting on November 24, 2009 in the Capitol, many stakeholders were brought together to be sure we had agreement on the wording for this compromise bill.

As others will share in their testimony, we would be wise to formalize the process that is working well between our communities and our military

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currently. We do not know when personnel changes might tip the balance and result in some dire consequences for our state. While Kansas did very well in the most recent BRAC closures, it is clear that we must protect this critical asset for our state. Such legislation has been deemed a national priority and passing this bill will position us for continued success in Kansas.

Our military and the combined economic benefits derived provide our state with an output of \$7.7 B---that is 7% of our state GSP. The jobs impact statewide is 169,560. It is critical for us to embrace, protect and continue to develop this economic generator for our state economy.

As a member of the Governor's Military Council and a legislator whose district is adjacent to Ft. Riley, I stand in support of HB2445 and encourage the passage of this piece of legislation. Thank you Chairman Brungardt and Committee colleagues for your attention.

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STATE OF KANSAS
HOUSE OF REPRESENTATIVES

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State Representative
106th District
State Capitol, Room 161 West
Topeka, Kansas 66612
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CHAIR
Local Government Committee
Select KPERS Committee

HB 2445

Testimony for the Senate Federal and State Affairs Committee

February 2, 2010

Chairman Brungardt and Committee members:

I appear today as a neutral conferee on HB2445. My legislative district is the area that lies north of Fort Riley and includes the cities of Riley and Leonardville. The people in this area will be directly affected by the approval of this legislation. They have been involved with the negotiations with the "working group" through last spring and summer. I fully recognize that Fort Riley and the areas surrounding are vital to national security and the economic well being of the State of Kansas. I also know that it is important to promote communication and cooperation between the two entities and believe that this has happened in previous years **without** any formal document such as HB2445.

I have heard from constituents that have farm ground that lays adjacent to Fort Riley, has been a farm for 6 generations and also appears on the historic register. These people understand that with the passage of HB2445 they as well their neighbors will be never be able to develop their land. The land described as "critical areas" is currently generating only ag property tax and is attractive and lucrative to developers and would be assessed in a different tax category if developed; consequently generating much more revenue for the County than if it were left as agricultural.

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I question why the language that includes buffer areas and land contiguous to land already in the program is included as some of the current buffer land is over 10 miles from the base in Riley County and seems like it could mean that the buffer zone could be limitless.

I fully understand that HB2445 is a compromise developed by a working group and was introduced as a substitute for HB2169 which I did oppose. I would be pleased to respond to any questions you might have regarding HB2445.



DEPARTMENT OF THE ARMY
OFFICE OF THE ASSISTANT SECRETARY OF THE ARMY
INSTALLATIONS AND ENVIRONMENT
CENTRAL REGION ENVIRONMENTAL & GOVERNMENT AFFAIRS
601 EAST 12TH STREET, SUITE 0417
KANSAS CITY, MO 64106-2896

February 17, 2010

Re: House Bill 2445

The Honorable Pete Brungardt
Chairperson, Senate Committee on Federal and State Affairs
Room 136-E
Kansas State Capitol
300 SW 10th Street
Topeka, KS 66612

Dear Chairman Brungardt,

I am writing to you in support of the proposed legislation contained in House Bill 2445 which is currently before the Senate Committee on Federal and State Affairs. As the Department of Defense, Regional Environmental Coordinator for Standard Federal Region VII, which includes the State of Kansas, I appreciate the opportunity to voice my support for this important legislation.

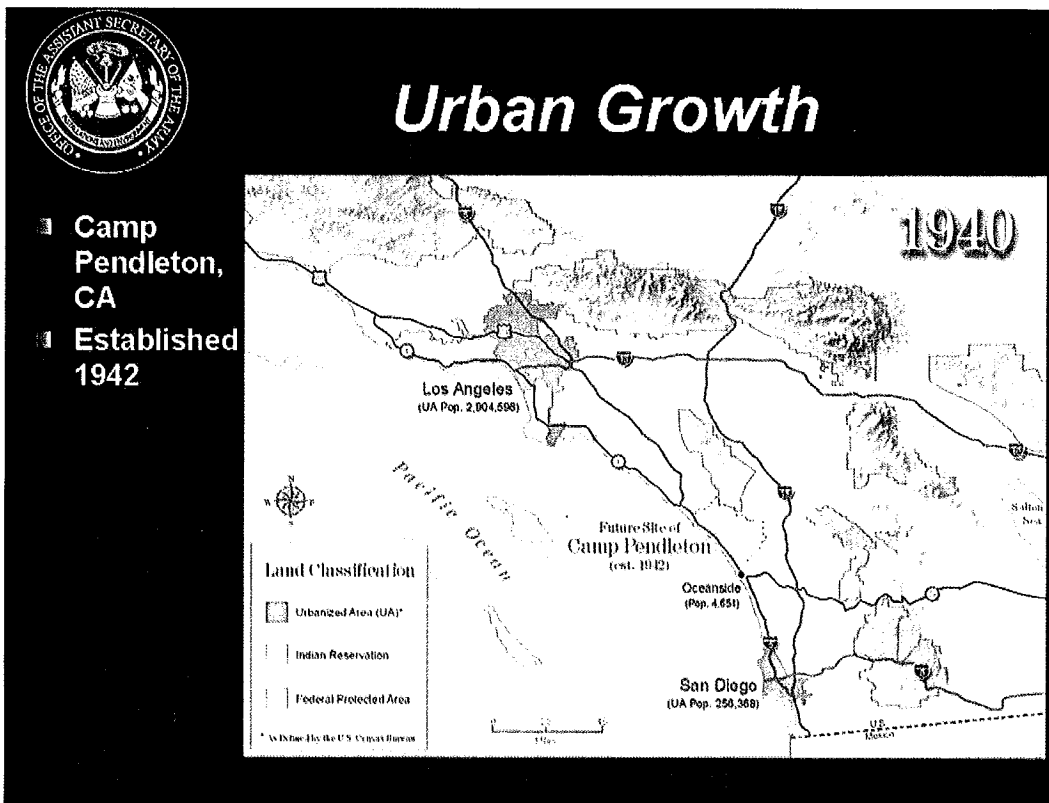
The long term sustainability of military installations is generally tied to three factors: 1) their size and available space for evolving operational missions; 2) the effects of technology on military capabilities and tactics; and 3) external political, environmental and development pressures. State and local governments can significantly influence installation sustainability. H.B. 2445 unequivocally expresses the state's interest in supporting the best interests of its military assets, while establishing legal authority for the state and the military to work as partners to promote the long term viability of these vital facilities.

I welcome the opportunity to work with you and your committee on this and any future matter 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) 358-3445, or e-mail at stephen.c.scanlon@us.army.mil. I thank you for the opportunity to comment on House Bill 2445 and would appreciate it if you would share this letter with members of your committee.

