

INTIMATE EMPTINESS: THE FLINT HILLS WIND TURBINE CONTROVERSY

BY

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Submitted to the graduate degree program in American Studies  
and the Graduate Faculty of the University of Kansas  
in partial fulfillment of the requirements for the degree of  
Master of Arts.

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Date Approved: July 2, 2008

ABSTRACT  
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American Studies, July 2008  
University of Kansas

This study examines the political and social controversy surrounding the proposed introduction of industrial scale wind turbines, roughly, those over 120 feet, in the Flint Hills region of Kansas. The study is primarily concerned with the proposed introduction of wind turbines in Wabaunsee County, Kansas and examines the County's consideration of wind turbine projects between 2002 and 2004. The controversy is contextualized within the social, political, geographical, geologic, and cultural history of the Flint Hills region. The study also examines how these historical factors inform the way people look at and understand both the prairie and wind turbines. Much of the information is gathered from Wabaunsee County Commission and Planning Commission meeting minutes, as well as transcripts of these meetings. The paper concludes by advocating for the continued absence of industrial scale wind turbines in the Flint Hills.

## ACKNOWLEDGEMENTS

I would like to thank my thesis committee, professors Norm Yetman, Cheryl Lester, and D. Anthony Tyeeme Clark. I was lucky enough to enroll in Professor Clark's Nationalism seminar during my first semester in graduate school. Since that semester, he has been a positive and important part of my life. Professor Clark was integral in helping me direct, shape, and organize my thoughts for this paper; he was also invaluable in the final moments of getting the work ready for proper submission. Without Professor Lester's thesis/dissertation class, and her positive attitude towards my work, I'd still be working on this. Finally, Professor Yetman provided me with unwavering support and countless editing hours. He is a wonderful advisor, mentor, and confidante. In particular, I would like to thank not only Norm, but also Ann Yetman, for their patience and especially their friendship.

I would like to thank my colleagues in the athletic department: Lew Perkins, Michelle Martin, Justin Mackey, Amy Leyerzapf, Leah Steinberg, Bill Nolan, Glenn Quick, Laura Jacobsen, Patsy Brandt, Liz Boldridge, Shanda Hayden, Dr. Scott Ward, Dr. Phil Lowcock, Dr. Jerry Bailey, Mary Beth Marchiony, Nancy Hettwer, Beth Swank, Dino Bell, and Megan Brent; they have supported me for five, sometimes long, years. I would also like to thank the Varsity Ambassadors and the entire

athletic department staff. In particular, I need to thank Paul Buskirk. His support has been absolutely vital to my success in the Lawrence community.

I would like to thank both my students and KU student athletes. Both groups provided me with insight, support, challenges, and joy. I would like to thank the American Studies and Humanities and Western Civilization office staff, especially Kay Isbell, Terri Rockhold, Carrie McDonald, and Jane Pearce. I would like to thank my colleagues in Humanities and Western Civilization, Dr. Jim Woelfel, Dr. Antha Cotten-Spreckelmeyer, Dr. Diane Fourny, Frank Cai Hong, Karenbeth Zacharias, Jennifer Heller, David Dewar, Shelly Cline, Matt Waldschlagel, Robert Vodicka, Jason Barrett-Fox, James Quinn, Rozanne Stringer, Nicolas Shump, and Stephen Tucker. I would further like to thank the Humanities and Western Civilization department for honoring me the 2008 Dean's Instructor lectureship and the opportunity to lead the spring 2006 HWC study abroad trip. I would also like to thank KU American Studies professors and instructors Dr. Bill Tuttle, Dr. Ruben Flores, Dr. Ann Schofield, Dr. Sherrie Tucker, and especially Dr. David Katzman, who was a sounding board for me over the past two years.

I would like to thank several Lawrence establishments and organizations that nourished me in times of need: the Love Garden, the Replay, the 8<sup>th</sup> Street Taproom, the Raindogs, the Spacey Squids, Chico's Bail Bonds, Quinton's, Louise's West, Milton's, and Jay's Bar – Holidome. I would also like to thank Colgate University and Vermont Academy for preparing me for this step.

Without many loving and supportive friends, I never could have finished this work. If I said all the things I need and want to say, I'd have another thesis' length document. To my Colgate friends, Adam, Abbie, Ann, Matt, Mark, and Rob, thank you for your continued support. To Lawrence friends, especially Adam Dubinsky, Mike and Matt Gilligan, Giles Dan (Toto) Harber, Jeffrey Bergfalk, Mike Pagano, Celia Shacklett, Jackie Zammuto, Jenny Noyce, Julie Noyce Lane, Kurt Lane, Aaron and Kendra Marable, and Brian and Heidi Azcona, thanks for your friendship and advice. To, Ray Pence, Zanice Bond de Perez, and Doretha Williams, those who are both friends and American Studies colleagues, I owe you special thanks for everything you've done for me. To Aileica Ruscin and Lindsey Feitz, a very special thank you for the significant influence you've had not only on this paper, but on my life.

A special thanks to Professor Ken Irby whose friendship, support, and dinners have helped to sustain me. Thanks to the Tallgrass Ranchers, especially Michael Stubbs and Simon and Anne McGee. To the Waugh's, Bruce and Nancy, I'll never be able to express my gratitude appropriately. To Kyle Waugh, there is no way that graduate school would have been as enjoyable, crazy, and worthwhile without you. This paper is dedicated to you.

Finally, to my family, the Phillips' and the Graham's, especially my paternal grandmother, Gladys, my maternal grandmother, Armella, my father, Sean, my mother, Kathy, my brothers, Luke and Coley, and my sister, Janah, thank you for always, and I do mean always, supporting me.

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## Introduction

In 1998, I drove through Kansas on my way to Colorado. As for many, Kansas was a means not an end. My friend John May and I stopped for lunch at the Howlin' Coyote rest stop on the eastern edge of the Flint Hills, again, as for many, I was charmed; after growing up in Cooperstown, New York and attending college at Colgate University in Hamilton, New York, I felt as though I had finally arrived in the West.

In 2003, I chose to attend graduate school at the University of Kansas. My intention was to study sports and nationalism, a long-time interest, earn a master's degree and move on. Five years later I find myself working on a project about the Flint Hills and entrenched in the life of the city and University. I came to the project through my classmate and friend Kyle Waugh and his family. The issue, wind turbines in the Flint Hills is timely, important, and interesting.

My project positions the wind development argument within a historical context to discover the cultural and aesthetic antecedents of wind rhetoric. This is useful and important because the necessity of wind development often precludes examination of the wind industry, their product, and their argument.

My first chapter locates the Flint Hills, explains why they are unique, discovers the reason wind developers wanted to site turbines in the Hills, and introduces the wind controversy. I draw on a number of secondary sources to help position my project within the field of American Studies including Walter Prescott Webb's *Great Plains*, William Least Heat Moon's *Prairie Earth*, Henry Nash Smith's



*Virgin Land*, and Frieda Knobloch's *Culture of Wilderness*. I also rely on two books by local authors, Rex Buchanon's *Kansas Geology* and O.J. Reichman's *Konza Prairie*, to describe the Flint Hills.

The second chapter follows the Wabaunsee County wind controversy. Relying heavily on county meeting minutes, interviews, newspaper articles, and letters, I investigate why industrial scale wind turbines were banned in Wabaunsee County in June 2004. This decision has held up in court and preceded Governor Sebelius' decision to establish the *Heart of Flint Hills Area* inside which wind development has been discouraged. In this chapter I examine how both the pro-and anti-turbine groups organized and proceeded with their project's aims.

In the final chapter, I explore the contested imagination of the Flint Hills. Using the *Homage to the Flint Hills* art exhibit and catalog as a starting point, I explore what the Flint Hills do. By positioning contemporary Flint Hills' art and imagination within the contexts of early projects of expansion and colonization on the Great Plains, I try to uncover the strands of historical thought that have shaped how we see the Flint Hills differently and why.

Mine is not a critique of the inner workings of the wind industry, although, I do believe it warrants a careful examination. Two issues that have whetted my appetite for such an examination, which I briefly touch on here, are Enron's interest in wind energy and *Kyoto's* mandates for renewable energy technologies.

My project considers the Flint Hills' imaginary and the politics and legal aspects of the Flint Hill's debate. It also explores the space between considering how

we imagine the plains and studying the minutia of county law and procedure. I hope my project does three things: first, shows why Wabaunsee County banned industrial scale wind turbines and the governor created the *Heart of Flint Hills Area*. Second, my argument complicates what is often considered a simple decision, the introduction of wind energy on the plains. Third, I want to continue to bring out the uniqueness of the Flint Hills.

## **Chapter 1**

### **Why the Flint Hills?**

I want to begin with a hypothetical question that will help position the reader in relation to my project. An energy company proposes industrial development within an endangered ecosystem. Mainstream environmental groups, including local chapters of the Nature Conservancy and the Audubon Society, oppose the development; the governor cautions against the development; hundreds of concerned citizens attend meetings to voice their opposition to the development, far outnumbering those who support it. The developer and supporters, through local and state political processes, are given the opportunity to convince people that the project will benefit local and state communities while not altering or harming the endangered environment. However, their arguments prove unconvincing and the project is blocked; a lawsuit ensues and the court upholds the decision to block development. Where would you position yourself in this argument? With whom would you side?

Presented in these terms, most people I know, regardless of race, ethnicity, gender, sexual orientation, age, or political affiliation, would support blocking the development project. They do this for a number of reasons: they trust the environmental groups, or the legal process; they back local and state governments; they side with the majority; they mistrust energy companies and the impetus for industrial development. However, when I tell people that I am not talking about drilling for oil in the Arctic National Wildlife Refuge or about logging in the

rainforest but about building wind turbines in the Flint Hills of Kansas, they often reposition themselves? Why?

The answer is twofold: On the one hand, given the spectre of global warming and demands for clean, renewable energy alternatives, wind turbines are industrial, designed for commercial use, but they are simultaneously clean, or green. On the other hand, Kansas is windy and given the relative absence of forests and dramatic geologic formations, it is not considered beautiful. Indeed, it has been argued that Kansas is a garden for wind energy and, given its barrenness, turbines will actually beautify the landscape.<sup>1</sup> The endangered ecosystem, the opinions of mainstream environmentalists, the failure of the wind companies to garner the political and legal support for their project, and majority opinion, are overruled. The necessity of renewable energy and the vision of Kansas as both empty and opportune is a powerful representation that, at least in this context, overrides what might function as common sense in others.

Yet, in 2004, Flint Hills' grassroots advocacy organizations, the Tallgrass Ranchers and Protect the Flint Hills, as well as mainstream environmental organizations, urged local and state political and legal authorities to outlaw turbines in Wabaunsee County, Kansas. Building on this decision, Governor Kathleen Sebelius created the *Heart of Flint Hills Area*, inside which she "urged restraint on development of wind energy."<sup>2</sup> The conclusion was that wind turbines, though

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<sup>1</sup> In-person communication with patron at Kansas Wind Energy Forum, Topeka, Kansas, May 2005. Also see page 8 footnotes 19-23.

<sup>2</sup> Scott Rothschild, "Governor Urges Restraint on Wind Farms in Flint Hills," *Lawrence Journal World*, November 22, 2004.

potentially beneficial in addressing the country's energy needs and providing a boon for local economies through jobs and lease money, would detrimentally alter the social, cultural, and aesthetic nature of the Flint Hills.

Maps of Kansas, like the Kansas Geological Survey's *Generalized Physiographic Map* or the National Park Services' map in the *Geology and the Prairie* pamphlet, outline the Flint Hills almost in the shape of a dagger.<sup>3</sup> Two hundred miles from butt to point and eighty miles at the guard they cut through east – central Kansas, north to south. Deposits of flint or chert, a microcrystalline form of quartz in the Permian limestone, the bedrock of the Hills, are the remnants of an ancient, inland sea that make the rock erosion-resistant and account for the relief. The surrounding, non-Permian rock, lacking flint, erodes faster than the Permian limestone, leaving hills.<sup>4</sup>

The Flint Hills mark the western boundary of the North American tallgrass region and the eastern edge of the Great Plains' "sea of grass." The rest of the tallgrass region is north, south, and east in Missouri, Illinois, Minnesota, and Iowa, not in western Kansas.<sup>5</sup> Thus, if we accept Walter Prescott Webb's classic definition of the West as that area of land roughly west of the 98<sup>th</sup> meridian, the Flint Hills are,

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<sup>3</sup> *Generalized Physiographic Map of Kansas* (Lawrence, KS: Kansas Geological Survey, 2001) map. Available at <http://www.ks.nrcs.usda.gov/about/profiles/physiography.html>. *Geology and the Prairie* (Strong City, KS: National Park Service and Kansas Geological Survey) map. Available at <http://www.nps.gov/tapr/upload/Geology%20brochureFINAL.pdf>.

<sup>4</sup> Rex Buchanon, *Kansas Geology: An Introduction to Landscapes, Rocks, Minerals, and Fossils* (Lawrence, KS: The University of Kansas Press, 1984) 19-20.

<sup>5</sup> O.J. Reichman, *Konza Prairie* (Lawrence, KS: The University of Kansas Press, 1987) map, 6.

in some respects, eastern.<sup>6</sup> Trees are confined to the watercourses in the Flint Hills, making the region predominantly treeless prairie, a distinguishing characteristic of the Great Plains, traditionally a region identified with the west. *The Atlas of the Historical Geography of the United States* shows that the Flint Hills region is or is near the national east/west dividing line between soil types, vegetation, relative humidity, and rainfall.<sup>7</sup>

Whether the Flint Hills are East or West is an interesting question but inconsequential for this study. It is important, however, that we recognize that the Flint Hills are a geographical and cultural borderland, a place where the American East meets the American West. Nineteenth-century settlers working their way along the Santa Fe Trail left “civilization” in Council Grove, Kansas - in the Flint Hills. Post-Civil War cattle drives skirted the western edges of the Flint Hills on their way to Abilene, Kansas.<sup>8</sup> And, when waves of settlers came to the plains in the late-nineteenth and early-twentieth centuries, they found the “clayey,” “flinty” soil of the Hills resistant to the plow and unsuited to eastern agriculture.<sup>9</sup> Settlers moved west and eventually found ways to introduce agriculture into the arid regions, but the Flint Hills, because of their geologic constitution, were spared the plow, the fate to which most of the rest of the plains have succumbed, “including some 400,000 square miles of tallgrass prairie (about the area of Texas, Oklahoma, and Kansas combined).”<sup>10</sup>

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<sup>6</sup> Walter Prescott Webb, *The Great Plains* (Lincoln, NE: The University of Nebraska Press, 1931) 7.

<sup>7</sup> Charles Oscar Paulin, *Atlas of the Historical Geography of the United States*. Edited by John K. Wright (Washington D.C.: Carnegie Institution and American Geographical Society, 1932).

<sup>8</sup> Walter Prescott Webb, *The Great Plains*, 221, 251.

<sup>9</sup> Rex Buchanon, *Kansas Geology*, 19.