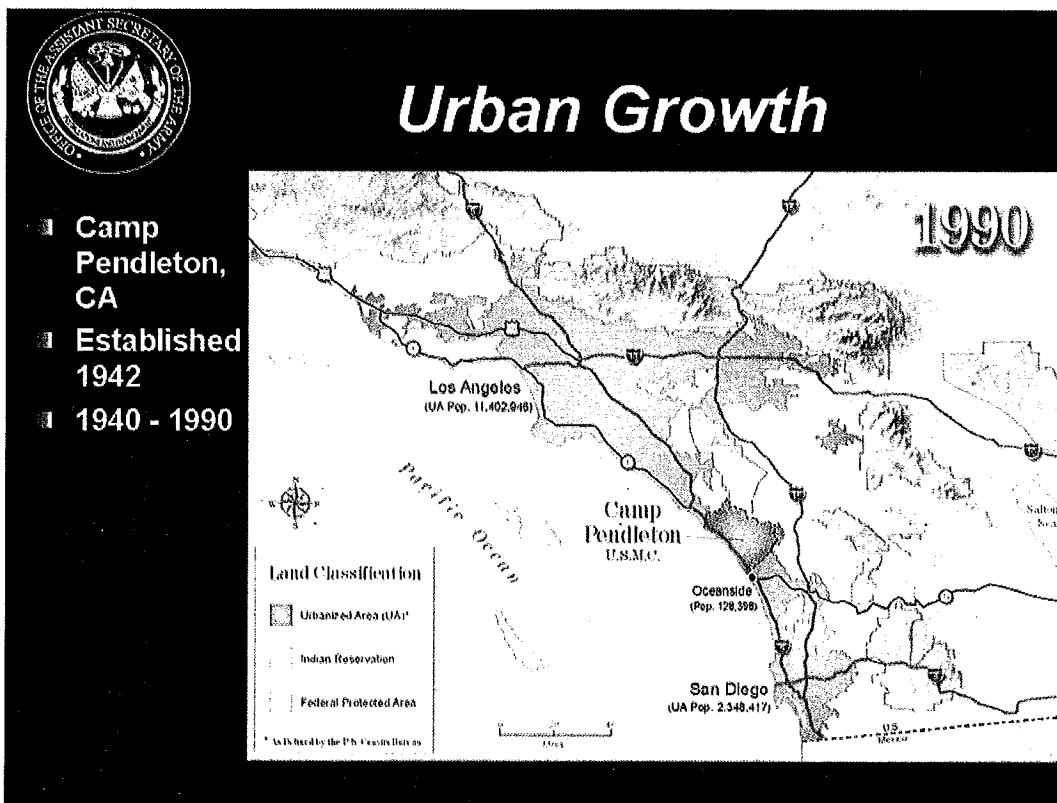
Sincerely,

Stephen C. Scanlon
DoD Regional Environmental Coordinator, Region VII

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Attachment 3



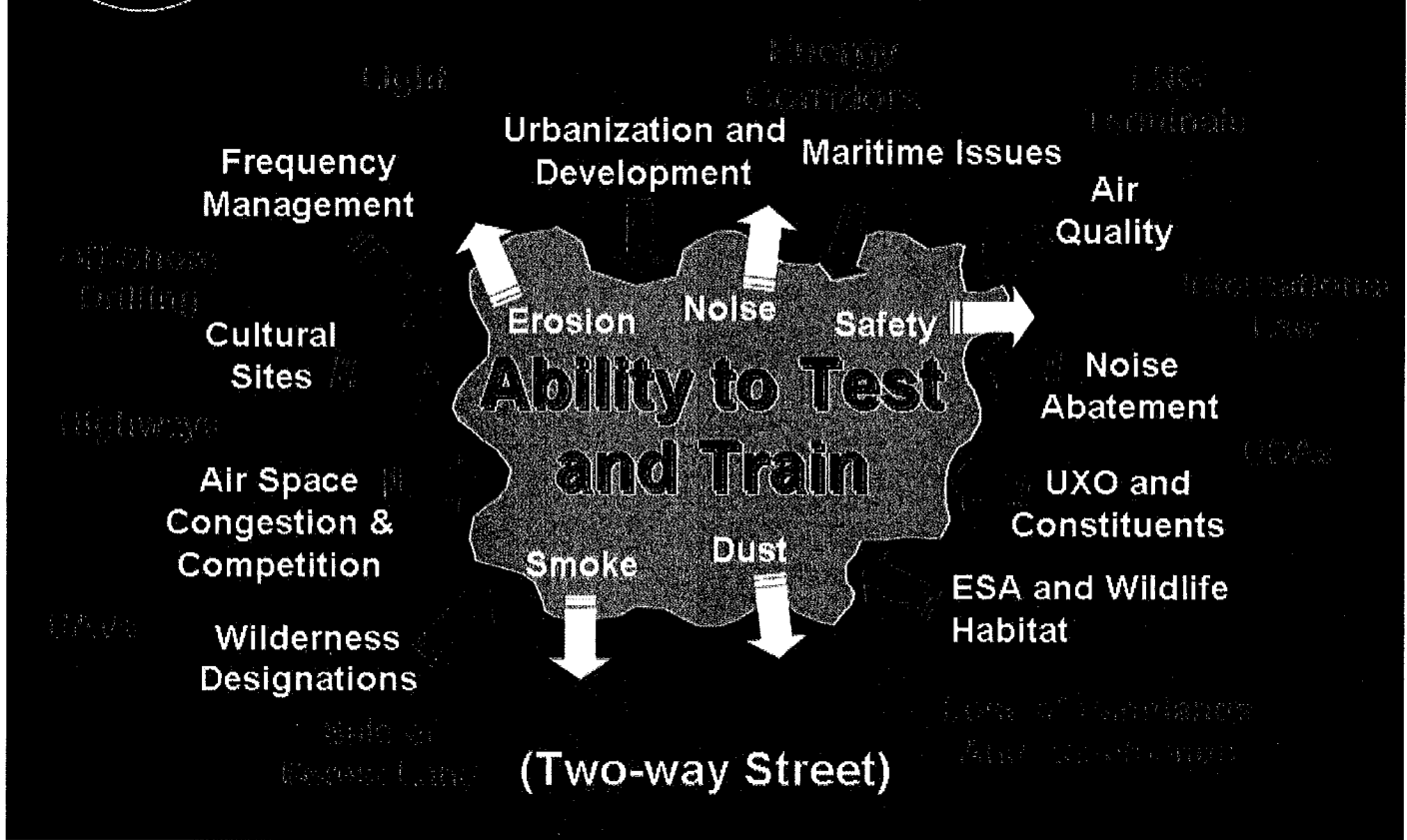
Slide 1



Slide 2



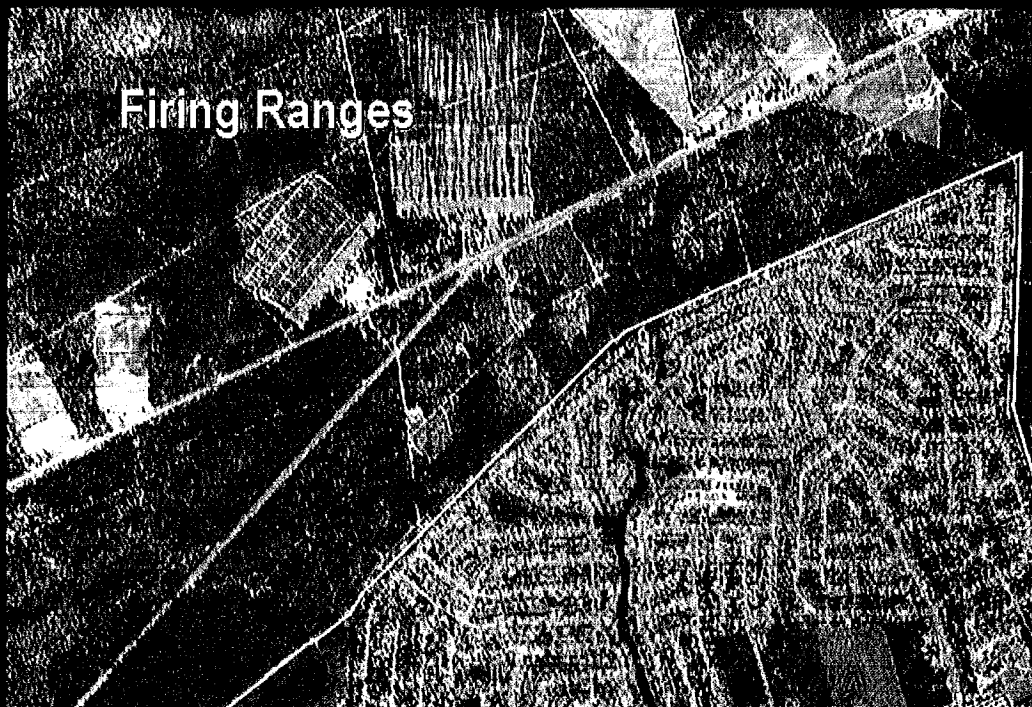
Encroachment Pressures



Slide 3



Incompatible Development



Slide 4



Internal Solutions

- Master Planning
- DOD Readiness and Environmental Protection Initiative (REPI) / Army Combatable Use Buffer (ACUB) Program
- Community coordination – Joint Land Use Study (JLUS)
- Army Operational Noise Management Program (ONMP)
- USN / USAF Air Installations Compatible Use Zones (AICUZ) program
- USN / USMC Range Air Installations Compatible Use Zones (RAICUZ) program
- Integrated Natural Resource Management Plan (INRMP)
- Base Realignment And Closure (BRAC)

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Partners

- Association of Defense Communities (ADC)
- Council of State Governments (CSG)
- Environmental Council of the States (ECOS)
- EPA Blue Skyways Collaborative
- International City / County Management Association
- Land Trust Alliance
- National Association of Counties (NACo)
- National Association of Regional Counsels (NARC)
- National Association of Resource Conservation and Development Councils (NARC&DC)
- National Conference of State Legislatures (NCSL)
- National Governors Association (NGA)
- The Nature Conservancy
- U.S. Natural Resource and Conservation Service
- Western Governors' Association (WGA)
- Western Regional Partnership

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DEPARTMENT OF THE ARMY
INSTALLATION MANAGEMENT COMMAND
HEADQUARTERS, UNITED STATES ARMY GARRISON, FORT RILEY
500 HUEBNER ROAD
FORT RILEY, KANSAS 66442-5000

February 24, 2010

Testimony Regarding House Bill 2445, before the Senate Federal and State Affairs Committee

Offered by Colonel John Dvoracek, Deputy Garrison Commander (Transformation),
U.S. Army Garrison, Fort Riley, Kansas

Chairman Brungardt and members of the Committee, thank you for the opportunity to testify today regarding House Bill 2445.

Fort Riley appreciates the committee's consideration of this bill. Military training, by its nature, generates noise, dust and smoke that can become an annoyance to our neighbors. Conversely, certain developments of land near military installations impede essential military activities within the boundaries of established military facilities. We believe that an aggressive program to manage development near the Fort Riley military installation in partnership with the installation's neighbor-communities is a vital part of sustaining Fort Riley's mission now and far into the future.

HB 2445, if enacted, would ensure that effective partnership of Fort Riley and its neighbors, which exists today, will continue. It would also codify requirements for local communities to inform Fort Riley of proposed developments of lands near the installation that could impact upon Fort Riley's Operations mirroring that obligation Fort Riley has to communities in accordance with the National Environmental Policy Act. I would like to point out that the partnership directed by HB 2445, would not, however, infringe upon Fort Riley's neighbors' responsibility or authority to make final decisions concerning development of their lands. Rather it would ensure only that Fort Riley and its neighbors consider the effects of decisions each of them may make upon the other.

This bill could help secure the value of Fort Riley for preparing our nation's Army and other military services to defend our great nation long into the future. I will stand for questions at the appropriate time.

Thank you.

John Dvoracek
Colonel, United States Army

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Testimony of COL Wayne Green
Garrison Commander, Fort Leavenworth, KS
Before the Kansas Senate Federal and State Affairs Committee
24 February 2010

Chairman Brungardt, Members of the Committee, I am COL Wayne Green, Garrison Commander at Fort Leavenworth, Kansas. On behalf of the Soldiers, Families, and civilians of Fort Leavenworth, I thank you for your support both past and present and for this opportunity to discuss House Bill 2445.

Since COL Henry Leavenworth established Fort Leavenworth in 1827 and the First City of Kansas followed in 1854, the adjacent communities and Fort Leavenworth have become ever-more inextricably linked. Today, your Fort contributes over \$330M dollars annually in payroll and contracts to the local economy. And we are known Army-wide as the intellectual center of the Army--the home of the Combined Arms Center and the Command and General Staff College--and with the completion of the Joint Regional Correctional Facility next Fall, a full Army Corrections brigade will call Fort Leavenworth Home. Over 20,000 retirees have decided to settle in the local area, and our CGSC students--including over 100 International officers--Soldiers and Families live, shop and thrive in the local community.

Recently the Leavenworth-Lansing Chambers of Commerce declared their chief objective of the new year: the continued strengthening of military affairs and relations with Fort Leavenworth. A testimony to our shared history and recognition of our shared future but also a recognition that we can and will do more to foster our partnership. Communication, cooperation, and collaboration have been the pillars of our relationship with our local community, and all three help ensure the viability of the vital missions that we provide for our Army.

While currently not an issue for Fort Leavenworth, encroachment has been recognized as an issue of national importance. Further on the relatively small 5,600 acres of our post, any encroachment could disadvantage our ability to train the growing number of military policemen for their deployments, restrict support to our mission, and hinder our ability to preserve the quality of life for our Families.

House Bill 2445 is a framework in which these encroachment issues may be addressed by facilitating communication between a municipality and the military installation it hosts while preserving the municipality's authority to decide upon its own plan for growth.

We understand that the relationship between a community and the military installation that it hosts is a joint responsibility. Fort Leavenworth has benefited from the thoughtful and gracious leadership of our partners in our community. We look forward to strengthening these lines of communication so that we may discuss and, to the extent possible, jointly manage issues of common concern.

Thank you again and I look forward to any questions you may have.



BOARD OF COMMISSIONERS

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February 24, 2010

The Honorable Pete Brungardt, Chairman
Senate Committee on Federal and State Affairs
Capitol Building, Rm. 144-S
Topeka, KS 66612

Re: H.B. 2445

Dear Chairman Brungardt and Members of the Committee:

I appreciate the opportunity to offer written testimony on behalf of the Riley County Commission in support of H.B. 2445.

This bill is the product of a truly collaborative effort between both military interests and civilian constituencies surrounding the Fort Riley military installation, located just outside Manhattan, Junction City, and Riley, Kansas. Our efforts on this bill began in February, 2009 when the Riley County Commission hosted a public meeting and appointed a 19-member local working group charged with developing a statute which would protect Fort Riley (and other Kansas military installations) from "encroachment" by civilian land uses surrounding these installations. Our county commission's goal was to produce a bill which would be satisfactory to both military and civilian stakeholders. We believe H.B. 2445 accomplishes just that. That local working group was composed of representatives of: Riley and Geary counties; Fort Riley; the Secretary of the Army; the cities of Manhattan, Junction City, Riley and Ogden; rural landowners and township representatives. It met in early March 2009 and produced a "consensus draft" of statutory language by March 27, 2009. That "consensus draft" was endorsed by representatives of the foregoing cities (with the exception of Ogden) and counties by April 2, 2009. Riley County placed that "consensus draft" on its website and discussed the "consensus draft" in its regular open public meetings many times throughout the spring, summer and fall of 2009.

Our "consensus draft" was also discussed at length with the Riley County legislative delegation and members of the public at our June, 2009 legislative conference. It was designated the lead item in our county's 2010 legislative platform.

In July and September, 2009 we presented our "consensus draft" to the legislative policy committee of the Kansas Association of Counties. The KAC membership was receptive to our proposed bill and later added a statement in its 2010 legislative platform in support.

In November, 2009 John Armbrust, of the Governor's Military Council, convened a meeting in Topeka with representatives of Riley County, the military and legislators Taffanelli and Hawk, to determine if additional revisions were necessary to move the "consensus draft" forward this legislative session. At that meeting changes to the document were offered by both the military and Riley County. Those November, 2009 changes to the "consensus draft" were thereafter approved by consensus by members of the local working group.

Throughout this process, Riley County's primary point of legislative contact on this issue has been Representative Sharon Schwartz. As a matter of timing, H.B. 2445 was introduced January 14, 2010, while Sharon Schwartz' bill, H.B. 2487, was introduced January 20, 2010. The two bills have only minor

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differences, primarily grammatical. I can report the local working group supports by consensus H.B. 2445, as well as H.B. 2487. Representative Schwartz encouraged Riley County to support H.B. 2445 because hearings were already scheduled. She believes it is important that a good bill be passed, that has the support of the local community affected. Riley County appreciates Representative Schwartz's leadership and guidance on this issue.

When the next BRAC occurs, it is absolutely critical those Kansas Counties with military installations demonstrate they have worked cooperatively with their military installations to address potential base "encroachment." The long path Riley County and its partners on this bill have taken over the past 10 months, which has produced HB. 2445, is proof of that local cooperation between civilian and military interests.

I encourage you to act favorably upon H.B. 2445 and pass it in its current form, out of respect for the tremendous effort we and our partners have expended in producing legislation which respects the long-term interests of the military, while safeguarding local control over land use and development surrounding military bases.

Thank you for your attention to this critical matter.

Sincerely,



Michael B. Kearns, Chairman
Board of Riley County Commissioners

cc: Riley County Commission:
Karen McCulloh, Vice Chair
Alvan D. Johnson, Member



Planning & Development

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Email: mwedel@rileycountyks.gov

February 24, 2010

The Honorable Pete Brungardt, Chairman
Senate Committee on Federal and State Affairs
Capitol Building, Rm. 144-S
Topeka, KS 66612

Re: H.B. 2445

Dear Chairman Brungardt and Members of the Committee:

As the Director of Planning & Development for Riley County and as a representative of the Kansas Association of County Planning & Zoning Officials, I am pleased to offer testimony in support of H.B. 2445.

The beauty of this bill is that it fosters a cooperative and collaborative environment in which local communities and military installations can mutually address encroachment issues without state control of private land use. It does this in part by requiring communities to communicate with military installations about encroachment issues in the critical areas of concern, share information on land use plans and regulations as they are being developed or changed, share information regarding development activity surrounding the installation, and notice citizens of potential conflicts with the military installation. Perhaps most importantly the bill fosters cooperation by requiring communities to:

- notify the military installation of critical development proposals that may effect the military mission; and
- consider and evaluate with each such development proposal a very specific set of factors to determine what impact the development may or may not have on the military mission.

These last two points are very critical in order to have a good, sound planning process for proper decision-making at the local level and I am pleased that the bill requires all affected communities to analyze and evaluate these same factors in all development situations. This provides for uniformity and consistency in the planning process for all affected communities and is a fair and equitable way of assuring a significant measure of cooperation and collaboration with neighboring military installations.

I therefore strongly urge passage of this consensus legislation without modification.

Sincerely,

Monty R. Wedel, Director
Planning and Special Projects

cc: Michael B. Kearns, Chairman, Board of Riley County Commissioners
Karen McCulloh, Vice-Chair, Board of Riley County Commissioners
Alvan D. Johnson, Member, Board of Riley County Commissioners
Clancy Holeman, Riley County Counselor

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Attachment 7

2-24-10



COUNSELOR'S OFFICE

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February 24, 2010

The Honorable Pete Brungardt, Chairman
Senate Committee on Federal and State Affairs
Capitol Building, Rm. 144-S
Topeka, KS 66612

Re: H.B. 2445

Dear Chairman Brungardt and Members of the Committee:

On behalf of my client, the Board of Riley County Commissioners, I'd like to express my support of H.B. 2445.

This bill is a stellar example of what can happen when those local citizens and governmental entities affected by proposed legislation are given sufficient time to weigh in with their comments and concerns. H.B. 2445 is the end product of a national and regional effort by the military to address "encroachment" on military installations by surrounding residential, commercial and agricultural development.


H.B. 2445 is very different from the original legislation which spurred Riley County and its local private and public partners to develop an alternative bill. One of the essential terms of H.B. 2445 is Section 4, which is an explicit guarantee local citizens have the final say in all land development decisions relevant to property surrounding military bases:

"Notwithstanding any other provision of this act, the final decision on all planning, development, zoning and land use issues shall be made by each municipality adjacent to or surrounding a military installation."

The importance of leaving Section 4 in H.B. 2445, as written, cannot be overstated—it means any proposed interpretation of the remainder of the statute cannot defeat local civilian control of development decisions. As Riley County Commission Chairman Kearns has testified, H.B. 2445 resulted from 10 months of detailed discussion and negotiation among civilian and military interests, private citizens and local governmental bodies.

Like Chairman Kearns, I encourage this Committee to respect that local effort and act favorably upon H.B. 2445, without modifying its terms.

Sincerely,



Clancy Holeman
Riley County Counselor

cc: Michael B. Kearns, Chairman, Board of Riley County Commissioners
Karen McCulloh, Vice-Chair, Board of Riley County Commissioners
Alvan D. Johnson, Member, Board of Riley County Commissioners

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Attachment 8

2-24-10

Testimony on House Bill 2445

To the Senate Federal and State Affairs Committee

Randy Mettner
On behalf of Major General Tod Bunting
The Adjutant General of Kansas

Wednesday, February 24, 2010

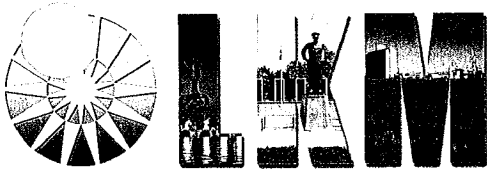
Mr. Chairman and members of the Committee:

I am Randy Mettner, Executive Officer for Major General Tod Bunting the Adjutant General and Director of Homeland Security for Kansas. Along with me are members of the Kansas Army and Air National Guard. I want to thank you for allowing me to comment and speak in support of HB 2445 which in specific terms directs and encourages the communication between the local communities and military installations in Kansas. This will continue the goal of assuring the military community that Kansas supports them in both their mission and their state located installations.