<sup>10</sup> William Least Heat Moon, *Prairie Earth: a deep map* (Boston: Houghton Mifflin, 1991) 108.

The Flint Hills, sometimes called the “Last Stand of the Tallgrass Prairie,” “contain approximately two-thirds of all the remaining resource of unplowed tallgrass prairie in the world.”<sup>11</sup> Though life west of the Flint Hills is lived differently from life to the east, the amount of precipitation, among other things, dictating this, there is the kinship of agriculture and the plow, which the Flint Hills, largely, do not share; they are, in some ways, an island of unplowed tallgrass. The Hills have, to use a phrase from Henry Nash Smith’s iconic 1950 book *Virgin Land: The American West as Symbol and Myth*, remained outside the “advance of the agricultural frontier.”<sup>12</sup>

In *Culture of Wilderness*, Frieda Knobloch calls plowing the “axiomatic” sign of European civilization.<sup>13</sup> The Flint Hills, then, are distinct in that they have in at least one important way avoided European civilization. Nevertheless, some of the largest power lines in the state, those between Wichita and Manhattan, Topeka, Lawrence, and Kansas City, run through the Flint Hills. However, although there are hundreds of oil and gas wells in the Hills, though the Kansas Turnpike runs through the Hills, and though the Hills are heavily ranched, they represent, if we use Knobloch’s terms of analysis, “virgin” prairie.<sup>14</sup>

Moreover, ranching and burning, an annual spring event, which are both prominent aspects of Flint Hills’ life, mirror, some claim, indigenous practices and

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<sup>11</sup> Kathleen Sebelius to Lee Allison, Chairman, Kansas State Energy Resources Coordinating Council, December 2, 2003, *Kansas Energy Plan* (Lawrence, KS: Kansas Geological Survey, 2004) 45.

<sup>12</sup> Henry Nash Smith, *Virgin Land: The American West as Symbol and Myth* (Cambridge, MA: Harvard University Press, 1950) 54.

<sup>13</sup> Frieda Knobloch, *The Culture of Wilderness: Agriculture As Colonization In The American West* (Chapel Hill, NC: The University of North Carolina Press, 1996) 3.

<sup>14</sup> “County Production of Oil and Gas,” Kansas Geological Survey, <http://www.kgs.ku.edu/PRS/petro/interactive.html>. (Accessed May 16, 2008).

give the Hills an aspect of aboriginal functionality. This sense of aboriginal functionality, whether real or imagined, helps us understand how many Flint Hills residents position themselves in relation to place.<sup>15</sup> For its residents the Flint Hills are not just where one lives, they are part of one's identity. Thus, it is not surprising to hear Michael Stubbs, a member of the Tallgrass Ranchers and Wabaunsee County landowner, say that a wind turbine in the Flint Hills is like a "knife" in his heart; for him it is not only an attack on land but an attack on the self.<sup>16</sup>

It is this relationship between place and self that wind developers and their supporters situate, or prioritize differently. Their sense of place, as evidenced in their rhetoric, is concerned with the imagined global community and the promotion of sustainable energy as a way to connect and bind that community.<sup>17</sup> This leaves the nation, that entity between the local and the global, as a highly contested space within the wind turbine debate. While turbine opponents want to situate the Flint Hills in the nostalgia of the American pastoral ideal, turbine proponents seek to re-establish American exceptionalism through resource development.

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<sup>15</sup> For a more complete look at place see Keith Basso, *Wisdom Sits in Places* (Albuquerque, NM: University of New Mexico Press, 1996); Henri Lefebvre, *The Production of Space*, edited by Donald Nicholson-Smith (England: Blackwell Publishing, 1991); David Harvey, *Spaces of Global Capitalism Towards a Theory of Uneven Geographical Development* (New York: Verso 2006); David Harvey, *Justice, Nature, and the Geography of Difference* (England: Blackwell Publishing, 1996). Neil Smith, *Uneven Development: Nature, Capital, and the Production of Space* (England: Blackwell Publishing, 1984); Martin Jones, Rhys Jones, and Micheal Woods, *An Introduction to Political Geography: Space, Place and Politics* (New York: Routledge, 2004).

<sup>16</sup> Michael Stubbs, interview with author, Wabaunsee County, Kansas, April 27, 2005.

<sup>17</sup> Benedict Anderson, *Imagined Communities* (New York: Verso, 1981) 2.



Wind is legend in Kansas. In the mid-nineteenth century Samuel Peppard built a wind wagon and, reportedly, sailed it across the state;<sup>18</sup> it is also a fact of life. The name Kansas is derived from Kaw, the people of the south wind, and Dodge City ranks among the windiest cities in America.<sup>19</sup> It is unsurprising that wind companies have long been interested in developing the state.

In 1981 the State of Kansas developed a handbook for wind energy.<sup>20</sup> In 1995 the Kansas Electric Utilities Research Program identified potential wind turbine sites across the state.<sup>21</sup> In 2000, wind research revealed that the “Sunflower State ranked near the top in the country for wind-energy potential;”<sup>22</sup> in 2001, the Montezuma Project in Gray County, near Dodge City, Kansas’ first wind farm, went into operation;<sup>23</sup> and, in 2002, a study “ranked Kansas as the number one state in potential wind resources when existing transmission availability was factored in.”<sup>24</sup> Constant wind, coupled with the improvement of wind conversion systems, the emerging financial viability of the industry, and burgeoning public interest in renewable technologies, have all improved the cultural and financial environment for wind development, making Kansas a logical site for turbines.

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<sup>18</sup> “Wind Wagons: A Kansas Portrait,” *Kansas State Historical Society*.  
[http://www.kshs.org/portraits/wind\\_wagons.htm](http://www.kshs.org/portraits/wind_wagons.htm) (accessed May 16, 2008).

<sup>19</sup> “Average Wind Speed Mph,” *World Facts and Figures*,  
[http://www.worldfactsandfigures.com/weatherfacts/average\\_wind\\_speed.php](http://www.worldfactsandfigures.com/weatherfacts/average_wind_speed.php) (accessed June 21, 2008).

<sup>20</sup> *Kansas Wind Energy Handbook* (Topeka, KS: Kansas Energy Office, 1981).

<sup>21</sup> *Potential Wind Farm Sites, Kansas Electric Utilities Research Program* (Overland Park, KS: DynCorp, 1995).

<sup>22</sup> Jim Carlton, “Plans for Huge Wind Turbines Jolt Kansas,” *Wall Street Journal*, October 14, 2004.

<sup>23</sup> Matt Moline, “Energy Blows in From Wind Farm,” *Topeka Capital Journal*, December 31, 2001; Roxana Hegeman, “State’s First Wind Farm Putting Town to Work,” *Lawrence Journal World*, December 3, 2001.

<sup>24</sup> Sebelius to Allison, 45.

The region with the most wind potential in Kansas is the western region. The Kansas Wind Resource Map shows that the western quarter of the state has average wind speeds between 16.8 and 17.9 mph all year round.<sup>25</sup> Yet, wind developers have turned their attention not to western Kansas, but to the Flint Hills, an area that had, on average, less wind but higher potential for development. This highlights an important and basic fact: energy potential is different from development, a distinction that is often obscured or misunderstood.

Wind development in western Kansas is hindered because the region is “located far from major population centers and...lack[s] adequate electricity-transmission capacity to support many more wind farms.”<sup>26</sup> This makes wind farms in western Kansas economically unsustainable. Whether or not wind projects in western Kansas will be slowed following the Sebelius administration’s denial of permits to build two coal-fired power plants, which also tabled plans for the construction of new, high capacity transmission lines in the region, as Sunflower Electric contends, further demonstrates that wind developers must have infrastructure to support the transmission of energy from wind turbines to large population centers.<sup>27</sup>

A 2005 article, “Report Doubts Future of Wind Power,” originally published in the German newspaper *Der Spiegel* and reprinted in the U.K.’s *Guardian*, also demonstrates the point that transmission capacity is a critical factor in siting and

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<sup>25</sup> *Kansas Wind Resource Map* (Lawrence, KS: Kansas Geological Survey, 2004) map.

<sup>26</sup> Carlton, “Plans for Huge Wind Turbines Jolt Kansans.”

<sup>27</sup> Scott Rothschild, “Coal Plant’s Denial Stuns State,” *Lawrence Journal World*, October 19, 2007.

developing wind energy projects. The report, “drawn up by the German government’s energy agency, says that wind farms prove a costly form of reducing greenhouse gases,” because “the world’s leading producer [Germany] of wind energy,” would have to invest “1.1 billion euros to link [its] existing wind farms to the national grid if it is to meet its target of producing 20 percent of its electricity from renewable resources by 2015.”<sup>28</sup> An August 2005 *MSNBC* article, “Change is Blowing For the Wind Power Industry,” also acknowledges that significant changes in energy transmission infrastructure, at significant costs to investors and, eventually, to consumers, is imminent if we are to reach promised benchmarks in wind energy production.<sup>29</sup> Wind farms need not only windy conditions, but also electricity infrastructure to be profitable.

In Kansas, it is both less expensive and more lucrative to site turbines in the Flint Hills, which are relatively close to population centers like Wichita (20 miles) and Kansas City (100 miles) and have high capacity electricity infrastructure.<sup>30</sup> However, the wind argument for the Flint Hills (and, indeed, for all of Kansas and everywhere turbines are proposed) rarely emphasizes electricity infrastructure as a development factor. Instead, the wind argument highlights the positive economic and environmental impacts of turbines.

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<sup>28</sup> Luke Harding, John Vidal, and Alok Jha, “Report Doubts Future of Wind Power,” *Guardian*, Saturday, February 26, 2005.

<sup>29</sup> John W. Schoen, “Change is Blowing for Wind Power Industry: Technology Helps Wind Compete Head-to-Head with Fossil Fuels,” *MSNBC*, August 11, 2005, <http://msnbc.msn.com/id/7549533> (accessed September 2, 2005).

<sup>30</sup> Personal measurement with car odometer.

In a 2005 news release, “Wind Farms Can Benefit Kansas,” The Wind Coalition, a non-profit organization that promotes wind development in the south central United States,<sup>31</sup> asserted that wind “can reduce pollution by cutting the need for fossil-fueled electricity plants. Wind farms also bring economic activity to rural parts of the state.”<sup>32</sup> Michael Haas, President of Orion Energy, LLC, in an op-ed piece printed in the *Manhattan Mercury*, used similar language in his effort to promote wind development in Riley County, Kansas: “there are many public benefits of wind-generated power, including local economic benefits, helping to slow the depletion of our limited fossil fuel resources, no demand for water, and zero air and water emissions.”<sup>33</sup> The American Wind Energy Association says that wind is an “increasingly competitive source of energy” and “can provide at least six percent of the nation’s electricity by 2020, revitalize farms and rural communities, reduce volatility in natural gas prices, and increase the security of U.S. electricity supply – without consuming any natural resources or emitting any pollution or greenhouse gases.”<sup>34</sup> The development message, that turbines are both environmentally and economically positive, is consistent and the predominant theme of wind energy promotion.

The *Kyoto Protocol* legitimized the development message on a global scale and created an increased market for wind energy. Article 2, section 1, point (iv) of

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<sup>31</sup> “America’s South Central States are Rich in Wind Energy Potential,” *Wind Coalition*, [http://www.windcoalition.org/about\\_us.php](http://www.windcoalition.org/about_us.php) (accessed June 27, 2008).

<sup>32</sup> Wind Coalition, “Wind Farms Can Benefit Kansas,” op. ed., *Kansas City Star* August 2, 2005.

<sup>33</sup> Michael Haas, “Windpower is a Clean, Sustainable, Ecologically Benign Source of Energy,” op. ed., *Manhattan Mercury* December 2005.

<sup>34</sup> “Wind Energy Basics,” *American Wind Energy Association*, (May 2004), [http://www.awea.org/newsroom/Wind\\_Energy\\_Basics.pdf](http://www.awea.org/newsroom/Wind_Energy_Basics.pdf) (accessed November 2, 2006).

the agreement calls for “research on, and promotion, development and increased use of, new and renewable forms of energy, of carbon dioxide sequestration technologies and of advanced and innovative environmentally sound technologies.”<sup>35</sup> Articles 3 and 6 establish rules for emission trading; “a regulatory program that allows firms the flexibility to select cost-effective solutions to achieve established environmental goals.”<sup>36</sup> Emission trading is a complicated process whose functionality is best demonstrated in an example.

*Kyoto* requires an emission reduction commitment from its signatories. Each country pledged to reduce their emission total by x number of units, with the first benchmark in 2008. The governments of individual countries then gave businesses within their borders an allowance for emissions. If a business emits 100,000 tons of carbon a year, but is only allowed 95,000, it must cover the extra 5,000 tons of carbon or face stiff penalties. So, “they can either reduce 5,000 tons of carbon, or purchase 5,000 allowances in the market.” Put in other terms, they can either clean up their dirty plant or purchase clean energy equal to the amount of pollution they’ve over-emitted.<sup>37</sup>

Because turbines offset carbon pollution, they qualify as allowances; the price of an allowance is variable, “a function of supply and demand as in any other free

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<sup>35</sup> “Kyoto Protocol,” United Nations Framework Convention on Climate Change, February 16, 2005. <http://unfccc.int/resource/docs/convkp/kpeng.html> (accessed June 26, 2005) 2.

<sup>36</sup>“Emissions Trading Definition & Glossary,” *Cantor Environmental Brokerage*, <http://www.emissionstrading.com/defined.htm> (accessed June 26, 2005)

<sup>37</sup>“Questions & Answers on Emissions Trading and National Allocation Plans,” *European Union*, <http://europa.eu.int/rapid/pressReleasesAction.do?reference=MEMO/04/44&format=htm> (accessed June 26, 2005), 6. Number sequence also borrowed from site.

market.”<sup>38</sup> The issue of carbon offsets is an extremely complex one. Article 6 of the *Kyoto Agreement* says, “for the purpose of meeting its commitments under Article 3, any Party included in Annex I may transfer to, or acquire from, any other such Party emission reduction units resulting from projects aimed at reducing anthropogenic emissions.”<sup>39</sup> Despite its refusal to sign the *Kyoto* agreement, the United States is listed in Annex I. So, if a Scottish company, operating under a U.S. subsidiary, constructs a wind farm in Butler County, Kansas, can they trade that allowance to Ukrainian polluters? What is the allowances’ relationship to the actual amount of energy produced? In other words, if a four hundred and fifty foot turbine is expected to produce x amount of energy but, because of environmental or market factors, does not produce that much, what is the allowance equal to, x or the amount of actual energy produced? If an international corporation operates out of a domestic subsidiary, does it qualify for U.S. government subsidies?

If this seems like a ridiculous question or scenario, consider, as in the case of the Flint Hills, that many of the companies interested in developing wind farms in the U.S. are international corporations. PPM Energy, a Scottish company, operates the Elk River project in Butler County and JUWI, a German company, operating from a Lawrence subsidiary, JW Prairie Windpower, was the developer in Wabaunsee County. What are the benefits of foreign companies erecting wind turbines in the United States? Consider further the example of the Zond Corporation, one of the early leading wind developers in the United States. Enron purchased Zond in 1997

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<sup>38</sup> *Ibid.*

<sup>39</sup> “Kyoto Protocol,” 4.

and renamed it Enron Wind LLC,<sup>40</sup> which subsequently was a player in at least one of Enron's corrupt financial schemes investigated by the Securities and Exchange Commission.<sup>41</sup> It is also interesting to note, as is clearly demonstrated in the documentary "The Smartest Guys in the Room" that Enron was interested in many projects that potentially, but not actually, produced energy.<sup>42</sup> Although not all wind developers operate on an Enron model, the complexity of mechanisms for trading carbon demonstrates the difficulties of implementing the *Kyoto Protocol*. Resolution of these issues lies outside the scope of this project. What is important is that Kyoto clearly creates a global impetus for alternative energy systems, including wind.

Federal and state authorities also clearly support wind development. In 2003, in the same letter in which she highlighted the distinctiveness of the Flint Hills, Governor Sebelius also noted the potential of wind energy: "the development of our state's wind energy potential could play a role in helping turn our state into an energy exporter, enhance economic development and promote future energy security and independence."<sup>43</sup> The United States also continues to subsidize green energy, including wind. This August the Democratic National Convention in Denver, Colorado is poised to proclaim itself the greenest political convention in United States history.<sup>44</sup>

Wind Energy in the Flint Hills is complicated. Wind energy promises a better future for all people and a stimulus for rural economies; it carries the state seal of

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<sup>40</sup> "Enron Acquires Zond, A Major Wind-Power Company," *New York Times*, January 7, 1997.

<sup>41</sup> Committee on Governmental Affairs, *Committee Staff Investigation of the Federal Energy Regulatory Commission's Oversight of Enron Corp* (GPO, November 12, 2002). Available at [fl.findlaw.com/news.findlaw.com/hdocs/docs/enron/111202fercmemo.pdf](http://fl.findlaw.com/news.findlaw.com/hdocs/docs/enron/111202fercmemo.pdf) (accessed July 2, 2008).

<sup>42</sup> *Enron: The Smartest Guys in the Room*, dir. Alex Gibney, Magnolia Pictures 2005, dvd.

<sup>43</sup> Sebelius to Lee Allison, 45.

<sup>44</sup> Doug Yetman, in-person communication with author, April 5, 2008.

approval, and it is potentially very lucrative. On the other hand, the Flint Hills are an endangered ecosystem. Does the combination of global environmental imperatives and local economic incentives legitimize wind turbine development in an endangered ecosystem?

*The Topeka Capital-Journal* framed the controversy for its readers; the controversy, “pit[s] landowners seeking to preserve the landscape as North America’s last tallgrass prairie against developers seeking a clean source of electricity and supplemental income for local landowners.”<sup>45</sup> The framework I have provided thus far outlines the public positions of the antagonists: the preservation of an endangered ecosystem versus the development of sustainable energy and a financial boon for the local economy. It became the project of both sides to complicate the simplicity of their opponent’s position.

In December 2003, Joe Downey of Downey Ranch, Incorporated wrote to the Wabaunsee County Planning Commission that he hoped the “future of Wabaunsee County does not rest in the hands of a group of Kansas City lawyers.”<sup>46</sup> In August 2005, in a *Kansas City Star* op-ed Bruce Waugh, a Kansas City lawyer and fourth generation Wabaunsee County landowner, characterized wind turbines as “tax subsidy schemes driven by misleading claims that they will reduce pollution and shut down conventional plants.”<sup>47</sup> If the *Capital-Journal* had reframed the controversy in

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<sup>45</sup> Chris Moon, “Wind Energy Debate Shifts,” *Topeka Capital-Journal*, July 11, 2004.

<sup>46</sup> Joe Downey, letter to Wabaunsee County Planning Commission Members, December 15, 2003, personal collection of author.

<sup>47</sup> Bruce Waugh, “Wind is Not the Air Apparent,” *Kansas City Star*, August 16, 2005.



the negative terms of Downey's and Waugh's arguments, their sentence might have read: the controversy pits landowning elites who seek to preserve the view from their second homes against multi-billion dollar energy conglomerates who seek to line their pockets with government subsidies and the spoils of the energy trading market by duping the public into believing that wind will replace coal.

Land use policy in the Flint Hills has been contested since the 1960s, most prominently in the Prairie Park debate. Jean Attebury's 2000 dissertation, *Language for the Land: The Prairie Park Debate* is a good resource on the issue. This controversy pitted Prairie Park advocates who "advanced the concept that a prairie park should be publicly owned and separated from human agency in order to be accessible to the public for scientific observation and personal revivification" against those who championed "continued private ownership of the prairie."<sup>48</sup> Prairie Park advocates, including, among others, the Sierra Club, were part of a movement Joni Adamson describes in her essay "Encounter with a Mexican Jaguar," as "mainstream environmentalists insist[ing] that ranchers be put completely out of business for the damage livestock [have] caused to public lands over the past several decades."<sup>49</sup> Prairie Park opponents championed working wilderness that "sustain[s] wildlife and ecosystems [and] livestock and other productive uses,"<sup>50</sup> this concept "directly confronts mainstream U.S. environmentalist discourses that banish humans from

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<sup>48</sup> Jean Attebury, *Language for the Land* (Ph.D., University of Kansas, 2000) 7, 5. Attebury dates the debate between 1960 and 1996 (2).

<sup>49</sup> Joni Adamson, "Encounter with a Mexican Jaguar," *Globalization on the Line: Culture, Capital, and Citizenship at the U.S. Border*. Edited by Claudia Sadowski-Smith (New York: Palgrave, 2002) 222.

<sup>50</sup> Dan Daggett, *Beyond the Rangeland Conflict*, quoted in Joni Adamson, "Encounter with a Mexican Jaguar," *Globalization on the Line: Culture, Capital, and Citizenship at U.S. Borders*, 230. Dan Daggett, *Beyond the Rangeland Conflict: Toward a West that Works* (Good Stewards Project, 2000).

nature.”<sup>51</sup> Like the Malpai Borderlands group that sought to maintain stewardship of land in the southern Arizona – New Mexico border area in Adamson’s study, Flint Hills’ ranchers, utilizing the “theater of public opinion...on the stage of political influence,” were largely successful and the Prairie Park never came to fruition.<sup>52</sup>

Turbine opponents clearly position themselves as inheritors of Prairie Park opposition. Bruce Waugh, in a letter to Wabaunsee County ranchers rallying support for turbine opposition, summoned this heritage: “over 20 years ago, in a national debate about creating a federally managed Tallgrass Prairie National Park, the ranchers of Wabaunsee County and the Flint Hills told the nation that they had the best interests of this unique region in mind. They said that they were the best qualified to be caretakers of the world’s last landscape-scale Tallgrass Prairie;” he challenged Flint Hills’ ranchers to rise to the occasion of this new threat, “where are [your] voices now?”<sup>53</sup>

Yet mainstream environmental groups, like The Nature Conservancy and the Audubon Society of Kansas, as well as government agencies like the Kansas Department of Wildlife and Parks, the U.S. Department of the Interior, the Fish & Wildlife Service, and the Wildlife Management Institute, have also come out against turbines in the Flint Hills. Turbines opponents have formed an unusual alliance between preservationists/protectionists and conservationists, forces that have, historically, been at odds. Conservationists stress the utility of Nature, while

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<sup>51</sup> Joni Adamson, “Encounter with a Mexican Jaguar,” 230.

<sup>52</sup> Jean Attelbury, *Language for the Land*, 23. In 1997, at the Z-Bar Ranch in Morris, County, Kansas the Tallgrass National Preserve, a 10,984 acre preserve of tallgrass was created. See the following website for information: <http://www.parktrust.org/zb-curr.html>.

<sup>53</sup> Bruce Waugh to Ranchers of Wabaunsee County, Kansas, personal collection of author.

preservationists emphasize the “setting apart of nature.” Borrowing language from Robert Gottlieb’s *Forcing the Spring: The Transformation of the American Environmental movement*, the wind turbine opposition’s argument combines the “diverse approaches of nationalism (Nature as national treasure); commercialism (wilderness available for tourism and recreation); spiritualism (wilderness as regeneration in an urban and industrial age); ecology (Nature as biological richness and diversity); and a kind of elite aestheticism (Nature as beauty and experience, especially for those presumed to be most capable of appreciating it).”<sup>54</sup>

Turbine opposition has inherited the traditions of not only Prairie Park opposition, but Prairie Park advocacy as well. The antagonists in the Prairie Park debate have set aside historical differences to present a united front against the industrialization of the Flint Hills, which threatens both conservationist and preservationist aims outlined above.

Wind developers also claim preservation and conservation heritage. This is evident in the comments of Pete Farrell, the Butler County rancher who leased his land to PPM Energy for the construction of one hundred turbines, the Elk River Project: “I am the fourth generation to ranch on this property. My family has been here since 1888 and that weighs heavily on my decision to engage in practices that can be carried on generation after generation without depleting the resources. Both

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<sup>54</sup> Robert Gottlieb, *Forcing the Spring: The Transformation of the American Environmental Movement* (Washington, D.C.: Island Press, 1993) 26-27.

the grass and the wind will be here for generations.”<sup>55</sup> For Farrell, wind turbines represent an opportunity to conserve natural resources and preserve his family ranch.

Both pro-turbine and anti-turbine arguments embody traditional preservationist and conservationist aims. Flint Hills’ landowners, whether choosing to pursue turbines on their land or not, are all interested in preserving their place in the Hills. The crux of the turbine argument is in the variations of conservation discourse between the opposing groups. When we examine conservation themes in the opposition’s position, we find that they contend they are interested in conserving the Flint Hills. This is evident in a letter from Alan Pollum, head of the Kansas Nature Conservancy, to Scott Wilson, Wabaunsee County Planning Commission Chair, “the aesthetic qualities of this ‘last stand of the tallgrass prairie’ are important to its long-term conservation.”<sup>56</sup> When we examine the conservation discourse of the pro-turbine position, we find that they also laud the economic incentives of turbines for the preservation of rural economies, but their land conservation project is concerned, primarily, with the national and global environment, not the local. The comments of PPM Energy representative Raimund Grube are indicative of this position: “the benefits of projects like Elk River are immense – contributions to rural economies, jobs, and above all, clean, cost-competitive wind power.”<sup>57</sup> Because the debate about turbines took place at the local level, at planning board and county commission meetings, the burden of proof was on turbine developers; they had to prove not only

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<sup>55</sup> “Elk River Wind Power Project Delivers Renewable Energy,” *Renewable Energy OnLine*, <http://www.renewableenergytoday.net/rea/news/story?id=44924> (accessed May 16, 2008).

<sup>56</sup> Alan Pollum to Scott Wilson, Wabaunsee County Planning Commission, Topeka, KS, October 29, 2003, personal collection of author.

<sup>57</sup> “Elk River Wind Power Project Delivers Renewable Energy.”

that they would bring money to the Flint Hills but that they would not damage them in the process.

As environmental questions mounted and mainstream environmental groups joined the opposition, and Wabaunsee County enacted a moratorium to more carefully consider the impacts of turbines, the number of conditions wind developers would have to meet, costing time and money, grew. This caused two things to happen: first, the County moratorium, which allowed it adequate time to study the effects of turbines, also gave turbine opponents adequate time to develop their strategy. Opponents claimed that they were protecting an endangered ecosystem, and they attacked the economic promises of wind developers: They contended that “the primary windfall for local communities will be lease income for a select few landowners and a handful of maintenance jobs. Employees skilled in erecting wind turbines will most likely not come from the local labor pool.”<sup>58</sup> As developers and landowners saw their window of opportunity diminishing, they maneuvered to get a foothold in the Hills; the rush, as we will see, caused them to make mistakes that irreparably damaged their argument and, perhaps, their reputation.

In late 2003 the growing din over turbines in the Flint Hills convinced Kansas Governor Kathleen Sebelius to form a task force to study the issue. Her directive to Lee Allison, Chairman of the Kansas State Energy Resources Coordinating Council, was to consider both the “development of our state’s wind energy potential” and

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<sup>58</sup> “Find Out the Truth About Wind Farms.” *Tallgrass Ranchers*, pamphlet.

Kansas' obligation to protect a "true treasure of national and international importance."<sup>59</sup>

In June 2004, the task force could agree that "the state should preserve ecologically significant native grasslands in the Flint Hills and across the state, but they differed on how to accomplish that goal."<sup>60</sup> While some task force members believed that there should be no wind development in the Flint Hills, other members championed restrictions on development. In fall 2004 the Governor, perhaps dissatisfied with the indecision of the task force, "appointed a Cabinet team to try to balance conservation efforts with development." The result was the Heart of the Flint Hills Area<sup>61</sup> inside which, as stated earlier, the Governor "urged restraint on development of wind energy."<sup>62</sup>

One of the episodes that informed the Governor's decision was the Wabaunsee County wind debate that took place in Wabaunsee County, Kansas between 2002 and 2004. Wind developers JUWI and JW Prairie Windpower, along with countians who wanted to lease land to the developers, squared-off against the Tallgrass Ranchers and their supporters, who wanted to keep turbines out of the County.

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<sup>59</sup> Sebelius to Allison, 45.

<sup>60</sup> "Wind Direction," op. ed., *Lawrence Journal World*, June 9, 2004

<sup>61</sup> See "Heart of Flint Hills Area" map on page 72.

<sup>62</sup> Rothschild, November 22, 2004

## Chapter 2

### The Wabaunsee County Controversy<sup>63</sup>

The Wabaunsee County wind debate begins with the County permit process. All new structures within the County require a permit. A conditional use permit, or CUP, is “a written document of certification issued by a Zoning Administrator permitting construction, alteration or establishment of a Conditional Use.”<sup>64</sup> In Wabaunsee County, Kansas “the establishment of all land uses except agricultural uses and single-family uses” requires a conditional use.<sup>65</sup>

In 2002, when whispers of wind turbines began to be heard in Wabaunsee, one of thirteen Flint Hills counties, the county was zoned for sixty-two conditional uses among them, junkyards, laboratories, fairgrounds, fire stations, feedlots, cemeteries, riding academies, drive-in theaters, manufactured homes, quarrying, and radio and television broadcasting towers. The County also provided for “industrial” structures but limited their construction along “major roads and highways only,” with a maximum height of forty-five feet. As constituted, Wabaunsee County law prohibited industrial-scale turbines in two ways: first, because they were commercially oriented, the turbines could not be erected in an area zoned for agriculture because they were not explicitly permitted as a conditional use; second,

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<sup>63</sup> There are two dominant sources in this chapter. The first is official Wabaunsee County Planning and County Commission meeting minutes. The other source is transcripts of these meetings compiled by Nora Lyons and Associates, an official court stenographer who was hired by the Tallgrass Ranchers to record Wabaunsee County Planning Commission meetings in 2004. I’ve relied on these heavily because I believe they give more detail about what actually took place in the meetings. Subsequent Nora Lyons and Associates footnotes are identified by NLA.