The Bill requires that installations and communities have points of contact, make annual contact and that any community planning take into consideration the military mission. The military is required to discuss with the community changes to their missions and comment on community actions. However more detail will be given by others testifying in support of this legislation.

While there have not been many issues over the years that would be considered encroachment in the Kansas National Guard there have been some. This will help mitigate future difficulties. This is also very important for Base Realignment and Closure (BRAC). If future follow-on missions, as a result of BRAC, affecting or changing force structure this legislation will go far in continuing to have Kansas seen as a "military friendly" state. The state and the armed Forces have much to offer each other considering the military sector remain a \$13 billion industry.

Thank you for letting me provide General Bunting's views as well as my own. I will be glad to answer any questions the Committee may have.



TO: Senate Federal and State Affairs Committee
FROM: Sandy Jacquot, Director of Law/ General Counsel
DATE: February 24, 2010
RE: Support for HB 2445

On behalf of the League of Kansas Municipalities, I want to thank the Committee for allowing us to testify in support of HB 2445. This bill does put in place additional notice requirements and mandates on cities when zoning in the vicinity adjacent to military installations, but LKM has checked with the cities affected by these requirements and they do not believe the additions will be problematic. Cities have been involved in the process and are informed regarding the changes. Thus, LKM supports the adoption of HB 2445.



KANSAS
ASSOCIATION OF
COUNTIES

TESTIMONY TO THE SENATE FEDERAL AND STATE AFFAIRS COMMITTEE
ON HB 2445
FEBRUARY 24, 2010

Mr. Chairman and Members of the Committee:

Thank you for the opportunity to appear today in support of HB 2445.

This legislation was introduced during the 2009 session. Counties were concerned about some provisions in the 2009 bill that affected counties' ability to regulate local land use. Riley County led the discussions on the legislation with other local governments and the military in an attempt to find compromise. HB 2445 reflects a compromised agreement between all parties with an interest in this matter.

KAC supports this bill as a balanced approach for local government and the military. We believe it addresses the concerns raised by the military without infringing on local government planning and zoning abilities.

KAC asks the committee to support the agreed-to legislation.

I would be happy to stand for questions.

Respectfully Submitted,

Melissa A. Wangemann
General Counsel and Director of Legislative Services

300 SW 8th Avenue
3rd Floor
Topeka, KS 66603-3912
785•272•2585
Fax 785•272•3585

Sn Fed & State
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2-24-10

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TESTIMONY OF COLONEL RON LANGFORD

BEFORE COMMITTEE ON VETERAN, MILITARY, AND HOMELAND SECURITY

HB 2445 (2010)

Introduction

Good afternoon Chairman Myers and committee members, I am Colonel Ron Langford, the Commander of the 22nd Operations Group, McConnell Air Force Base, Kansas. Today, you are considering whether to support legislation that could assist local communities and military installations throughout Kansas develop in a compatible manner. I have come here today to voice support for this encroachment legislation on behalf of the United States Air Force and McConnell Air Force Base, assuming that minor changes are made to address the Air Force's sovereign immunity concerns. The Air Force Regional Environmental Coordinator letter to the committee suggested modifications that would sufficiently resolve these concerns.

McConnell Air Force Base

I would like to start by briefly discussing McConnell Air Force Base. McConnell Air Force Base is part of Air Mobility Command (AMC) and is the home of the 22nd Air Refueling Wing. The 22nd Air Refueling Wing is the largest of only three supertanker KC-135 Stratotanker wings in the Air Force. Our primary mission is to provide the nations global reach by conducting air refueling and airlift when and where needed. The 22nd Air Refueling Wing is comprised of the 22nd Operations Group, 22nd Maintenance Group, 22nd Mission Support Group, and 22nd Medical Group.

I serve as the Commander of the 22nd Operations group. The 22nd Operations Group flies the wings KC-135R Stratotanker refueling and airlift operations in support of worldwide AMC, U.S. Transportation Command, Air Force, Department of Defense, and allied operations anywhere in the world. With its four flying squadrons and one operations support squadron, the group executes operations in support of strategic force projection and mobility, special operations, tactical air operations, and humanitarian assistance efforts. The 22nd Operations group operates 63 KC-135 Stratotankers that average 246 sorties and over 985 hours of flight time a month.

In addition, McConnell Air Force Base is home to the Kansas Air National Guard's 184th Intelligence Wing and Air Force Reserve 931st Air Refueling Group. In all, McConnell Air Force Base is home to 2,801 Active Duty members and their families as well as the workplace for another 2,527 reservists, guardsmen, and

civilian employees. McConnell Air Force Base's total economic impact on the local area is over \$400 Million dollars annually.

Discussion of Compatible Use

Increasingly McConnell Air Force Base, like many other military installations, has been confronted by threats of incompatible land use near our installation. Incompatible land uses around the military installation result in a situation often referred to as encroachment.

What is encroachment? Encroachment is the cumulative result of any and all outside influences that inhibit normal military training, testing and operations. The simple answer is that encroachment is the growth of communities around an installation that interferes with the installation's ability to perform the mission. Encroachment has emerged in recent years as a major issue for the Department of Defense (DOD), as ever-increasing population growth continues near once remote and isolated military installations. The transformation of areas around military installations over the last 10-20 years has been truly dramatic.

It is also very important to understand that development can interfere with military functions in many ways other than just the size and location of buildings. Clearly building a high rise at the end of a runway is the simplest, clearest example of encroachment but there are many other forms of encroachment. Incompatible land uses involving electro-magnetic or radio transmissions can also cause interference with the frequency spectrum necessary for military communications and safe flight operations. Also, local development of landfills or waste water treatment facilities near runways or low level flight paths attract birds and significantly increase Bird Aircraft Strike Hazards (BASH). BASH incidents pose significant threats to aircraft safety. Encroachment often leads to the military modifying its activities to mitigate potential impacts; these modifications reduce the effectiveness of training and can inhibit mission effectiveness.

Today, we focus on community partnering and intergovernmental planning to achieve compatible land use and zoning to protect ever-evolving management needs. McConnell Air Force Base and our local communities benefited greatly over the last few years through strong partnering efforts. First, the City of Wichita and Sedgwick County created the Metropolitan Area Planning Department in order to better foster interaction and cooperation between McConnell and the local communities. When future planned developments are submitted, the base is contacted and allowed to provide comments related to potential encroachment threats. Based on our relationship with our local communities, McConnell AFB believes that our comments are strongly considered by the decision makers.

The Air Force also integrates these activities as appropriate with such programs as the Air Installations Compatible Use Zones (AICUZ) program and the Joint Land Use Study (JLUS) Program. In 1991, local governments adopted an Airport

Overlay District around McConnell Air Force Base. This district substantially adopted the findings of McConnell's AICUZ and further helped protect the base from encroachment.

Concurrently, the Air Force is also working with national organizations such as the National Conference of State Legislatures, the Council of State Governments, the National Association of Counties, the Environmental Council of States, and many other state and local organizations to encourage state legislation and policy development to enhance long-term sustainability of our military installations. The legislation before the committee is just that sort of legislation.

Conclusion

I would like to thank you for giving me an opportunity to address this legislation on behalf of the Air Force. By supporting this legislation, you can help improve the ability of the United States Air Force to carry out its national security mission and at the same time promote the health and safety of surrounding communities. Thank you for seriously considering this important legislation.



DEPARTMENT OF THE AIR FORCE
AIR FORCE CENTER FOR ENGINEERING AND THE ENVIRONMENT
REGIONAL ENVIRONMENTAL OFFICE
525 SOUTH GRIFFIN SUITE 505
DALLAS TEXAS 75202-5023

17 February 2010

Re: House Bill 2445

Honorable Pete Brungardt
Chair, Senate Federal and State Affairs Committee
Capitol Office
Room 136-E
Kansas State Capitol
300 S.W. 10th Street
Topeka, KS 66612

Dear Chairman Brungardt,

My name is Tom Manning and I am the Director of the Regional Environmental Office for Federal Region VI, located in Dallas, TX. My office is also responsible for Air Force installations in EPA Region VII, which as you know includes the State of Kansas. I am writing to express the position of the Department of the Air Force on the proposed legislation contained in House Bill 2445, which is currently scheduled for public hearing before the Senate Federal and State Affairs Committee on Wednesday, 24 February 2010. I appreciate the opportunity to express the Air Force's general support of this important legislation as well as a few concerns we have with the language used in the legislation. Most of our concerns deal with the matter of federal rights and the federal government's relationship as a sovereign entity with individual states.

I would also like to provide you with a copy of the House testimony of Colonel Ron Langford, the Commander of the 22nd Operations Group, McConnell Air Force Base, Kansas. Colonel Crowhurst, the base commander at McConnell AFB, sincerely regrets the fact that neither he nor a member of his base leadership could attend in person because they are currently involved in a Unit Compliance Inspection. He requests that you consider the prior testimony of Colonel Langford in support of the legislation.

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H.B. 2445 provides communities with the tools needed to work with military installations to address the problem of incompatible land uses that can lead to encroachment problems. What is encroachment? Officially, encroachment is the cumulative result of any and all outside influences that inhibit normal military training, testing, and operations. The simple answer is that encroachment is the growth of communities around bases that interferes with the bases' ability to perform their missions. Encroachment has emerged in recent years as a major issue for the United States Air Force (USAF) and the Department of Defense (DOD), as ever expanding development continues near once remote and isolated military installations. The transformation of areas around military bases over the last 10-20 years has been truly dramatic.

Today, the USAF and DOD focus on community partnering and intergovernmental planning to achieve compatible land use and zoning to protect ever-evolving mission requirements. We are integrating these efforts with such programs as the Air Installations Compatible Use Zones (AICUZ) program and the Joint Land Use Study (JLUS) program. Concurrently, the DOD is also working with national organizations such as the National Conference of State Legislatures, the Council of State Governments, the National Association of Counties, the Environmental Council of States, and many other state and local organizations to encourage state legislation and policy development to enhance long-term sustainability of our military installations. H.B. 2445 is just the sort of legislation that helps ensure compatible land use near our facilities.