<sup>64</sup> Wabaunsee County, *Wabaunsee County, Kansas Zoning Regulations* (Alma, KS: 1995) 7.

<sup>65</sup> *Ibid.* 145.

the structures, towering to over four hundred feet, exceeded county industrial height limitations.<sup>66</sup>

Because County regulations did not explicitly prohibit turbines, developers and their supporters believed the regulations were simply outdated and could be amended. In the summer of 2002, County Commissioners began a “review” of “zoning regulations to determine the necessity of amending” them and “engage[d] in a thorough and comprehensive review of the impact which wind turbine electric generation projects” would have “upon property within Wabaunsee County.” They enacted moratorium 2002-13 on November 12, 2002 stipulating that the “Wabaunsee County Zoning Administrator shall not accept nor process applications for conditional use permits in connection with wind turbine electric generating projects” until the moratorium expired or was repealed.<sup>67</sup>

JW Prairie Windpower, a subsidiary of JUWI, a German energy corporation that works “with landowners, local communities, financial institutions and utility companies...to build and operate wind farms as well as large scale photovoltaic systems,” was the wind developer interested in Wabaunsee County. JW Prairie had approached “several” landowners to negotiate leases for turbines.<sup>68</sup> Among them was Thomas Wagstaff, a Wabaunsee County landowner, who stated that he “could see no reason to ruin [his] property by allowing these large, ugly machines to be constructed.”<sup>69</sup> But others, like Roger Zimmerman, who owned land in the

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<sup>66</sup> *Ibid.* 135.

<sup>67</sup> Wabaunsee County, *Resolution 2002-13* (Alma, KS: November 12, 2002).

<sup>68</sup> “several” is referenced by Bruce Waugh in his letter to Wabaunsee County ranchers in June 2003.

<sup>69</sup> Thomas Wagstaff to Claude Blevins, unpublished, July 23, 2003.



southwestern portion of the county, were persuaded by the promise of clean, sustainable energy, and economic incentives, perhaps \$2,000 annually for each turbine erected, agreed to lease.<sup>70</sup>

Turbines outside the Flint Hills had raised little concern among countians.<sup>71</sup> Michael Stubbs, now an outspoken critic of turbines, admits that his first reaction to the turbines was “‘oh good’, let’s reduce our dependency on foreign oil;”<sup>72</sup> But he had a different reaction to turbines in the Flint Hills. Stubbs describes the moment he heard turbines were planned for the Flint Hills “like a knife” in his “heart.”<sup>73</sup> He reached out, at first, to Protect the Flint Hills, an organization dedicated to protecting “the last expanse of Tallgrass Prairie on the continent” from the threat of “industrial energy development,” and then connected with other concerned citizens.<sup>74</sup> In Wabaunsee County, Stubbs and others formed the Tallgrass Ranchers, whose stated goal was to “preserv[e] the ranching heritage, the scenic beauty, the natural integrity and the unique landscape of the Tallgrass Prairie in Kansas while respecting the property rights of others.”<sup>75</sup> In solidarity with Protect the Flint Hills, they formed a politically connected and legally savvy opposition to turbine projects in the Flint Hills.<sup>76</sup>

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<sup>70</sup> Figure derived from the following article: Clifford Krauss, “Move Over, Oil, There’s Money in Texas Wind,” *New York Times*, February 23, 2008.

<sup>71</sup> “countians” is a word used in William Least-Heat Moon’s *Prairy Erth*.

<sup>72</sup> Stubbs interview

<sup>73</sup> Stubbs interview

<sup>74</sup> “The Issues,” *Protect the Flint Hills*, [www.protecttheflinthills.org/](http://www.protecttheflinthills.org/) (accessed May 16, 2008).

<sup>75</sup> *Ibid.*

<sup>76</sup> *Ibid.*

With moratorium 2002-13 in place, the County Commission embarked on their investigation of “wind turbine electric generating projects.” They hired consultant Dave Yearout of the Baughman Company of Wichita to draft “Wind Energy Conversion System Zoning Amendments.” Yearout’s hiring presupposed that the County would draft regulations that would permit wind turbines. Yearout, as is evident from the proposed regulations he presented in 2003, operated under this directive: “the present Zoning Regulations, while clearly requiring a Conditional Use Permit in order to construct such a facility, do not address specific issues related to these operations and the County has determined it is in the public interest to have these development requirements more specifically stated within the regulations.”<sup>77</sup>

The Tallgrass Ranchers challenged the assumption that the County had to draft regulations at all; they, suggested that, if the County chose to regulate, that they did not have to regulate for allowance. They reminded the County that their obligation was to “contract for protection and promotion of the public health and welfare,” which they aimed to prove was served by outlawing turbines.<sup>78</sup> County legal counsel disagreed; they advised the County that outlawing turbines “would be an illegal ‘taking.’”<sup>79</sup> Wind developers confidently awaited regulations.

By April 2003 Dave Yearout had presented his working document, “Wabaunsee County: Wind Energy Conversion System Zoning Amendments,” to the County. The document considered visual impact, noise, soil erosion, cultural

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<sup>77</sup> Dave Yearout, *Wind Energy Conversion System Zoning Amendment* (Alma, KS: Wabaunsee County, 2003).

<sup>78</sup>“Wabaunsee County Commissioners,” Wabaunsee County, [www.wabaunsee.kansasgov.com/MV2Base.asp?VarCN=2](http://www.wabaunsee.kansasgov.com/MV2Base.asp?VarCN=2).

<sup>79</sup> Waugh to Wabaunsee County ranchers.

heritage, water quality, native vegetation/weeds, bird migration, and wildlife habitat among the “key issues.” Applicants would present an “overview of existing environment” and “potential environmental effects” along with “applicant’s plan to mitigate.” The requirements for application approval were all technical: among them, FAA lighting standards, a stipulation prohibiting logos or advertisements on the structure, a surety bond for decommissioning, and the prohibition of hazardous materials on site.

On June 23, 2003, in accordance with Wabaunsee County law, which stipulates that “conditional uses are allowed only after public notice, hearing, and approval,”<sup>80</sup> the County published the required notice in the *Wabaunsee County Signal Enterprise*, the official county paper, which is owned by county commissioner Ervan Stuewe. The notice indicated that the Wabaunsee County Planning Commission would consider Yearout’s “proposed amendments to the Wabaunsee County Zoning Regulations” on July 24.<sup>81</sup>

The Tallgrass Ranchers mobilized. In a letter addressed to Wabaunsee County ranchers, Bruce Waugh called people to action:

The assault on Wabaunsee County has already begun. A subsidiary of a German company has contracted with several landowners to erect turbines on their land. They have also applied to the Wabaunsee County Planning Commission for building permits. They are in the county, hoping to set a legal precedent for setting up the industry here. They want a foot in the door.<sup>82</sup>

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<sup>80</sup> Wabaunsee County, *Kansas Zoning Regulations* (Alma, KS:1995) 7.

<sup>81</sup> Wagstaff to Blevins.

<sup>82</sup> Waugh to Wabaunsee County ranchers.

At the July 24 meeting, JW Prairie Windpower, Zimmerman, and their supporters hoped that the Planning Commission would recommend approval of the regulations. The recommendation for approval would bring them one step closer to turbines. However, the Tallgrass Ranchers, who came out in large numbers, represented the majority of those who addressed the Commission. They called on the County to outlaw turbines and claimed that industry on this scale had no place in their rural community. They demanded that the County re-visit the Comprehensive Plan developed in 2000 by Kansas State professor John Keller, which they inexplicably had not adopted following its completion. They believed that the Comprehensive Plan prohibited turbines. In particular, conclusions four and eight of the Keller plan: “develop realistic plans to protect natural resources such as the agricultural land, landscape, scenic views, and Flint Hills through regulatory practices; [and], develop a tourism program involving historic properties, nature of rural character, and scenic landscape.”<sup>83</sup> The meeting adjourned without a vote on the proposed regulations and the discussion was tabled until August.

On August 21, 2003 the Planning Commission reconvened to consider, once again, the regulations. At first it seemed as though the Commission would recommend approval, at one point moving and seconding “to recommend the

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<sup>83</sup> John Keller and Wabaunsee County, et. al *Comprehensive Plan 2000* (Alma, KS: 2000). The comprehensive plan was originally prepared in 2000 by Kansas State professor John Keller and his Plan Preparation Class, in the Dept. of Landscape Architecture and Regional & Community Planning. It was not adopted, and then with some alterations including those added by Dave Yearout, until 2004. For more about tourism in developing the “heartland,” see David L. Edgell, *Managing Sustainable Tourism: A Legacy for the Future* (Philadelphia: Haworth Press, 2006).

proposed amendment to the regulations as amended this evening.”<sup>84</sup> However, after discussion, the Commission rescinded the motion and tabled the proposed amendments until “further direction on the comprehensive plan from the County Commission” was given. The Tallgrass Ranchers’ push to have the County revisit the comprehensive plan had worked. The County retained Dave Yearout as a consultant and began their review of the comprehensive plan.

“A sound comprehensive plan helps communities to develop smart growth while minimizing its adverse impact.”<sup>85</sup> Kansas State Professor of Landscape Architecture/Regional and Community Planning John Keller and his Professional Planning Preparation class, the capstone course at K-State for graduate level professional community planners, had revised the Wabaunsee County Comprehensive Plan in 2000; it was the first time the plan had been touched since 1974. Keller had first been approached about the project by colleague and Wabaunsee County Planning Commissioner Pete Cohen. Claude Blevins, the Wabaunsee County Zoning Administrator, made the formal contact. Keller agreed to have his class develop the plan at the cost of student travel and a color printer, which was returned to the County upon completion of the project.

For over two months the class compiled data. They collected demographic statistics dating back a century as well as information on soil types, vegetation, terrain, topographics, economic and employment statistics, data on population

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<sup>84</sup> Dave Yearout reads the August 21, 2003 meeting minutes at the 5/20/04 planning commission meeting. Wabaunsee County Planning Commission Minutes (Alma, KS: Wabaunsee County, April 21, 2003).

<sup>85</sup> Wabaunsee County Comprehensive Plan (Alma, KS: Wabaunsee County, 2004) 1.

changes, historical assets, and tourism potential. Finally, they conducted a series of focus groups in most of the small communities in Wabaunsee County. The class had also formally included the Planning Commission, County Commission, and Claude Blevins in the project, requesting that they find fifteen to twenty people who widely represented the community for the focus groups. The final report was formally presented to the county in the spring of 2000 and was based on these two sets of data: The final document was over 140 pages long and was certified by Keller. However, the County never adopted the Plan.

While the Tallgrass Ranchers lobbied the county to adopt Keller's plan, others derided it. For instance, Joe Downey, a Wabaunsee County landowner, wrote the County planning commission, "I would like to reiterate Allan Hess's comment that the draft Comprehensive Plan 2000 should be thrown in the trash and never see the light of day again. While I fully realize that the document is intended to provide guidelines for future development, it is full of outrageous proposals that if adopted, could lead to unreasonable regulation."<sup>86</sup> Turbine proponents started referring to plan as the "students'" plan in an effort to discredit the report as being prepared by amateurs, a criticism that Keller rebutted during my interview with him by listing the professional degrees and positions that the "students" had and have earned.<sup>87</sup>

The controversial part of the Keller plan was its opening pages, the section labeled "Goals and Objectives." The Tallgrass Ranchers believed that the goals and objectives clearly showed that wind turbines didn't belong in Wabaunsee.

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<sup>86</sup> Joe Downey to Wabaunsee County Planning Commission Members.

<sup>87</sup> John Keller, interview with author, Wabaunsee County, Kansas, April 11, 2005.

Furthermore, if the County adopted the Keller plan and then adopted wind turbine regulations, which could be argued were not in the best interest of “public health and welfare,” it might strengthen any future lawsuits because it could be argued that the County had not acted in the interest of public health, which it had established by adopting the comprehensive plan. That the Tallgrass Ranchers were on to something is evidenced by the vehement objections of turbine proponents.

At the September 8, 2003 County Commission meeting Dave Yearout said that he would not “change the goals and objectives” of the Keller plan; they would “be left alone and endorsed.”<sup>88</sup> A least one county commissioner, Morris Gleason, agreed, “expressing his concern that the goals and objectives remain the same.”<sup>89</sup> When the draft proposal of Yearout’s updated comprehensive plan was completed in December 2003 the goals and objectives remained in the proposal but were now called “Citizen Concerns and Desires” and were moved off the first page to the appendix. The Yearout plan’s mission statement explains this decision:

The Wabaunsee County Planning Commission solicited public participation through a community survey as part of the effort to update the Plan in 2000. Those findings were identified and articulated in the Plan at that time. Goals and objectives for any community are intended to identify the aspirations and intentions of the citizens of that community with respect to various topics or ‘elements’ of the planning process. The Planning Commission has reviewed those comments and is developing goals and objectives intended to enhance and support the priorities and issues identified by the citizenry. The following list of goals and objectives deal with the ‘elements’ of the Comprehensive Plan and are not intended to alter the ‘rank order’ as identified from the community survey. Each of the stated goals and supporting objectives received considerable thought and were developed with the interests of the

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<sup>88</sup> Wabaunsee County, *County Commission Meeting Minutes* (Alma, KS: September 8, 2003).

<sup>89</sup> *Ibid.*

citizens of *Wabaunsee County*<sup>90</sup> in mind. It is the intent of the Planning Commission that the goals and objectives stated herein be viewed as a statement of ‘vision’ for Wabaunsee County and its future.”<sup>91</sup>

It is instructive to compare the goals and objectives of the two plans:

2000, Keller Plan Goals and Objectives

2003 Update, Yearout Plan

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|--|--|
| <ol style="list-style-type: none"><li>1. Establish an organized pattern of land use with controlled and smart growth that brings prosperity to the county while also respecting its rural character.</li><li>2. Maintain the rural character of the county with respect to its landscape, open spaces, scenery, peace, tranquility, and solitude.</li><li>3. Develop moderate and slight growth of businesses, industries, and services with small-scale employment.</li><li>4. Develop realistic plans to protect natural resources such as the agricultural land, landscape, scenic views, and Flint Hills through regulatory policies.</li><li>5. Promote historic preservation, which protects and restores historic properties, old limestone buildings, and landmarks in the county.</li><li>6. Attract small retail businesses and encourage clustering of retail and service businesses.</li><li>7. Improve school system and other public facilities to address the existing deficiencies and needs.</li><li>8. Develop tourism program involving historic properties, nature or rural character, and</li></ol> | <ol style="list-style-type: none"><li>1. Encourage and expand the opportunities for new development within the county to promote actual growth within the county.</li><li>2. Work to assure decent, safe and affordable housing for all Wabaunsee County residents.</li><li>3. Provide an efficient and safe transportation system designed to move people and goods within and around the county.</li><li>4. Promote the extension of utility systems to provide safe and affordable utility services to residents of the county.</li><li>5. Promote the proper management of the drainage systems with Wabaunsee County, especially in recognized floodplains. Recognize that certain areas of the county are not compatible with development and therefore development should not be encouraged within those areas.</li><li>6. Plan and provide for the maintenance and expansion of community services and facilities in Wabaunsee County in order that proper development is not restricted and to help maintain or improve the local quality of life</li></ol> |
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<sup>90</sup> emphasis mine.