The Air Force, however, has concerns with some of the language used in H.B. 2445. We recommend that the word "shall" in § 2(b)(1) be followed by the phrase ", consistent with Federal laws and regulations:" or a similar phrase. Although we fully agree that frequent communication between military installations and their surrounding communities is desirable for all parties and should be encouraged, the Air Force is concerned that such a mandate could run afoul of Federal Laws, including the doctrine of sovereign immunity.

Additionally regarding the notion of federal sovereignty, we respectfully request a modification to § 2(b)(2)(C). We do not believe that a military commander's failure to respond to any type of notice mandated under state law can constitute his default approval of the terms of the notice (and by extension, the federal government's approval of such). It would be reasonable, however,

to construe a military commander's silence to a given notice as an indication that he does not expressly disapprove of the terms of the notice. We therefore suggest that the final portion of § 2(b)(2)(C) be amended to read as follows: "Failure of an installation commander to respond after receiving notification under this subparagraph shall be deemed to indicate *that such commander does not object to...* (amended portion in italic font)."

I welcome the opportunity to work with you and your Committee on this and any future matter that may affect DoD installations and agencies in the state of Kansas. If you have any questions, please feel free to contact me by telephone at (214) 767-4650 x 4669 or by e-mail at thomas.manning@brooks.af.mil. You may also contact my Regional Counsel, Major Michael Blackburn, at (214) 767-4650 x 4672 or via email at michael.blackburn@brooks.af.mil. I thank you for the opportunity to comment on H.B. 2445 and would appreciate it if you would share this letter with members of the committee.

Sincerely,



THOMAS M. MANNING
Department of the Air Force
Regional Environmental Coordinator, Region VII

Attachment:
Testimony of Colonel Langford



KANSAS

Governor's Military Council

Testimony in Favor of HB2445
To
Federal and State Affairs Committee
February 24, 2010

Chairman Brungardt and Members of the Committee, I'm John Armbrust, Executive Director of the Governor's Council. On behalf of the Council, thank you for the opportunity to provide testimony in support of HB2445.

The Governor's Military Council has not reviewed the detailed language in HB2445, but voted in its February 18, 2009 meeting to support the concept addressed in the bill.

HB2445 is revenue neutral, and if passed, will once again put the state of Kansas in the forefront of being a military-friendly state. As you may remember, we were extremely successful during the 2005 round of Base Realignment and Closure (BRAC), being the sixth largest growth state resulting from BRAC 2005 and BRAC 2005- related decisions. One of the major reasons for our success was our proactive approach to protecting and growing our installations.

Passage of HB2445 will continue our efforts to be proactive in protecting, maintaining and growing our military installations and thereby preparing for another round of BRAC or BRAC-like activity. The question in my mind is not if there will be another round of BRAC-like activity, but when this activity will take place.

When the next round of BRAC or BRAC-like activity occurs, it is already clear a major evaluation factor will be if an installation has current or potential encroachment issues, and whether or not the state in conjunction with the communities near that installation are taking actions to resolve such issues. HB2445 addresses this evaluation factor directly, and in a way that also protects the rights of local units of government and local land owners.

HB2445, in the final analysis, simply requires a local unit of government and an installation to discuss workarounds for potential encroachment issues prior to a final land use decision being made. Once these discussions have taken place, the local unit of government retains the right to make the final decision.

Some may wonder why protecting our installations from encroachment is so important as to require state legislation. The answer to this question is to not only prepare for the next round of BRAC-like activity, but also to protect a major player in our state's economy. The results of a study recently conducted by Wichita State University show military activity in Kansas adds nearly \$8B per year to the state's GSP, directly and indirectly employs over 169,000 persons in Kansas and pays about \$6B per year in wages to people living in Kansas. Additionally, military activity generates about \$395M in taxes each year.

Clearly military activity in Kansas is a major force in our state's economy, and HB2445 helps keep that economic force strong and viable – in a revenue neutral manner and in a way that protects the rights of local units of government and local land owners. As a result, we recommend you fully support HB2445.

Thank you again Chairman Brungardt and Committee Members for allowing me to provide testimony in favor of passage of HB2445.

Senate Committee on Federal and State Affairs

Hearing on House Bill 2445

Wednesday, February 24, 2010

Written Testimony of Bob Strawn

Mayor, City of Manhattan, Kansas

Chairperson Brungardt, Vice-chairperson Reitz and Honorable Members of the Senate Committee on Federal and State Affairs:

Please accept my written testimony in support of HB 2445 concerning land use adjacent to military installations. The City of Manhattan is fortunate to be a neighbor to the U. S. Army Installation Fort Riley. Fort Riley plays a critical role in our national homeland security mission, but is also a major economic engine for the Flint Hills region and the entire State of Kansas. We at the City pride ourselves on having a strong, collaborative relationship with our partners on post and frequently share information and resources on a variety of issues including housing, recreation, child care, and workforce development.

We understand that protection from development encroachment around the installation is important for the Department of Defense to achieve its mission at Fort Riley. HB 2445 formalizes protocols for the military and local communities to share information and achieve mutual goals for land use. Many of its mandated practices are already in place between the City of Manhattan and Fort Riley. HB 2445 represents the consensus of a working group of military representatives and local officials, and it addresses the concerns that were raised in the last session about a similar piece of legislation, HB 2169. The City of Manhattan supports this legislation because it reinforces our cooperative relationship with Fort Riley and the importance of joint land use planning. Thank you for your consideration.

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2-24-10



(16)

DEPARTMENTS OF THE ARMY AND THE AIR FORCE
JOINT FORCES HEADQUARTERS/KANSAS
2800 SOUTHWEST TOPEKA BOULEVARD
TOPEKA, KANSAS 66611-1287

21 January 2010

Honorable Don Myers
Kansas State Capitol
300 SW 10th Avenue, Room 561-W
Topeka, KS 66612

Dear Representative Myers

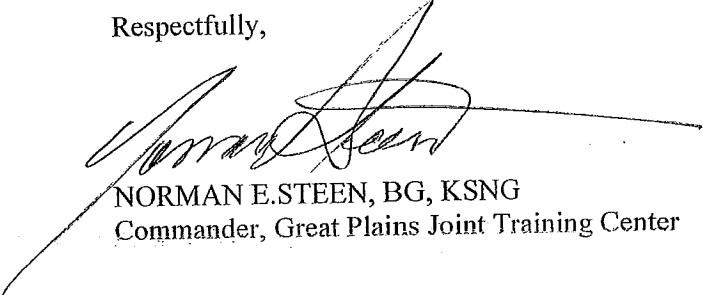
I am writing to support HB 2445, an act relating to military installations and adjacent areas.

I have found that effective and open communication between the leadership of military installations and the leadership of local governments is a key element in ensuring cooperative and responsible growth in both sectors. As commander of the Great Plains Joint Training Center near Salina, our excellent relationships with the Salina Airport Authority, City of Salina, and Saline County have made it possible to bring new jobs, new construction, and new military transient students to Kansas. We recognize the value of working cooperatively to enhance our State and national security, and well as strengthen our economy.

This bill codifies important practices to improve two-way communication between the leadership of military installations and municipal governments, and will further improve our future opportunities for mutual growth to the benefit to those we serve.

I urge you and your committee to support this bill through final passage.

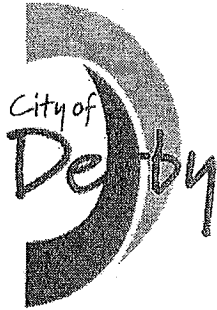
Respectfully,



NORMAN E. STEEN, BG, KSNG
Commander, Great Plains Joint Training Center

Sn Fed & State
Attachment 16

2-24-10



January 26, 2010

Representative Don Myers, Chair
House Committee on Veterans, Military & Homeland Security
State Capitol 561-W
Topeka KS 66612

Re: HB 2445 concerning land use; relating to military installations and adjacent areas

Dear Chairman Myers and Committee Members:

Thank you for this opportunity to address the committee in support of HB 2445.

While the City of Derby has enjoyed a high quality, open relationship with our neighbor to the north, McConnell Air Force Base, we understand the apparent need of some communities in the state to gain clarity about protocols regarding growth and development near military installations. In reviewing HB 2445, it was easy to see that some effort has been put into improving this bill over last year's version. That effort is much appreciated.

We also understand that having such protocols in place may prevent miscommunications and may provide an important indicator of our state's support of all its military installations, should another federal effort regarding base closure or realignment occur in the future.

While HB 2445 would require the City of Derby to engage in additional notifications and other procedures, we believe we could manage such a commitment for the good of the state as a whole, given the economic and other benefits of McConnell and the other military installations.

Thank you for your consideration of HB 2445.

Highest regards,

A handwritten signature in dark ink that reads "Dion P. Avello".

Dion P. Avello
Mayor

DPA:kbs

STATE OF KANSAS

18

LARRY POWELL
REPRESENTATIVE, 117TH DISTRICT
2209 GRANDVIEW EAST
GARDEN CITY, KS 67846-9668
(620) 275-6789

STATEHOUSE, 142-W
TOPEKA, KANSAS 66612
(785) 296-7694



TOPEKA

HOUSE OF
REPRESENTATIVES

COMMITTEE ASSIGNMENTS
CHAIRMAN: AGRICULTURE AND NATURAL
RESOURCES
VICE CHAIRMAN: AGRICULTURE AND NATURAL
RESOURCES BUDGET
MEMBER: TAXATION

February 24, 2010

Neutral testimony on behalf of **HB 2445**

Chairman Brungardt and members of the Committee, thank you for giving me the opportunity to provide written testimony on **HB 2445**.

I think there is some confusion as to what the bill does; some say it just lets the cities, counties, etc., talk with the military installations. My concern is that it is opening the door to conservation easements which I do not think a lot of people understand what the consequences of conversation easements would have on private property.

I do have a proposed amendment that I have enclosed with my testimony along with a story from a Texas rancher on his experience with conservation easements.

Thanks again,

Representative Larry Powell
District 117

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2-24-10

HOUSE BILL No. 2445

By Committee on Federal and State Affairs

1-14

Representative Powell

2/24/10

Prepared by Doug Taylor, Office of the Revisor of Statutes

18-21

9 AN ACT concerning land use; relating to military installations and ad-
10 jacent areas.

11
12 *Be it enacted by the Legislature of the State of Kansas:*

13 Section 1. Areas of this state that are wholly or in part within jointly
14 developed community — military air installation compatible use zone
15 (AICUZ) study area, joint land use study (JLUS) area, army compatible
16 use buffer (ACUB), or an environmental noise management plan
17 (ENMP) of an active duty, national guard or reserve military installation
18 shall constitute a state area of interest vital to national security and the
19 economic well being of the state.

20 Sec. 2. (a) It is the desire of the state of Kansas to promote com-
21 munication, cooperation and collaboration between any military installa-
22 tion and any municipality adjacent to or surrounding the military
23 installation.

24 (b) To further communication, cooperation and collaboration:

25 (1) Each military installation shall:

26 (A) Notify each municipality adjacent to or surrounding the military
27 installation of any development, project or operational change on the
28 military installation which will alter or amend a JLUS, ACUB, AICUZ or
29 ENMP or any element therein.

30 (B) Notify each municipality adjacent to or surrounding the military
31 installation of any change in the name of any contact person, and any
32 related information thereto, who is used for the purpose of communica-
33 tion between the military installation and the municipality.

34 (C) Meet at least annually with representatives of each municipality
35 adjacent to or surrounding military installations for the purpose of deter-
36 mining any critical area within the state area of interest. A critical area of
37 interest is any portion of the state area of interest where future use of
38 such area should be monitored or controlled, or both, to reduce any po-
39 tential conflict with any military operation at the associated military
40 installation.

41 (2) Each municipality adjacent to or surrounding a military installa-
42 tion shall:

43 (A) Meet at least annually with the commander of the active duty,

purposes of coordinating
development of and planning for

1 national guard or reserve military installation associated with the state
2 area of interest in which the municipality is located to jointly determine
3 what portion, if any, of that state area of interest is a critical area.

coordinate and

4 (B) Notify the commander of each military installation located adja-
5 cent to or surrounded by a municipality of any change in the name of any
6 contact person, and any related information thereto, who is used for the
7 purpose of communication between the military installation and the
8 municipality.

coordinating

9 (C) Provide written notice to the commander of each military instal-
10 lation located adjacent to or surrounded by a municipality of the adoption
11 of any regulation, including any amendment thereof, or any amendment
12 to any comprehensive planning document which affects any mutually
13 agreed upon critical area. Such notice shall be provided at least 60 days
14 prior to the adoption of any such regulation, or amendment thereof, or
15 any such amendment to a comprehensive planning document. Failure of
16 an installation commander to respond after receiving notification under
17 this subparagraph shall be deemed to indicate such commander's ap-
18 proval of the regulation, or amendment thereof, or amendment to the
19 comprehensive planning document.

and coordinated

20 (D) Provide written notice to the commander of each military instal-
21 lation located adjacent to or surrounded by a municipality of each
22 development proposal which affect any agreed upon critical area to pro-
23 vide the commander of any military installation affected an opportunity
24 to assess any impact and coordinate issues with planning staff. Such notice
25 shall be provided prior to or concurrently with any statutorily required
26 notice for public hearing.

and coordinated

27 (E) Evaluate and consider the impact of each of the following factors,
28 based upon information provided by the installation, before making a final
29 decision regarding a development proposal located within an agreed upon
30 critical area:

31 (i) The potential for release into the air of any substance such as
32 steam, dust or smoke unless such substance is generated by agricultural
33 use, that would impair visibility or otherwise interfere with military oper-
34 erations, including ground operations.

35 (ii) The potential for production of any light emission, either directly,
36 or indirectly or by reflective light, that would interfere with pilot vision,
37 and aerial or ground based night vision training.

38 (iii) The potential for the production of electrical emissions that
39 would interfere with military ground and aircraft communications and
40 navigation equipment.

41 (iv) The potential to attract birds or waterfowl including, but not lim-
42 ited to, operation of any sanitary landfill and the maintenance of any large
43 scale feeding station.

1 (v) Whether or not structures are proposed within 10 feet of any
2 defined aircraft approach, departure, or transitional surface; or within 100
3 feet beneath any low-level military aircraft training route as provided by
4 the federal aviation administration.

5 (vi) The potential to expose persons to noise greater than 65 DNL.

6 (vii) The potential for obstructed visibility or surveillance, or both, of
7 direct fire weaponry platforms into permanently populated or operational
8 areas of military installations.

9 (viii) Whether or not there will be a violation of any federal aviation
10 administration height restriction in title 14 of the code of federal regu-
11 lations (14 CFR) part 77 entitled "Objects Affecting Navigable Airspace"
12 or Department of Defense Instruction (DoDI) Number 4165.57 entitled
13 "Air Installations Compatible Use Zones."

14 (F) Ensure that all comprehensive plans or zoning ordinances or reg-
15 ulations affecting any mutually agreed upon critical area of a state area
16 of interest consider the most current jointly developed community —
17 military JLUS or AICUZ, or both, recommendations sponsored by the
18 United States air force installation located at McConnell air force base
19 located in Sedgwick county, Kansas, sponsored by the United States de-
20 partment of the army installations located at Fort Riley in or adjacent to
21 Clay, Geary and Riley counties, Kansas, and Fort Leavenworth in Leav-
22 enworth county, Kansas, or sponsored by the Kansas adjutant general for
23 Forbes Field in Shawnee county, Kansas, or the Smoky Hill facility lo-
24 cated in Saline county, Kansas. All such comprehensive plans or zoning
25 ordinances or regulations shall also consider the presence and effective-
26 ness of any ACUB and the findings and recommendations of any AICUZ
27 or ENMP.

28 (G) Interpret such plans, ordinances or regulations in a manner that
29 considers the recommendation or study provided by the military with a
30 view to protection of public health, safety and welfare and maintenance
31 of safe military and aircraft operations, and the sustainability of installa-
32 tion missions.

33 (H) Consider the adoption of a mandatory disclosure requirement
34 for any property within any agreed upon critical area of a state area of
35 interest, which would inform a buyer of the potential for impact from
36 noise, smoke, dust, light, electromagnetic interference and aircraft safety
37 zones on the landowner produced by normal military operations.

38 (I) Provide notice to commanders of all construction permits issued
39 for improvements within the agreed upon critical area.

40 (J) Provide the following written notice to individuals receiving a con-
41 struction permit for improvements within the agreed upon critical area:

42 "The property for which this permit is issued is situated in an area that
43 may be subjected to conditions resulting from military training at a nearby

be coordinated with all jurisdictions
named herein, and shall

1 military installation. Such conditions may include the firing of small and
2 large caliber weapons, the over flight of both fixed-wing and rotary-wing
3 aircraft, the movement of vehicles, the use of generators and other ac-
4 cepted and customary military training activities. These activities ordi-
5 narily and necessarily produce noise, dust, smoke and other conditions
6 that may not be compatible with the permitted improvement according
7 to established federal guidelines, state guidelines or both."

8 (c) Nothing herein shall prevent municipalities adjacent to or sur-
9 rounding military installations from entering into interlocal agreements
10 with such military installations, in order to accomplish the objectives ex-
11 pressed herein.

12 Sec. 3. As used in sections 1 through 4, and amendments thereto:

13 (a) "AICUZ" means a jointly developed community — military air
14 installation compatible use zone.

15 (b) "ACUB" means an army compatible use buffer.

16 (c) "Development proposal" means any development requiring a re-
17 view process prior to approval including, but not limited to, platting, re-
18 zoning, conditional use, special use, variance or any other similar action.

19 (d) "DNL" means a day — night noise level.

20 (e) "ENMP" means an environmental noise management plan of an
21 active duty, national guard or reserve military installation.

22 (f) "JLUS" means a joint land use study.

23 (g) "Military training buffer contract" means land in which the private
24 owner voluntarily provides, sells or leases the development rights for the
25 land or provides, sells or leases the right of the military to reject proposed
26 development that will be incompatible with the training mission and op-
27 erations of a federal or state military facility of more than 100 acres.
28 Nothing in the state area of interest, military training buffer area or mil-
29 itary training buffer area contract shall provide authority for the use of
30 eminent domain.

31 (h) "Municipality" shall mean a city or county.

32 (i) "State area of interest military training buffer area" means land
33 that is contiguous to a federal or state military facility of more than 100
34 acres as specified in the applicable AICUZ, JLUS, ACUB, or ENMP or
35 is located adjacent to lands already in the program or is under a military
36 flight path.

37 Sec. 4. Notwithstanding any other provision of this act, the final de-
38 cision on all planning, development, zoning and land use issues shall be
39 made by each municipality adjacent to or surrounding a military
40 installation

41 Sec. 5. This act shall take effect and be in force from and after its
42 publication in the statute book.

coordination

[Faint, mostly illegible text from the reverse side of the page, appearing as bleed-through or ghosting.]