<sup>91</sup> Dave Yearout and Wabaunsee County, *2003 Update to Wabaunsee County Plan* (Alma, KS: 2003).



- scenic landscape.
9. Provide affordable and good quality housing with respect to current deficiencies and future needs.
  10. Attract new population, a stronger labor force, and retain youth.
7. Recognize the value of strong public schools to the overall quality of life within Wabaunsee County and support the continuation of the schools with the county.
  8. Encourage the expansion of business and job opportunities with Wabaunsee County through a strong economic developmental program.
  9. Provide opportunity for the orderly and efficient development of land which will achieve a fiscally sound and environmentally safe county, while maximizing compatibility among land uses.

While Keller’s plan highlights the preservation of the “rural character” of the County while promoting moderate development and tourism, Yearout’s plan privileges development exclusively; moreover, in chapter 2 of the Yearout plan, there is an explicit allowance for the revision of zoning regulations for the purpose of development: “Wabaunsee County presently has Zoning Regulations in effect for the County. While this provides a base from which to evaluate proposed development within the county, the need exists to expand these regulations to provide better standards for development within the rural areas.”<sup>92</sup> It was obvious to all who read both plans that the 2003 update would take Wabaunsee in a completely new direction, and, some wanted this.

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<sup>92</sup> *Ibid.*

In the late winter of 2004 the Tallgrass Ranchers discovered that Dave Yearout had also developed Rice County's comprehensive plan. When they examined the Rice County comprehensive plan, they found that it was nearly identical to the proposed Wabaunsee County plan – a vast majority of the document simply replaced “Rice” with “Wabaunsee.” It became obvious that the “students” research exceeded, both in scope and depth, that done by Yearout, a paid consultant. This revelation was a significant blow to the developers for two reasons: first, it was the chief factor in the County's decision to privilege the Keller plan and move Yearout's 2003 additions to the appendix; second, it seemed to legitimize Tallgrass Rancher claims that wind developers, in cooperation with some County officials, were seeking to fast-track development without truly considering the needs of the County.

What at first had seemed like an easy victory for wind developers was quickly turning into a costly battle of attrition. The number of conditions wind developers would have to meet to realize their projects continued to grow. The anti-turbine lobby was growing and gaining strength. Editorials deriding the turbine projects began to appear in Kansas newspapers. Environmental groups like the Kansas Audubon Society and the Kansas chapter of the Nature Conservancy came out against turbines in the Flint Hills. The Tallgrass Ranchers published and disseminated a pamphlet, “Find Out the Truth About ‘Wind Farms;” which questioned how wind turbines would affect land and wildlife in the Flint Hills and whether they would

offset the nation's dependence on foreign oil as turbine developers promised.

Ultimately it asked: "is this the legacy you want to leave in the Flint Hills?"<sup>93</sup>

As the controversy increased, Governor Sebelius formed her energy task force to investigate "the siting of Windpower projects in the Flint Hills/Tallgrass Prairie region of [the] state." As the pressure continued to grow, developers realized that they would have to act quickly and decisively to accomplish their aims. Reacting to the changing environment, JW Prairie advanced a new project in the early winter months of 2004.

On January 5, 2004, Roger Zimmerman filed a conditional-use permit application, for a sixteen story (165 foot) meteorological tower, or MET tower.<sup>94</sup> The Wabaunsee County Zoning Administrator, Claude Blevins, accepted the permit application.<sup>95</sup> Blevins informed the County of the application, and it notified the public in the *Signal Enterprise* that it would consider the permit at the regularly scheduled planning commission meeting on February 19, 2004.

A letter from Wabaunsee County resident and Kansas City businessman Simon McGee dated February 10, 2004 to County Planning Commission Chairman Scott Wilson summarizes the Tallgrass Rancher position as concerns the Zimmerman MET tower; McGee objected to the MET tower for four reasons. First, the application

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<sup>93</sup> "Find Out the Truth About 'Wind Farms,'" Tallgrass Ranchers, pamphlet.

<sup>94</sup> Permit Application. It is the MET tower issue that gives the entire controversy relief. This is in part because the Tallgrass Ranchers hired a stenographer from Nora Lyon & Associates to record the proceedings of planning commission meetings. The documents, sometimes hundreds of pages long, give a much more accurate portrayal of events than the cursory County meeting minutes. In the pages of these meeting minutes the legal arguments, confusion, and passion of the controversy come to life. Moreover, the MET tower argument is a microcosm of the entire issue.

<sup>95</sup> Blevins has since retired.

presupposed that Wabaunsee County would allow industrial wind energy conversion systems; as we saw earlier with Yearout’s proposed turbine regulations, the Tallgrass Ranchers had consistently rejected this position. Second, the proposed tower was unnecessary and redundant – there was another wind data tower less than one mile from the proposed site. Third, the County had not properly given notice of the hearing; the Tallgrass Ranchers claimed that Zimmerman’s adjacent landowners had not been properly informed about the proposed tower. Finally, the application lacked adequate detail necessary to make an informed decision – there were no tower specifications in the permit application. Moreover, the Tallgrass Ranchers believed that accepting the permit violated the moratorium, which stipulated that the “zoning administrator should not accept or process applications for wind turbine electric generating projects.”<sup>96</sup>

Perhaps recognizing these objections, Zimmerman withdrew his application on Thursday, February 19, 2004, the day the Planning Commission was scheduled to hold the public hearing on the MET tower.<sup>97</sup> The Tallgrass Ranchers were, at first, not informed about the withdrawal and came to the meeting only to find that the issue had been removed from the agenda.<sup>98</sup> Four days later, on February 23, 2004, County Commissioners - Fred Howard, Ervan Stuewe and Maurice Gleason - voted at their weekly Monday morning meeting to extend the moratorium (2004-02), which they had done four previous times, but, this time, with a wording change. The moratorium

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<sup>96</sup> Wabaunsee County, *Wabaunsee County Moratorium 2003-32* (Alma, KS: December 29, 2003).

<sup>97</sup> Wabaunsee County, *Notice of Public Hearing: Wabaunsee County Planning Commission* (Alma, KS 2004).

<sup>98</sup> Bruce Waugh, interview with author, May 2, 2005.

now read that the “Zoning Administrator should not accept or process applications for wind energy conversion systems.”<sup>99</sup> MET towers were clearly part of the “project” for “generating” “wind turbine electricity.” However, a MET tower does not “convert” wind to electricity. The change appeared specifically to address construction of a MET tower.

There was one other change. Usually, resolutions took “effect upon its passage and publication in the official county newspaper,” which, in this case, was to be published on Wednesday, February 25.<sup>100</sup> Instead, the resolution took effect immediately, a decision the Tallgrass Ranchers believed was made to get the application on the Planning Commission docket before the end of March, when moratorium 2003-32, which had just been replaced, was set to expire. The Zimmerman application was re-filed within hours of the meeting and was put on the agenda for the March 18<sup>th</sup> Planning Commission meeting.<sup>101</sup> Due to a lack of quorum, the March 18 meeting was pushed back one week, to March 25.

Roger Zimmerman’s lawyer, Michael Schultz, summarized the mood in the Alma Courthouse that night: “I taught law school at UMKC for six years and a group of students wasn’t as intimidating as this crowd is tonight.”<sup>102</sup> The crowd was large and, primarily, opposed to Zimmerman’s and Schultz’s project; at this point it was not unusual for more than a hundred people, some driving from as far away as Kansas

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<sup>99</sup> Wabaunsee County, *Resolution 2004-02* (Alma, KS: February 23, 2004). Simon McGee notes. Also used by Pete Cohen, on page 65 of April 14 meeting. This replaced *Resolution 2003-32*.

<sup>100</sup> *Ibid.*

<sup>101</sup> Bruce Waugh . Corroborated by Simon McGee through personal correspondence.

<sup>102</sup> Michael Schultz, *Public Meeting Before the Wabaunsee County Planning Commission: Wabaunsee County Courthouse, Alma, Kansas, March 25, 2004*, Tallgrass Ranchers Publication (Topeka: Nora Lyon and Associates, 2004), 8.

City, two hours east, to attend Wabaunsee County Planning Commission meetings. Opponents of the project believed that the tower was a step towards allowing turbines in Wabaunsee County, an effort by developers to “get their foot in the door” with zoning regulations; they called the tower the “first brick.” After Schultz addressed the commission, another lawyer, Tallgrass Rancher Bruce Waugh, asked those in the crowd opposed to the presence of industrial scale wind turbines in Wabaunsee County to stand up; almost everyone in the courthouse, more than a hundred, stood.<sup>103</sup>

Time and again during the meeting, Zimmerman, Brian Starry, a spokesperson for JW Prairie, and Schultz tried to convince the County that the MET tower had no relationship to wind turbines. Brian Starry explained the MET tower’s purpose: “this tower is for the sole purpose of gathering wind data, specifically wind direction, intensity, variations due to height and temperature,”<sup>104</sup> a point Schultz repeated, “it’s our opinion that this application tonight is not about wind energy development per se. It’s not about wind turbines or wind farms.”<sup>105</sup> Zimmerman also sought to separate the projects. “We are not asking approval for a wind turbine or a windmill. This is only a wind instrument tower,” he argued.<sup>106</sup>

It was clear from the beginning that J.W. Prairie Windpower intended to address the objections the Tallgrass Ranchers had raised in the McGee letter.<sup>107</sup> Starry

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<sup>103</sup> Bruce Waugh, *Public Meeting Before the Wabaunsee County Planning Commission: Wabaunsee County Courthouse, Alma, Kansas, March 25, 2004*, Tallgrass Ranchers Publication (Topeka: Nora Lyon and Associates, 2004), 65. Waugh used the same technique at the May 20, 2004 Public Meeting of the Wabaunsee County Planning Commission.

<sup>104</sup> Brian Starry, *March 25, 2004 Meeting*, NLA, 14.

<sup>105</sup> *Ibid.*

<sup>106</sup> Roger Zimmerman, *March 25, 2004 Meeting*, NLA, 11.

<sup>107</sup> Simon McGee letter to Wabaunsee County Planning Commission (Alma, KS: February 10, 2004).

explained that, although another wind data tower stood less than one mile from the proposed site, “these towers are privately owned and the data is kept pretty secret. There is historical data that we might have access to, but we really need what’s going on right now to correlate with the data we’re already pulling from our other MET towers.”<sup>108</sup> The historical data, collected by Westar, former owner of the nearby MET tower, was, therefore, useless.

Starry presented commissioners with two handouts that contained “graphic representations” of the MET tower and “a letter from...consulting wind experts outlining the need to—for us to place this unit.”<sup>109</sup> He also clarified the tower’s specifications; it would stand “165 feet” tall, would not require FAA lighting, would be supported by “four sets of six quarter-inch guide wires,” “would require no heavy cranes” during construction, and was “rated to withstand winds of 160 miles per hour without ice buildup and also rated 100 miles per hour with a quarter-inch of buildup on the structure itself.” The construction would take one to two days, and “further access to the tower after construction will be only needed on a very limited basis.”<sup>110</sup> J.W. Prairie would receive data from “phones inside the tower itself...we call in via a modem. It downloads the data to our computer.”<sup>111</sup> The tower would require “no concrete”, and, “once it is done, the screws are pulled back out of the ground...the tower dropped, pulled back into pieces. It’s still a usable tower. It’s carted up and

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<sup>108</sup> Starry, *March 25, 2004 Meeting*, NLA, 17.

<sup>109</sup> Starry, *March 25, 2004 Meeting*, NLA, 14-15.

<sup>110</sup> Starry, *March 25, 2004 Meeting*, NLA, 14-15.

<sup>111</sup> Starry, *May 25, 2004 Meeting*, NLA, 17.

put to wherever the next site is.”<sup>112</sup> The tower would be non-invasive and simple.

Robert Goss, Zimmerman’s neighbor, saw the tower as “nothing more than a tall flag pole.”<sup>113</sup>

Mr. Zimmerman’s lawyer, Michael Schultz, commented during the meeting that the County Commissioners had “revised or amended that moratorium [2003-32] so that meteorological towers could go forward.”<sup>114</sup> He responded to point 1 of the McGee letter by arguing that moratorium 2004-02 did not preclude MET towers, but was, in fact, adopted for the purpose of “moving forward” with the MET project.

Brian Starry addressed issues detailing the specifications and clarifying the “need” for the tower. Together, they were able to address the questions about the technical details of the tower.

The Tallgrass Ranchers responded as systematically as the Zimmerman team. Tallgrass speakers sought to discredit the notion that MET towers were not tied to wind turbines, and they asked why the Zimmerman-JW Prairie team had not addressed point 3 of the McGee letter, “Improper Notice.” Furthermore, they questioned the legality of the proceedings. Sheila Hill, who asserted that she had lived “in the area” of Zimmerman for her “entire life,” was one of the speakers; of the MET tower she believed, “it’s the first step to the wind power.”<sup>115</sup> Linda Ashburn, an adjoining landowner, also stated her opposition to the tower. When asked why? She responded, “well, one thing, there’s going to be turbines out there and we don’t want

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<sup>112</sup> Starry, *March 25, 2004 Meeting*, NLA, 19.

<sup>113</sup> Robert Goss, *May 25, 2004 Meeting*, NLA, 23.

<sup>114</sup> Michael Schultz, *March 25, 2004 Meeting*, NLA, 9.

<sup>115</sup> Sheila Hill, *March 25, 2004 Meeting*, NLA, 28.



the wind turbines.”<sup>116</sup> Scott Wilson, chairperson of the Planning Commission, repeatedly reminded speakers that there was no relationship between the CUP application and wind turbines. In response to Ashburn’s statement, Wilson stated, “It really isn’t relevant. That’s not a relevant argument. Either you’re for it or – it’s not – there’s absolutely not a relevant argument that it leads to wind power.” He threatened to “limit comments to this particular application’s merits in and of itself.”<sup>117</sup>

A remarkable exchange between Starry and an “unidentified speaker” demonstrates how Tallgrass Ranchers repeatedly tried to re-establish a connection between the MET tower and wind turbines:

*Unidentified Speaker:* How much does the tower cost?

*Mr. Starry:* I really can’t answer that. It is in the thousands. That is not something that I’ve been a part of the aspect to.

*Unidentified Speaker:* Was there any concrete in the base?

*Mr. Starry:* There is not concrete. There are no permanent aspects in putting this in the ground. Any other questions? Thank you for your time.

*Unidentified Speaker:* Just one question. How far do the guide wires go out?

*Mr. Starry:* I believe it is – if you’ll look on that front page of that graphic there, approximately 115 feet.