TO SAVE THE STARS: *The McIvor Ranch Story*

BY DUSTI SCOVEL

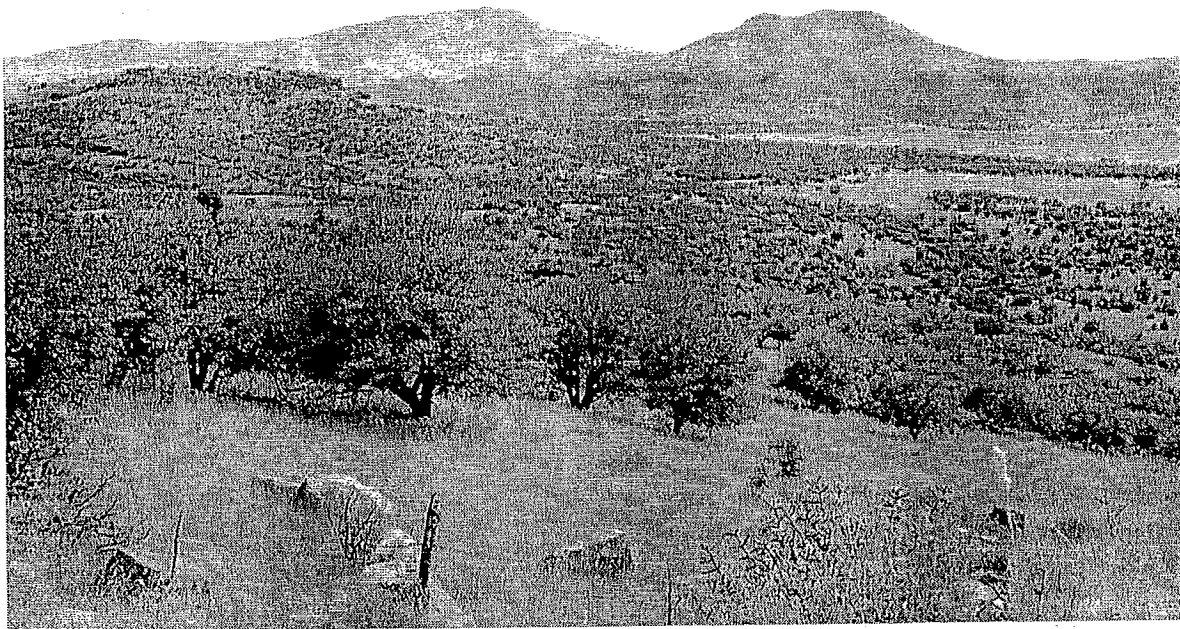


photo courtesy the McIvor Family

The U-Up-U-Down Ranch in the Davis Mountains of West Texas

20
Julie McIvor was varnishing a door to one of the rooms of the old ranch house on the morning I called. She was expecting my call but because we've discussed this issue before, she thought she could keep painting while we talked.

"Okay, Julie," I said. "Let's say I know a rancher who is considering doing a deal with the Nature Conservancy for a conservation easement on his land because he really needs the cash or he really needs the tax break. And, well, what they're proposing sounds pretty perfect. He'll get some cash up front, his taxes will be easier to swallow and his land will be protected from predator developers. In fact, it sounds pretty perfect. How would you tell him to approach the issue?"

I hear rustling noises in the background as the lid snaps

sharply back onto the paint can, the varnishing brush goes down and Julie's discourse begins - with a flat but emphatic "don't do it!" Clearly, Julie is not going to be varnishing a door during this conversation.

Julie McIvor and her husband, Scott, have a lot to say about conservation easements and rightly so. For more than a decade, the McIvors have lived under the thumb of the Nature Conservancy (TNC), thanks to a conservation easement Scott's dad, Don, gave the behemoth non-profit in 1996. When Don McIvor died in 2005, he died knowing that the legacy he so longed to leave his children had been nothing more than a land deal, another major coup for TNC in their mission to take over and control private property.

"DON MCIVOR THOUGHT HE WAS DOING A GOOD THING WHEN HE GAVE THE NATURE CONSERVANCY A CONSERVATION EASEMENT ON HIS WEST TEXAS RANCH. BY THE TIME HE REALIZED HE'D JUST GIVEN AWAY THE FAMILY HERITAGE, IT WAS TOO LATE."

The History

Don McIvor thought he was doing a good thing – in fact, the right thing. When his mother, Violet McIvor, died in the early 90's, Don and his sisters inherited the family's 40,000 acre ranch situated in the lush high country of west Texas, the Davis Mountains. The ranch, known as the U Up and U Down, had been in the McIvor family for well over a century. Like most cattle operations, no one was getting rich on the U Up and U Down, but it was a decent living and the quality of life was worth it.

Prior to Violet's death, property values for ranches in the Davis Mountains had skyrocketed. Because no family trust had been set up, Don and his sisters found themselves holding an enormous estate tax bill. The sisters, who lived elsewhere, were ready to sell out. But Don, who lived on the ranch, wanted to keep what he could of the ranch to pass on to his son.

The McIvors have a long history in this predominately ranching community. Their cattle ranch had been around for over a century and in 1932, Violet McIvor donated land to the University of Texas for the world renowned McDonald Observatory, a project the McIvors continue to take great pride and interest in although very few people are aware of the McIvor's gift.

The Observatory became a major attraction for the Davis Mountains and brought thousands of visitors to the unique "sky islands." The dense forests, spectacular canyons and sweeping mountain views soon became the new place to live for claustrophobic city dwellers and Don worried that if development continued at the current pace, the "dark skies" required for the Observatory would be lost.

He would sell a major chunk of land to get the money to pay the taxes and keep what he could for Scott and his family. But the stars would be saved.

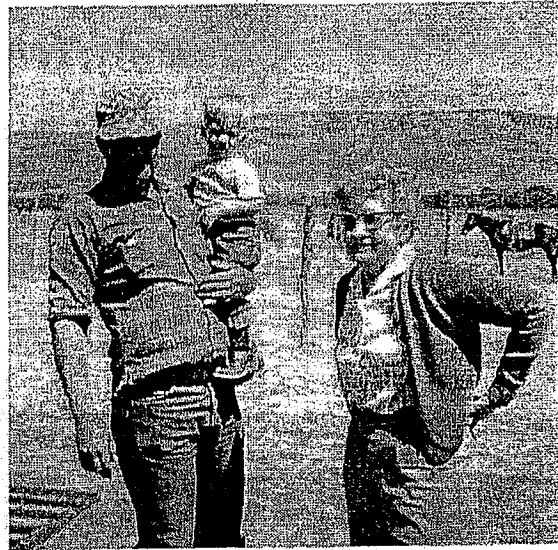


photo courtesy the McIvor Family

Don and Violet Locke McIvor and their son Scott

Selling the Ranch - The Nature Conservancy

Don knew a little about The Nature Conservancy but undoubtedly, he didn't know enough. In the 70's and 80's he had received several awards for his conservation efforts but times had changed and TNC was no longer the "two man office out of Austin" as Don would say.

Today, The Nature Conservancy is a multi-billion dollar organization with tentacles that stretch around the globe, casing out and taking control of vast pieces of land, either through arranged purchases or conservation easements. That land is then "held in trust for the public," which makes the property vulnerable to a whole host of

Spring Works at the U-Up-U-Down ranch early 1900's

photo courtesy the McIvor Family



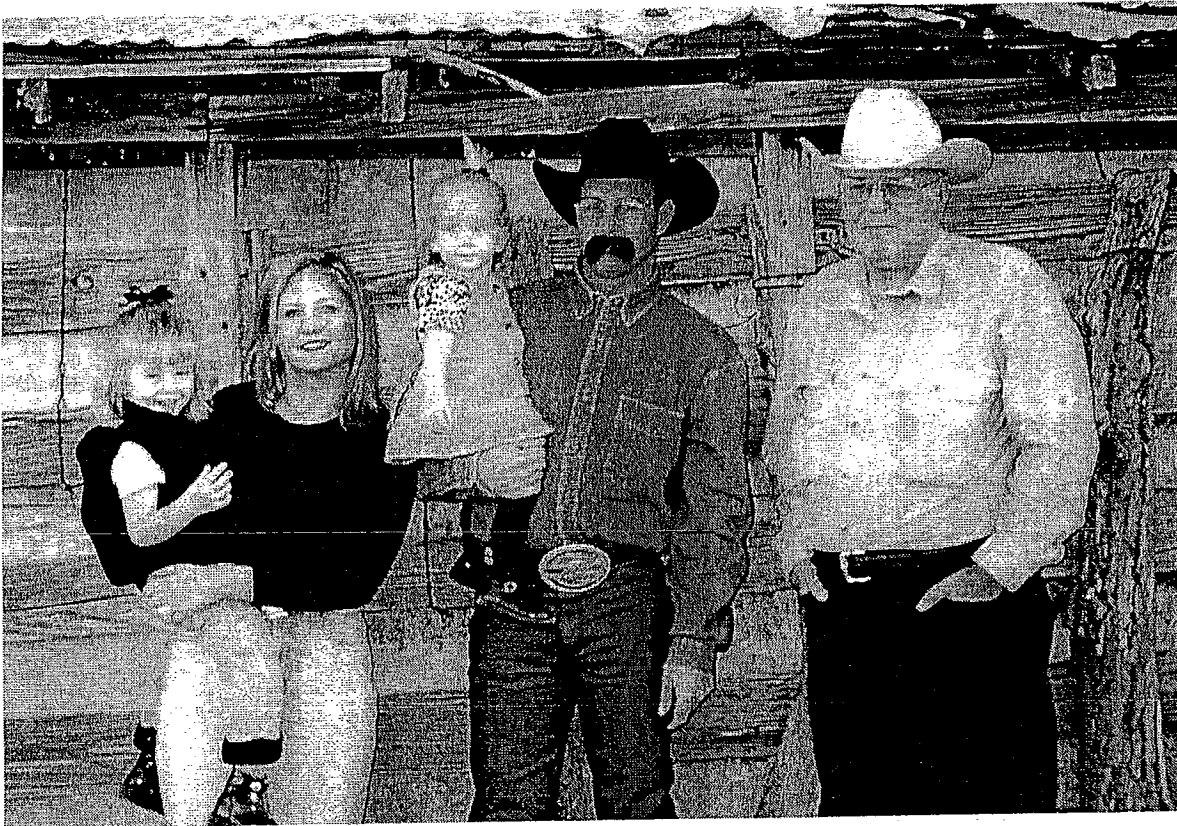


photo courtesy the McIvor Family

(Left to right) Julie McIvor holding daughter Locke Ann, Scott McIvor holding daughter Mae and Don McIvor, Christmas 2000 on the ranch.

adverse possibilities down the road including eminent domain and mitigation.