*Unidentified Speaker:* These towers are gathering wind data?

*Mr. Starry:* Correct

*Unidentified Speaker:* And you say that they have to be in sync with the kind of wind power and turbine that you want to put up?

*Mr. Starry:* No, No, No. What I’m saying is we have three other MET towers in Morris County. What we’re trying to do is take the data from those and correlate it with the data we want to draw here to get a wider picture of what the wind generation, what wind patterns due to temperature, to elevation, to direction are pulling this whole region.

*Unidentified Speaker:* I misunderstood you then. I thought you said you wanted some certain cups.

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<sup>116</sup> Linda Ashburn, *March 25, 2004 Meeting*, NLA, 30.

<sup>117</sup> Scott Wilson, *March 25, 2004 Meeting*, NLA, 30.

*Mr. Starry:* Types of cups. And all that is, it's a set of three cups and it measures the data.

*Unidentified Speaker:* And that's the site – that's specific to the turbines?

*Mr. Starry:* No, it's a measuring tool. It has nothing to do with the turbines themselves.<sup>118</sup>

It's evident that the unidentified speaker is not primarily concerned with the cost of the tower or the length of the guidewires, though he continues to ask questions about these. Rather, he's interested in getting Starry to link the MET tower with the proposed turbines. The drama of the meeting, the "intimidation" to which Schultz referred is evident in this exchange. Starry, thinking he is off the "stand" thanks the audience for their time but is called back at the last second for one last question. Feigning misunderstanding, the unidentified speaker continues to pepper Starry.

Bruce Waugh was the final speaker for the Tallgrass Ranchers. He began by asking Blevins, the Zoning Administrator, Claude Blevins, if his withdrawal of the original CUP application had been based on the McGee letter. Blevins responded combatively: "I'm not sure, Bruce, and I'm not on the witness stand."<sup>119</sup> Waugh's response set the tone for the rest of the meeting, and in some ways summarized the feelings of the Tallgrass Ranchers: "you're not sworn, at least."<sup>120</sup> Blevins' answer perhaps summarized some of the pro-turbine feelings, "that's right."<sup>121</sup> The Tallgrass Ranchers were putting the pro-turbine forces on trial. The pro-turbine resented the questioning.

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<sup>118</sup> Unidentified Speaker and Brian Starry, *March 25, 2004 Meeting*, NLA, 18-20.

<sup>119</sup> Claude Blevins (Unidentified speaker), *March 25, 2004 Meeting*, NLA, 64.

<sup>120</sup> Waugh, *March 25, 2004 Meeting*, NLA, 64.

<sup>121</sup> Blevins, *March 25, 2004 Meeting*, NLA, 64.

Waugh spoke at length and revisited two important questions that had heretofore not been addressed in full. Did County Moratorium 2004-02 supplant County Moratorium 2003-32? Moreover, had Zimmerman's neighbors been properly notified of the proposed MET tower? Earlier in the evening Gerald Cooley, a lawyer with the firm Gilliland and Hayes, representing Thomas Wagstaff and his family spoke to the legality of Moratorium 2004-02:

The law is simply this. That if you did not use language to repeal, you live with the former law unless it's in total conflict with a law that you adopted, which in this case was Resolution 2004-02. Therefore, I submit that you do not have the legal ability because there's no standing for this body to act.<sup>122</sup>

Waugh agreed with this assessment, stating, "that moratorium or resolution cannot be revoked or rescinded by implication."<sup>123</sup> That is, a simple wording change without specific language of "repeal" does not give the second moratorium legal precedence over the first.

Waugh also addressed point three of the McGee letter: "Improper Notice." He confronted the "professional staff of Wabaunsee County" and Blevins, in particular, with accusations of bias:

The zoning administrator tonight has said that he has attempted to redefine the notification area to one thousand feet from the proposed tower. That's contrary to the notification that's been given to any other conditional use permit for years. Matter of fact, I would defy anybody to find a use permit application which has not been given notification for the notification area within one thousand feet of the property line.<sup>124</sup>

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<sup>122</sup> Gerald Cooley, *March 25, 2004 Meeting*, NLA, 40.

<sup>123</sup> Waugh, *March 25, 2004 Meeting*, NLA, 66.

<sup>124</sup> Waugh, *March 25, 2004 Meeting*, NLA, 74.

The County had actually notified all neighbors within one thousand feet, but described these as “courtesy notices,” informing property owners of the impending action but implying that they were ineligible to file an official protest.<sup>125</sup> The only property owner that was “officially notified” was Zimmerman’s father.<sup>126</sup> The Waugh- Blevins exchange also deserves to be quoted at length:

*Mr. Waugh:* This is the first time in your role as zoning administrator that you’ve ever measured from one thousand feet of the tower, be it a cell tower, be it a quarry, right?

*Mr. Blevins (Unidentified Speaker in transcript):* That’s correct.

*Mr. Waugh:* And every other time you’ve done it, you measured from the property line?

*Mr. Blevins:* That’s right. And this is something if it ever goes to court will be determined by the court. Am I right or am I wrong?

*Mr. Waugh:* Oh yes, you’re right.<sup>127</sup>

Waugh also asked “whether any other resolutions that either of you [also addressing, Planning Commissioner Scott Wilson] are aware of have become effective upon signing”?<sup>128</sup> His reference here was to the fact that moratorium 2004-02 became effective immediately, not upon its publication in the *Signal Enterprise*. An unidentified speaker [either Wilson or Blevins] replied vaguely: “I don’t know one way or another without going through the resolutions, I suppose.”<sup>129</sup>

At the end of the night everyone, all factions in the courtroom the Planning Commission, the Tallgrass Ranchers and the Zimmerman-JW Prairie team agreed that there was a connection between a MET tower and a wind turbine. The Tallgrass Ranchers had of course been trying to establish this all night, but the other two groups

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<sup>125</sup> *March 25, 2004, NLA, 74.*

<sup>126</sup> Bruce Waugh, interview by author, March 3, 2005.

<sup>127</sup> Waugh, *March 25, 2004 Meeting, NLA, 75.*

<sup>128</sup> Waugh, *March 25, 2004 Meeting, NLA, 76.*

<sup>129</sup> Unidentified speaker (either Claude Blevins or Scott Wilson), *March 25, 2004 Meeting, NLA, 76.*

conceded the point only at the meeting's end. Planning Commissioner Pete Cohen spoke near the end of the night: "I find it difficult to comprehend why the Munker's Creek project has been so strongly pursued up into this area if there's no wind there for it. And the J.W. promotional literature has mentioned – says sufficient wind data, more than two years' of data gathered."<sup>130</sup> Cohen concluded that this was a "disconnect." Mr. Schultz, Zimmerman's lawyer, also capitulated:

I do want to address what I think are some real misconceptions and also say there's no secret about this. J.W. Prairie Wind Power is interested in the possibility of developing wind turbines in the State of Kansas, in Morris County and potentially Wabaunsee County....Yes, there is a connection between the two, but wind data isn't being collected to be put in a box and kept secret somewhere.<sup>131</sup>

What Schultz's comments reveal is that the pro-turbine group did not use consistent language. Recall Brian Starry's comment that MET data is "kept pretty secret." That is hard to reconcile with Schultz' statement, "wind data isn't being collected to be put in a box and kept secret somewhere." And, if "there is a connection between the two," MET towers and wind turbines, how could Scott Wilson say, "there's absolutely not a relevant argument that it" [referring to a MET tower] "leads to wind power." The tension and confusion of the meeting is palpable.

The meeting ended in postponement. Questions surrounding the legality of the proceedings raised by both Cooley and Waugh; the intimidating crowd, almost entirely anti-turbine; the unsuccessful attempts by the pro-turbine group to separate MET towers from turbines; and the questionable notification practices of County

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<sup>130</sup> Pete Cohen, *March 25, 2004 Meeting*, NLA, 83.

<sup>131</sup> Michael Schultz, *March 25, 2004 Meeting*, NLA, 91.

officials had raised questions the County could not answer. An unidentified speaker (one of the Planning Commissioners, the only people in the courtroom who can make motions) introduced a motion near the end of the meeting to “postpone this until after the June 31 (sic) deadline,”<sup>132</sup> the day after the recently adopted moratorium, 2004-02, was set to expire. Pete Cohen, the Planning Commissioner who had raised questions about “disconnects,” seconded. The motion carried by a vote of four to three.<sup>133</sup>

The March 25<sup>th</sup> meeting accomplished one thing for the pro-turbine forces: it got the public hearing on the MET tower out of the way. The Planning Commission had met its legal requirements and no longer would have to hear public comments on it even after the June 30 deadline. It certainly accomplished more for the Tallgrass Ranchers. They had demonstrated that many more people in the courtroom opposed wind turbines than supported them; they were able to take a straw poll to gauge where Planning Commissioners stood on the issue of turbines; and they had at least persuaded enough of the Commissioners that the situation was too confused to vote on. A “foothold” for turbines was postponed until June, or so it appeared.

Most important, Bruce Waugh believes, was the effect that meetings of this sort was beginning to have on the County Commissioners. They too were in the crowd on March 25<sup>th</sup>. Prohibited from sitting together by the Open Meetings Act, they observed from their own corners and, not themselves being the subject of attack,

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<sup>132</sup> Unidentified Speaker, *March 25, 2004 Meeting*, NLA, 112.

<sup>133</sup> *March 25, 2004 Meeting*, NLA, 114. This vote is also referenced by Jim Kaup at the May 20, 2004 meeting, pg. 48.

could observe and feel what the Tallgrass Ranchers were accomplishing more completely.<sup>134</sup> A curious issue at this juncture is that the Tallgrass Ranchers did not, in the grand scheme of things, care about the MET tower, per se. They perceived it as an attempt by JW and Zimmerman to gain a “foothold” in the County, something they could return to and expand upon in case the zoning regulations did not turn out in their favor. The Tallgrass Ranchers saw an opportunity to again be heard publicly, to expose wrongdoing and hypocrisy and, most important, to demonstrate to the three county commissioners, Stuewe, Howard, and Gleason, that they were right about the MET tower, and they were right about turbines.<sup>135</sup>

At the April 14, 2004 Planning Commission meeting, one month removed from the “intimidating” proceedings outlined above and two months before the date on which the Planning Commission had decided it would revisit the MET tower (and outside the realm of official public scrutiny), the MET tower application resurfaced. Jim Kaup, a Topeka lawyer hired by the County to help them navigate the complex legal procedures surrounding the MET tower and moratorium, explained the reasoning:

I’m here tonight to ask for your consideration of action to reconsider that motion and action that was taken back on March 25. It’s my opinion that there’s no valid justification, at least no valid justification that was put forward for delaying the action...And specifically it’s my opinion that the county moratorium on the consideration of conditional use permits for wind energy conversion systems, the existence of that moratorium is not a valid reason to delay planning commission action on application for a MET tower, CUP. That’s the bottom line.<sup>136</sup>

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<sup>134</sup> Bruce Waugh, interview with author, May 2, 2004.

<sup>135</sup> *Ibid.*

<sup>136</sup> Jim Kaup, *April 14, 2004 Meeting*, NLA, 48-49.

Citing “rules of statutory construction,” in particular the “Doctrine of Last Enactment,” which, according to Kaup, says “if there’s conflict between two laws that can’t be reconciled, then the second law displaces the first one,” Kaup encouraged the Planning Commission to reconsider its decision to postpone voting on Zimmerman’s MET tower until after moratorium 2004-04 expired on June 30.<sup>137</sup> Because the public hearing on the MET tower was held on March 25, those in attendance were unable to rebut Kaup’s legal interpretation. Commissioner Pete Cohen did point out to his colleagues that there were other “professional legal opinions to the contrary.” Some hard questions need to be asked: Was Jim Kaup acting independently by asking for reconsideration? Or, had he worked with county officials to reintroduce the measure? Kaup claimed he had “no dog in the hunt,” but County officials had retained him, some of whom appeared to have a dog in the hunt.<sup>138</sup> A slight majority of whom favored adopting the MET tower.

With the obstruction of the public out of the way, Kaup needed only to convince the Planning Commissioners that they were within their legal rights, in fact were legally obligated, to vote on the MET tower issue. He assured commissioners that the legality of the issue boiled down to “good old common sense...you do something here and it’s inconsistent with what you did before, then the one that most recently happened is the one you go with;”<sup>139</sup> the Doctrine of Last Enactment. Bruce

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<sup>137</sup> Jim Kaup, *April 14, 2004 Meeting*, NLA, 51, 52.

<sup>138</sup> Jim Kaup, *April 14, 2004 Meeting*, NLA, 75.

<sup>139</sup> Jim Kaup, *April 14, 2004 Meeting*, NLA, 52.



Waugh calls this opinion “wrong.”<sup>140</sup> Scott Wilson, chairperson of the Commission, accepted Kaup’s explanation. When asked by Don Westhoff, a commissioner who had missed the March 25 meeting, whether the CUP application had been “tabled,” Wilson replied, “the word is postponed.” When Westhoff asked, “but it wasn’t denied?” Wilson responded, “that’s correct, that’s correct.”<sup>141</sup> Two votes ensued. The first was to “reconsider the action taken at the March 25 meeting to bring this item back on the table.”<sup>142</sup> That motion carried seven to one with an abstention. The dissenting vote was Pete Cohen’s. The second vote was to reconsider the CUP at the May 20 meeting, which was a scheduled public hearing on two other issues, the adoption of zoning regulations limiting the height of structures on the shore of Lake Wabaunsee so as not to block the view of those homes on a “second tier” and the lynchpin for the entire wind controversy, the proposed changes to County zoning regulations.<sup>143</sup> The Commission agreed to bring the MET tower application back on the table on May 20.

The first agenda item the Planning Commission considered at their May 20<sup>th</sup> meeting was a vote on the Zimmerman MET tower. By a vote of 6 to 2, the Planning Commission voted to recommend approval to the County Commission.<sup>144</sup>

Zimmerman had prevailed, but, again, considering that the primary purpose of the MET tower argument for both sides was turbines not the tower, the issue quickly

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<sup>140</sup> Waugh, interview with author, March 3 and May 2, 2005.

<sup>141</sup> Don Westhoff and Scott Wilson, *April 14, 2004 Meeting*, NLA, 58.

<sup>142</sup> Wilson, *April 14, 2004 Meeting*, NLA, 79.

<sup>143</sup> Bruce Waugh, interview with author, May 15, 2005.

<sup>144</sup> *May 20, 2004 Meeting*, NLA, 40, 41. Planning Commissioner Dr. Brethour abstained but because of Jim Kaup’s recommendation that he had abstained for convenience, his vote was counted in favor.

faded in light of the impending debate on the zoning regulations. The second agenda item, the Lake Wabaunsee improvement issue, was discussed next. Finally, at 8:50 p.m., almost two hours after the meeting had begun and culminating two years since the wind turbine debate began, the Planning Commission addressed proposed changes to the wind tower regulations.

From the start, it was chaos. Chairman Wilson introduced the regulations as “the previously acted upon wind tower regulations.”<sup>145</sup> He would limit comments to changes made only since the regulations were considered the previous summer. Wilson claimed that the commission had already voted to accept the proposed regulations and needed only to consider changes that “both clarify and strengthen the regulations”<sup>146</sup> Immediately, Bruce Waugh, the primary spokesperson for the Tallgrass Ranchers, objected. He claimed that the Commission had never acted on the proposed regulations. Dave Yearout was asked to intercede, and he recalled that “at the conclusion of the original set of public hearings on the proposed amendments to the regulations [the Commission] voted to recommend.”<sup>147</sup> Waugh believed that the “proposed regulations [were] postponed until the comprehensive – new comprehensive plan was in place.”<sup>148</sup> Dave Yearout, reading from the August 21, 2003 meeting minutes, was forced to confirm Waugh’s memory of events, the Planning Commission had never voted on the proposed regulations.

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<sup>145</sup> Scott Wilson, *May 20, 2004 Meeting*, NLA, 83.

<sup>146</sup> *Ibid.*

<sup>147</sup> Dave Yearout, *May 20 Meeting*, NLA, 85.

<sup>148</sup> Bruce Waugh, *May 20 Meeting*, NLA, 86.

This further confused the proceedings. According to Chairman Wilson, the public hearing was for changes to the originally proposed wind regulations only. This, however, was built on the belief that the Planning Commission had already voted to approve the regulations and had simply tabled the issue until the comprehensive plan could be approved and the regulations strengthened. This was an erroneous understanding because the Planning Commission had never voted on the proposed regulations. The meeting proceeded with ambiguity. The Commission still believed that the meeting was only about changes to the proposed regulations. The Tallgrass Ranchers, on the other hand, considered the regulations, in their entirety, open to public scrutiny and debate.

Jim Kaup who, along with Claude Blevins and Dave Yearout, had helped draft the changes that were to strengthen the regulations presented the document. Copies of the now updated regulations were passed out to the crowd. One of the main changes to the regulations was a provision for “environmental assessment and mitigation,” which specified that the applicant “as part of the application process [would have to examine] the impacts the project will have on wildlife, on flora, on birds, including migratory birds, impacts on soil, impacts on ground water and surface water, impacts on historic, cultural, and archaeological resources.”<sup>149</sup> It is interesting to note that this change, in particular, considers many of the issues privileged in the Keller comprehensive plan, which had finally been adopted a few months before.

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<sup>149</sup> Jim Kaup, *May 20 Meeting*, NLA, 95. 25-102.4 (m) in the proposed regulations.

Again, there was confusion. The passage Kaup was reading from appeared on page 9 of his document, but page 9 of the document passed out to both commissioners and attendees read differently. After two minutes of confusion and with the crowd already tense and angry, it was discovered that “the paragraph entitled ‘County Review of Adequacy of Application’” [was] not in the version that Claude [had] handed out.”<sup>150</sup> The section that had been left out detailed “some alternative means by which the County could insure that the taxpayers didn’t bear the cost of dealing with the application, lining up experts and so forth.”<sup>151</sup> How or why it was missing was unclear. Kaup claimed it was a “mistake.” Someone from the audience yelled that it had been “taken out purposely” and implicated Claude Blevins,<sup>152</sup> who denied any tampering.<sup>153</sup> An unidentified speaker summarized what the crowd, again predominantly anti-turbine, was feeling: “I hope to God this wasn’t orchestrated to take us into no-man’s land where we no longer have regulations to protect us when the moratorium is up. I hope this is just a bad accident.”<sup>154</sup> The Commission considered a motion to postpone, but the vote failed. The confused meeting continued.

Jim Kaup spoke for twenty minutes about the proposed changes before the meeting was opened for questions and comments. Again, Commissioner Wilson reminded the crowd that they should address the changes only.<sup>155</sup> Simon McGee

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<sup>150</sup> Unidentified Speaker, *May 20, 2004*, NLA, 96.

<sup>151</sup> Jim Kaup, *May 20, 2004*, NLA, 99.

<sup>152</sup> *May 20, 2004*, NLA, 100.

<sup>153</sup> *Ibid.*

<sup>154</sup> Unidentified Speaker, *May 20, 2004*, NLA, 103.

<sup>155</sup> Scott Wilson, *May 20, 2004*, NLA, 125.

pointed out to the commission that the wind energy regulations had been discussed the previous summer before the adoption of the Keller comprehensive plan. Therefore, neither the public nor the Commission had ever had an opportunity to reconcile the wind energy regulations with the new comprehensive plan.<sup>156</sup> Another speaker believed that wind turbines would lower property values.<sup>157</sup> A few, like Colleen Anderson, spoke in favor of turbines, and asked why the County would allow an “underground gas tank” but not wind turbines.<sup>158</sup> Thomas Wagstaff said he was “disturbed by the fact that this Commission doesn’t know what it voted on, doesn’t know whether it approved something or didn’t approve something, [and] that it presented written materials to the public that were inconsistent with what the Commission has.”<sup>159</sup> John Hund proclaimed, “I can’t imagine that after all of this time that anybody that sits on this Planning Commission has not smelled the coffee in terms of the preponderance of opinion in this county.”<sup>160</sup> The Commission, assuredly exhausted by the proceedings and chaos, voted, at 11:05 p.m. to postpone “further action on these regulations until next month’s meeting.”<sup>161</sup>

In a sign of things to come, four days after the Planning Commission meeting on May 24, the County Commissioners rejected the Planning Commission’s recommendation to accept Zimmerman’s MET tower application by a vote of two to one. On June 17, the Planning Commission finally voted on the proposed zoning

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<sup>156</sup> Simon McGee, *May 20, 2004*, NLA, 127.

<sup>157</sup> *May 20, 2004*, 132.

<sup>158</sup> Colleen Anderson, *May 20, 2004*, NLA, 133.

<sup>159</sup> Thomas Wagstaff, *May 20, 2004*, NLA, 139.

<sup>160</sup> John Hund, *May 20, 2004*, NLA, 143.

<sup>161</sup> Scott Wilson, *May 20, 2004*, NLA, 192.

regulations; they recommended approval. The Tallgrass Ranchers had long expected this eventuality and realized that to stop the introduction of turbines they would need to convince at least two County Commissioners to vote in their favor. They prepared an alternative document that limited the heights of wind turbines to 120 feet and disseminated it to the County Commissioners on June 21.<sup>162</sup>

On Monday, June 28, 2004, at the County Commission meeting, Maurice Gleason and Fred Howard voted to limit the height of wind turbines in Wabaunsee County to 120 feet.<sup>163</sup> *The Topeka Capital-Journal* described the decision as “controversial.”<sup>164</sup> Michael Stubbs described the day as overwhelmingly joyous.<sup>165</sup> Jennifer States of JW Prairie described the decision as disappointing and vowed to continue pursuing turbines in Wabaunsee.<sup>166</sup> Roger Zimmerman sued the County. On February 28, 2007, the County’s decision was upheld in the District Court of Wabaunsee County.<sup>167</sup> The decision is being appealed.

Several conclusions might be drawn from the Wabaunsee County wind controversy: first, the majority opinion voiced at Planning Commission meetings was that turbines do not belong in the Flint Hills. The number of concerned citizens who attended County meetings, the decision of the County Commission, and Governor Sebelius’ “Heart of the Flint Hills” support this. Second, local governments are within their legal rights to ban industrial scale wind turbines. Third, wind developers

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<sup>162</sup> Wabaunsee County, *County Commission Meeting Minutes* (Alma, KS: June 21, 2004).

<sup>163</sup> Wabaunsee County, *County Commission Meeting Minutes*, (Alma, KS: June 28, 2004).

<sup>164</sup> Chris Moon, “Wind Energy Debate Shifts,” *Topeka Capital-Journal*, July 10, 2004.

<sup>165</sup> Stubbs interview

<sup>166</sup> Moon, “Wind Energy Debate Shifts.”

<sup>167</sup> District Court of Wabaunsee County, Kansas, *Roger Zimmerman, et al., and A.B. Hudson, et al. v. Board of County Commissioners, of Wabaunsee County, Kansas*, February 28, 2007.

and supporters, as well as opponents, are not above using policy-making and political processes to accomplish their aims. This is evident in the issue of the Comprehensive Plan, the changing of County policy to accommodate wind energy needs, and in countless instances that stretch across the two-year controversy. Lastly, that wind turbines, if introduced, will change how the Flint Hills are perceived.

Another revealing aspect of the Wabaunsee County controversy is that aesthetics were rarely mentioned. In my research I discovered that most people, both pro-and anti-turbine, believed this was a major part of the issue. So, where was it? Bruce Waugh told me during an interview that the Tallgrass Ranchers believed that aesthetics were a hard position to defend, so they focused their efforts in other areas.<sup>168</sup> However, without a review of the aesthetics that underscore the controversy, we cannot understand the cultural and social forces at work in shaping and re-shaping how the Flint Hills are perceived. Moreover, aesthetics are an important factor in how I see the controversy, which shapes the way I understand and report on this controversy.

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<sup>168</sup> Waugh, interview with author, May 2 and May 3, 2004.

## Chapter 3

### Romancing Absence<sup>169</sup>

There is romance to the Flint Hills.<sup>170</sup> There is to William Least Heat-Moon's epic *Prairy Erth*, Jim Richardson's photography, and Phil Epp's painting. Flint Hills' art focuses on limitless skies and detailed grasses tends toward a nostalgic view of the American past and, to borrow from Epp, "diminishes" the place of people in the landscape.

At the "Images of the Plains: Culture, the Land, and its Uses," panel discussion that opened the "Claimed: Land Use in Western America" exhibit at the Spencer Art Museum in June 2007, Wes Jackson, founder and director of the Land Institute, asserted that we cannot discuss the Flint Hills without examining Flint Hills' art; it is what we see and what we desire.

The *Homage to the Flint Hills* art exhibit, which toured twelve Kansas locations between June 2004 and May 2006, including Topeka, Manhattan, Olathe, and Lawrence, and its accompanying catalog, *A Gathering of Art Inspired by the Tallgrass Prairie of Kansas*, provide excellent examples of Flint Hills' art. The

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<sup>169</sup> The bold print throughout this chapter indicates photographs, drawings, or paintings included in the *Homage to the Flint Hills: A Gathering of Art Inspired by the Tallgrass Prairie of Kansas* (Topeka: Mainline Printing, 2004) catalog. I was not able to gain permission to reprint these images, but I wanted to include references to specific pieces. I also showed these images when I presented this chapter on March 4, 2008 for the Humanities and Western Civilization Dean's Lecture in the Kansas Union at the University of Kansas. Among those I showed in that presentation are the following: Gordon Bulloch, *Ivanpah Creek Area, South of Cassoday*; Marilyn Grisham, *Summer Dressed Prairie*; Phil Epp, *Flint Hill Mustangs*; Kim Casebeer, *Flint Hills Vista*; Joan Parker, *Morning's Refreshment*; Anne Gagel, *Alma View #3*; Kevin Sink, *After the Ice Storm*; Louis Copt, *Prairie Night Fire*; Judith Sabitini, *Wabaunsee County*; Hugh Greer, *Lost in the Flint Hills*; Robert Sudlow, *Prairie Falcon*; Lisa Grossman, *Spring Skies-Chase County*.

<sup>170</sup> Mark Kurlansky, *Cod: A Biography of the Fish That Changed the World* (New York: Penguin Books, 1997) 92. The sentence structure is borrowed from Kurlansky's sentence, "There is romance to revolution."



artists are talented; their works, which as a genre focus on what Epp has characterized as “the faraway,” are romantic.<sup>171</sup> The *Homage* exhibit presents an idyllic, pastoral landscape: prairie fires, wild flowers, tallgrass, distant horizons, and *no people*: a landscape at once intimate and empty.

This intimate emptiness is often expressed as tension between the various elements of the Flint Hills, especially sky and grass. Painter Joan Parker describes it this way, “the open prairie...seems to wrap itself around me and stretch into infinity.”<sup>172</sup> Photographer Terry Evans calls her project, one she has “never been able” to fully achieve, an “attempt to capture that feeling of space and of light moving across the Flint Hills.”<sup>173</sup> For Evans, Parker, and many others, the Flint Hills are intimate and intangible, close enough to insulate and far enough away to inspire movement, a romantic juxtaposition.<sup>174</sup>

In his work, *Looking West*, John D. Dorst calls this juxtaposition the “paradoxical property of a western landscape whereby it seems to open up a ‘vast horizon’ and simultaneously collapse distance.”<sup>175</sup> Dorst examines “quintessentially American iconography”--paintings, novels, photographs, and other texts--to identify the forces of cultural production of western visuality. He explores how underlying cultural assumptions affect our perceptions of the West--what he calls hiding

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<sup>171</sup> Phil Epp in *Homage to the Flint Hills: A Gathering of Art Inspired by the Tallgrass Prairie of Kansas* (Topeka, KS: Mainline Printing, 2004).

<sup>172</sup> Joan Parker in *Homage to the Flint Hills: A Gathering of Art Inspired by the Tallgrass Prairie of Kansas* (Topeka, KS: Mainline Printing, 2004).

<sup>173</sup> Terry Evans, in *Homage to the Flint Hills: A Gathering of Art Inspired by the Tallgrass Prairie of Kansas* (Topeka, KS: Mainline Printing, 2004).

<sup>174</sup> Terry Evans, email conversation with author, July 20, 2008.

<sup>175</sup> John D. Dorst *Looking West* (Philadelphia: University of Pennsylvania Press, 1999) 20.

“cultural apparatuses behind the screen of nature.”<sup>176</sup> In other words, as Dorst suggests, the human eye determines the distance to the horizon. The eye determines how we “see” and “experience” place. We think the horizon is much closer than it is; a mirage is created. We imprint our illusion, recreated in books, photos, paintings, poems, with cultural desires and needs. Dorst believes that this method of examination reveals what people “want” and “desire” from the direction and object of their gaze. In the “mirage” we encounter their misconceptions, assumptions, and follies.

Intimate emptiness and Dorst’s “paradoxical property” of western visuality are aspects and descriptions of the same thing, the distance from here to the horizon.<sup>177</sup> It is both a reality and a mirage--the Flint Hills as they are, on the one hand, intimate and, on the other hand, empty, devoid of human influence. The Flint Hills as people want them to be, intimate and empty.

It is in this space, between here and the horizon, where the Flint Hills’ wind turbine controversy began. For some, the idea of introducing turbines into that perceived emptiness shatters the intimacy, peace, and balance they feel from and experience in the Flint Hills.<sup>178</sup> For these people, the introduction of turbines denies that there is any worth to the perceived emptiness. For others, the introduction of turbines enhances the beauty of the Flint Hills, demonstrating a commitment to

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<sup>176</sup> Dorst, *Looking West*, 23.

<sup>177</sup> Dorst, *Looking West*, 20.