Don did not want to sell the land to developers looking to build sprawling subdivisions or resorts nor would he sell to a government agency wanting to turn the ranch into a public park and he knew TNC was interested in land like his so that was his first call.

He was put through to James King, the Conservancy's state director of land acquisitions at the time. Don was encouraged to learn that King was just as interested in preserving the rambling vistas of the Davis Mountains as he was. Before long, the two had become fast friends.

"What Don didn't know," says Julie, "is the whole friendship deal is a lot more than what it seems. The Conservancy does major research in each area where they have an interest, listing all the major organizations and individuals, called Stakeholders, who might have an influence, good or bad, on their 'project' there. The list is extensive and includes all ranges of community groups, public and private, political and religious. They keep a tally sheet where they

document everything they know and what they don't know about these Stakeholders. It's all very well orchestrated to help them gain the trust and confidence of the landowners they're negotiating with or hoping to negotiate with. They want to be your friend."

Don McIvor was easy prey. He needed the cash from the sale of his land and King was putting a deal together to buy it. Plus, according to King, Don was going to be a hero of sorts, leaving a legacy of astounding proportions to future generations. Why, he would be known as the "Father of Conservation."

As Julie says, "who would bear that and not want it?" And Don did want it. His family had been ranching in these mountains for over a hundred years and they loved this land and the community.

Eventually, King presented a plan to purchase 32,000 acres of the McIvor Ranch. Nearly 18,000 acres of the ranch would become a nature preserve and to pay for the deal, the other 14,000 acres would be sold to six private buyers. Interestingly, one of the buyers was a distant cousin to King and another was a major TNC donor. Each parcel

was sold with a conservation easement already in place, reassurance to Don that a hefty portion of his ranch would forever remain in its natural state.

That's not exactly what happened. Each of the new landowner's Conservation Easements were custom designed to suit the owners. All the parcels now have custom built homes on them and one in particular has a home, a barn, a workshop and an 18,000 sq. ft. indoor riding arena. The parcel purchased by one of TNC's major donors has all sorts of potential. It allows for the building of a main house, a manager's house, an artist's cottage, tennis courts, a swimming pool and a barn. Ironically, when Don decided to build a home on his land, he was met with staunch resistance from TNC and had to get special permission to proceed – but more on that later.

Once the sale was complete, Don was left with the ranch headquarters and 6,500 acres. All was good. By selling the land, he had made enough money to pay the estate taxes, preserved the dark skies for the Observatory and kept a decent sized place to hand down to Scott and Julie and their two girls.

However, TNC wasn't done yet. James King had another idea. If Don would donate a Conservation Easement on his remaining 6,500 acres back to the Conservancy, it would soften the capital gains tax burden from the sale of the larger part of the ranch. It was only a one time tax break but it sounded good to Don – and he trusted King. Surely he wouldn't advise him to do anything that would adversely encumber his remaining home place. After all, King had said the McIvors could continue to live and work the ranch just like they had been. What did he have to lose?

The Awakening

Don's first clue came a little over a year later when he decided to build a home at the base of Blue Mountain, a local landmark that was part of Don's remaining 6,500 acres. Soon after construction began, Don heard from his old friend, James King, now in a new position as program director for The Nature Conservancy in Fort Davis. It seems Don's Conservation Easement didn't allow for any additional buildings on this part of his property.

Don was confused. Had giving the easement to TNC transferred total control of the land to them as well? Don soon realized it had. In fact, the easement made him merely a tenant with TNC as a landlord. Though eventually the Conservancy granted Don an amendment to the easement and allowed his house to go up, the bitter taste of reality was there to stay.

The Fine Print

In the ten years since his dad unknowingly handed over control of his ranch to The Nature Conservancy through a conservation easement, Scott and his wife Julie have spent many sleepless nights worrying about the future of their ranch. While Don did have legal counsel when he signed the easement, the long term ramifications were never clearly explained. By the time the family got a clear understanding of what the documents meant, it was too late to do anything about it.

"What people don't realize," Julie says, "is that these easements and their restrictions are in perpetuity – that means forever. We really need to plant wheat in one of our fields but because the field was being rested and not in use

when the easement was signed, we can never use it for anything. That's hard. Knowing we could improve our production significantly if we were able to use our land. But we can't. If the restrictions and control had been made clear, the easement would never have been signed.

"People have to consider what they're leaving their future generations. Don't leave them with restrictions and constraints that you didn't have to live with. No one can predict what will happen in a year, ten years or fifty years. The market changes, business models change, everything changes and just like you had to roll with the punches and make it work, they will need the freedom to do the same."

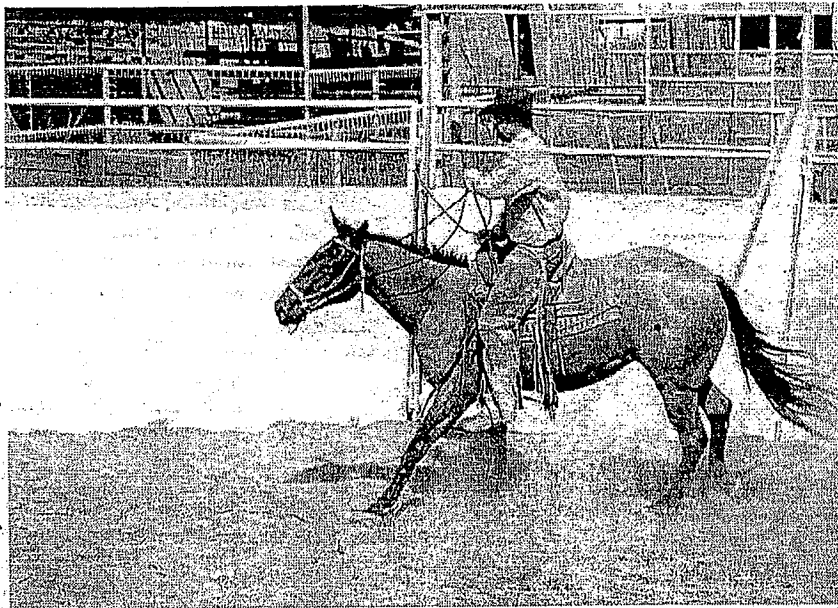


photo courtesy the McIvor Family

Scott McIvor in the round pen starting a colt

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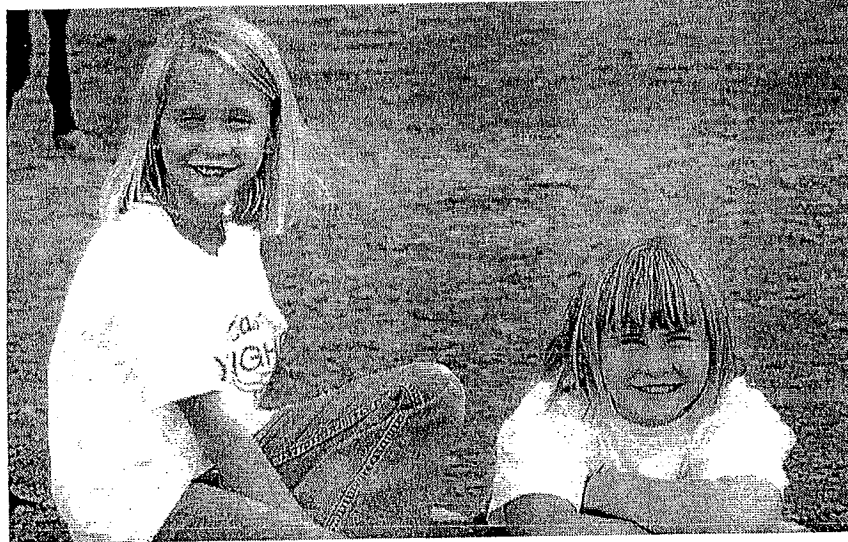


photo courtesy the McIvor Family

Locke Ann McIvor, left, and her sister Mae, photographed on the family ranch, September 2007

The McIvor's advice to anyone considering signing a conservation easement:

1. Get good legal advice from a property rights attorney. Do the research and find an attorney (preferably talk to several) who understands Conservation Easements and their long term effects. Call your state bar association for listings of attorneys who specialize in private property rights. If you belong to a property rights organization, ask them for recommendations or contact and join a property rights group. They can provide a wealth of information about these kinds of issues.
2. Talk to other people in similar situations (if you're a cattle rancher, try to find other cattle ranchers) who have done a Conservation Easement and are living with it. The more you can talk to, the clearer you'll be about what to expect. Don't rely strictly on contacts provided by the Land Trust you're working with. Ask around and find some landowners on your own so you will have more objective input.
3. Consider the implications of perpetuity. Whatever constraints the Conservation Easement places on your property remains in place for all of time. Really think about the long term effects of those constraints and the impact they will have on you and your heirs.
4. Consider this. When you give an easement on your property, it becomes public land held in trust by the Land Trust you grant the easement to. While it doesn't immediately give the public access to your land, it has become a public land. And it will remain on a list of public lands forever.



Dusti Scovel writes from her home ranch in Texas. She has written about ranching and rangeland issues for Range magazine and Stewards of the West. To learn more visit her website at www.dustiscovel.com