<sup>178</sup> For information about Indigenous land claims in the Flint Hills see “Survey of Kansas Indian Lands,” *Transactions of the Kansas State Historical Society* 4 (1888): 298-311; and, Anna Heloise Abel, “Indian Reservations in Kansas and the Extinguishment of Their Title,” *Transactions of the Kansas State Historical Society* 8 (1904): 72-109.

cleaner energy. For this latter group, we can, if we develop the emptiness, increase its economic worth. For others still, there is neither use nor time for an intimacy “empty” of the possibility of profit. The Flint Hills are just *plain* empty.

Therefore, the *Homage* exhibit provides a useful context within which to locate the Flint Hills wind controversy. All of the artists, even if unwittingly, believe that the Flint Hills have value, but not in its ability to provide human technologies that can capture earth’s resources (in this case, wind) and transport them in a variety of useful ways (as electricity, carbon trade, or as stock options). Although they may not have said so explicitly (and, indeed, many of the works were produced before the controversy began, and some of the artists, such as Terry Evans, do support wind energy), they see the Flint Hills without wind turbines.<sup>179</sup> They inspire advocacy groups like Protect the Flint Hills and the Tallgrass Ranchers. And *Homage* photos, paintings, and drawings, in their intimate emptiness, embody the assumptions of Flint Hills’ advocacy groups that an unblemished, unpopulated landscape is an ideal to be preserved. On the other hand, Flint Hills artists can be accused of *romancing absence*.

The absence of people in the *Homage* catalog is striking. Of the thirty-seven pieces only one, Jim Richardson’s photograph, *Burning Off, Kansas Flint Hills*, has people in it two cowboys in silhouette.<sup>180</sup> There are, of course, people who live and work in the Flint Hills, including many of the *Homage* artists, but they are often,

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<sup>179</sup> Don Lambert, in-person conversation, March 4, 2008. One of the artists who confirmed this is Terry Evans.

<sup>180</sup> Jim Richardson, *Burning Off, Kansas Flint Hills*, in *Homage to the Flint Hills: A Gathering of Art Inspired by the Tallgrass Prairie of Kansas* (Topeka, KS: Mainline Printing, 2004)

literally, left out of the picture. Richardson's photos accompanying "The Splendor of Grass: The Prairie's Grip is Unbroken in the Flint Hills of Kansas," which appeared in the April 2007 issue of *National Geographic*, are also entirely without people: eleven photos, no people.

In 1988, KU professors Norm Yetman, Ann Schofield, Beth Shultz, and Haskell Springer, attending a dinner in their honor in Beijing, China, presented a gift, a book of Kansas photos, to their Chinese host, the university's president. After examining the gift, the Chinese recipient burst into laughter. The KU professors immediately wondered what horrible mistake they had made, what cultural taboo had they violated? After the laughter subsided, the KU professors were relieved to discover that what their host had found funny was that this book about Kansas had no Kansans in it. "There are no people," he explained. The absence of people in Kansas, or Flint Hills art is, it seems, part of the romance and, in this case, part of the joke.<sup>181</sup>

Not only are there no people in the *Homage* art, there is virtually nothing but sky and grass save a few cattle, horses, the occasional road or home, and those two cowboys. This is also the trend in the collections of Flint Hills' art housed at Kansas University's Spencer Art Museum and countless Kansas photo books. For many, this absence inspires feelings of spirituality. Painter Louis Copt believes "the Flint Hills are timeless." For Copt, "painting them" is his "attempt to capture the eternal."<sup>182</sup> Fellow painter Hugh Greer brings this idea into focus, "the Flint Hills is about the

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<sup>181</sup> Norm Yetman, in-person conversation with author, (confirmed with Ann Schofield).

<sup>182</sup> Louis Copt in *Homage to the Flint Hills: A Gathering of Art Inspired by the Tallgrass Prairie of Kansas* (Topeka, KS: Mainline Printing, 2004).

only place in Kansas where you can look around and realize that it is about what it looked like there two hundred years ago.”<sup>183</sup> William Least Heat Moon echoes this sentiment in *Prairy Erth*: “citizens and visitors alike take pleasure in a place that remains recognizable not just from generation to generation but from century to century.”<sup>184</sup>

Flint Hills’ art, with its emphasis on absence, is an accurate representation of the Flint Hills as they are: empty.<sup>185</sup> There are few trees and few people. There is elevation but, in the age of mountaineering and interstates, its subtlety is often overlooked. We may even find it surprising that the first European explorers to visit the Flint Hills, sixteenth century Spanish conquistadors, traveling from the southwest, thought they had reached the foothills of the Appalachians.<sup>186</sup> This, however, should not be surprising, for the hills are what both wind and Flint Hills’ advocates see and desire. *Both sides imagine and see nothing*. Dorst’s “paradoxical properties” of western visuality are inside everybody. It is not just the *Homage* artists who are romancing absence; so, too, are the wind turbine advocates. They are thinking about the potential for developing the absence rather than maintaining the absence.

Imbedded in both of these visions is the long-held belief of the plains as “The Great American Desert.” This was the dominant vision of the plains in nineteenth century representations, which has persisted in twentieth-century scholarship, art, and

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<sup>183</sup> Hugh Greer in *Homage to the Flint Hills: A Gathering of Art Inspired by the Tallgrass Prairie of Kansas* (Topeka, KS: Mainline Printing, 2004).

<sup>184</sup> William Least Heat Moon, *Prairy Erth*, 52.

<sup>185</sup> Judith Sabitini, *Wabaunsee County*, in *Homage to the Flint Hills: A Gathering of Art Inspired by the Tallgrass Prairie of Kansas* (Topeka, KS: Mainline Printing, 2004).

<sup>186</sup> W.E. Richey, Address to the Kansas State Historical Society, December 1, 1903.

popular culture to inform contemporary understanding and experiences. As Walter Prescott Webb observed in his classic 1931 book, *The Great Plains*, the idea of the “Great American Desert” was “founded by the first explorers, was confirmed by scientific investigators and military reports, and was popularized by travelers and newspapers.”<sup>187</sup> In 1806, Zebulon Pike claimed that “these vast plains of the western hemisphere may become in time as celebrated as the sandy deserts of Africa.”<sup>188</sup> In 1819, from what would become Riley County, Stephen Long described a land “many miles in extent,” that had not “a single tree or bush” and therefore bemoaned that the “region will be much retarded on account of the want of trees.”<sup>189</sup>

At the same time, however, explorers, scientists, and travelers saw abundance in The Great American Desert. Pike had discovered a “country deserted and unpopulated,” but one that would quell the “anxious desire of the miser.”<sup>190</sup> Long, who believed that growth on the plains would be “retarded” by the lack of trees, also believed that the “soil” was “well adapted to the culture of some of our most valuable forest trees. The sugar maple, and several of the most important species of carya, the oaks, the tulip tree and the linden would unquestionably succeed.”<sup>191</sup> There was much potential abundance in the desert, but realizing it required ingenuity, work, and cultivation: development.

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<sup>187</sup> Walter Prescott Webb, *Great Plains*, 153.

<sup>188</sup> Walter Prescott Webb quoting Zebulon Pike, *Great Plains*, 155.

<sup>189</sup> Stephen H. Long, *Report of Major Stephen H. Long’s Expedition from Pittsburg to the Rocky Mountains, performed in the years 1819 and 1820*, Reprinted by the Kansas State Historical Society, First and Second Biennial Reports (Topeka, KS: George W. Martin Publishing House, 1881), 286.

<sup>190</sup> Pike to Wilkinson in *Exploratory Travels*, 392.

<sup>191</sup> Stephen H. Long, *Report of Major Stephen H. Long’s Expedition from Pittsburg to the Rocky Mountains*, 286.

Europeans had long reported “incredible abundance” in the new world.<sup>192</sup> William Cronon’s *Changes in the Land* looks at how reports of New England abundance led to exaggeration, commodification, and resource exploitation in the first English colonies. For Cronon, “descriptions framed on such a basis were bound to say as much about the markets of Europe as they did about the ecology of New England...seeing landscapes in terms of commodities meant...treat[ing] members of an ecosystem as isolated and extractable units.”<sup>193</sup> The New England settlements repeated earlier European patterns of conquest in which “hopes for great windfall profits had fueled New World enterprises ever since the triumphs of Cortes, and were reinforced by traditions as old as the Garden of Eden;”<sup>194</sup>

As previously noted, the enduring impact of the imagery and cultural valuations of the Flint Hills provide the context within which the controversy over wind turbines has taken place. At the 2004 Wind Conference in Topeka, a trade conference for wind development, Flint Hills turbine opponents operated a booth, though their request to make a presentation was denied. They displayed Flint Hills’ photos side-by-side with simulated projections of the photos with turbines. Most conference attendees who stopped to consider the photos reacted with indifference, seeing, virtually, no difference between them. One attendee, a man I knew from Lawrence, believed the turbine photos, the after, to be “as beautiful” as the before photos.

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<sup>192</sup> William Cronon, *Changes in the Land: Indians, Colonists, and the Ecology of New England* (New York: Hill and Wang, 1983) 22.

<sup>193</sup> William Cronon, *Changes in the Land*, 21.

<sup>194</sup> William Cronon, *Changes in the Land*, 35.

How do we quantify aesthetics? In 2006 the Kansas Court of Appeals in, *R.H. Gump Revocable Trust v. the City of Wichita, Kansas* ruled that, “while aesthetic considerations may not be as precise as more technical measures, they may be considered as a basis for zoning rulings.”<sup>195</sup> The question, then, is not only of philosophical but also of legal importance. What are more valuable: hills with turbines or without? The question asks us to weigh the health of the most endangered ecosystem in North America, the tallgrass prairie, against the pressure - environmental, economic, and political - of global warming. Both sides line up their statistics, their facts, their prairie chickens, and their number of homes a single turbine will power in a year, and lay them down like trump cards at debates, county commission meetings, wind forums, on the internet, in editorial columns, and across the airwaves. Each side has won some hands. While their construction has been denied in Wabaunsee County (no turbines over 120 feet), there are 100 turbines in Butler County (the Elk River Project).<sup>196</sup> There are also pending wind farm proposals for Morris, Riley, Geary, and Chase Counties. Finally, during the month in which this thesis was completed, the oil energy entrepreneur T. Boone Pickens has embarked on a much-publicized campaign to develop wind energy throughout the entire Great Plains region.

Choosing where to stand on this issue is difficult for three reasons: first, much of the statistical analysis about how much energy turbines can produce, or how much damage can be done in the construction and operation processes seems to come from

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<sup>195</sup> Court of Appeals, State of Kansas, *Gump Revocable Trust v. the City of Wichita*, April 14, 2006.

<sup>196</sup> Personal Count.



such a distant, obscure place that one would need advanced degrees in economics, political science, physics, chemistry, biology, landscape architecture, mathematics, and mechanical engineering to understand how certain figures are generated. This also makes it difficult to trust the numbers, not necessarily because the statistics are manipulated but because the formulas through which they have been reached are obscured. Second, both sides claim to be the “environmental” side, and there is some validity in both claims. One cannot deny that someone who advocates halting development within a rare ecosystem, the most endangered in North America, is not an environmentalist. At the same time, people who champion alternative sources of energy also carry the environmental torch. Choosing sides is difficult, especially for many public officials who see compromise as the sustainable path.

Therefore, the development of wind energy is influenced and affected by a host of environmental, political, cultural, and economic factors. Before making a decision on whether or not there is a place for them in the Flint Hills we need to consider how these factors shape the wind argument. As I’ve suggested, this is not easy. Disputed numbers, definitions, and outcomes muddy the waters. However, it is imperative to choose a side. The middle ground, politically sustainable, yields assuredly to the “inevitability” of “progress” and the economic development (opponents would say the despoliation) of the Flint Hills. This path chooses for you.

I don’t think industrial scale wind turbines, those over 120 feet and/or for commercial use, have a place in the Flint Hills, now or ever. The moment after someone says makes such an assertion, when one admits to opposing a wind energy

project, can be one of embarrassing ignorance. My position is accused of not realizing its participation in promoting traditional western modes of production that have fostered a violent, capitalistic, and imperial culture; it also accused of grossly underestimating the necessity of development; it is a quixotic moment.

Romanticism can reveal hidden truths. When Don Quixote engages the windmills, the “monstrous giants,” he is sorely used. Cervantes writes, “As he thrust his lance into its sail the wind turned it with such violence that it smashed the lance into pieces and dragged the horse and his rider with it, Don Quixote went rolling over the plain in a very sore predicament.”<sup>197</sup> Don Quixote discovers that these windmills are not the giants of his imagination, but neither are they harmless.

There is a similar moment in the classic movie *Mr. Smith Goes to Washington* when Senator Jefferson Smith, played by Jimmy Stewart, confronts Senator Joseph Payne, played by Claude Rains, about a proposed appropriations bill that threatens Smith’s beloved Terry Canyon. Senator Payne tells Senator Smith that he is “fighting windmills.”<sup>198</sup> Jeff is deluded not by chivalry but by American idealism. For his efforts, a marathon filibuster, Jeff too is sorely used; he is carried, exhausted and unconscious, from the Senate floor after Senator Payne admits that the bill’s primary purpose is graft. Jefferson Smith might be romantic, but he’s obviously not dumb, and he’s certainly not stupid.

I arrived “here,” at the conclusion that industrial scale wind turbines do not belong in the Flint Hills, after subjecting wind advocacy to the same method of

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<sup>197</sup> Miguel De Cervantes, *Don Quixote*. Editor John Rutherford (New York: Penguin, 2000) 64.

<sup>198</sup> *Mr. Smith Goes to Washington*, dir. Frank Capra, Columbia Pictures 1939, dvd.

analysis that Flint Hills' advocacy is subject to. I looked at the horizon, "there," with wind turbines and considered the desires and needs that put them there. First, aesthetically, for me, the Flint Hills are more beautiful and more valuable without wind turbines. Secondly, although I discovered some good reasons, both environmental and personal, for erecting wind turbines in the Flint Hills, I also found misconceptions, assumptions, and folly. As John Dorst might describe, I looked at the "paradoxical property" of the wind turbine vision, that space where we find "cultural apparatuses behind the screen of nature."<sup>199</sup> In this case, that space was where we find "cultural apparatuses behind the screen" of environmentalism. That is, like all cultural production, environmentalism represents a complex combination of cultural factors.

The economic incentives of wind energy development are "screened" by the label environmentalism. Local land owners make thousands of dollars for leasing their land to wind companies. The windfall, however, is the millions of dollars energy companies stand to make by erecting wind turbines. They make money from energy production but, primarily, from tax incentives, government subsidies, and green credits. I know of no better indication of this point than that Goldman Sachs, one of the world's largest global investment banks, bought Zilkha, one of the largest wind turbine companies in the world, in 2005. I am not suggesting that Goldman Sachs acted in an unethical way, actually, quite the opposite. The capitalist system demands

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<sup>199</sup> Dorst, *Looking West*, 20.

that they, the corporation, operate in the financial interests of their investors. They are required, legally and ethically, to make sound, profitable investments.<sup>200</sup>

The argument for wind turbines is that they will be minimally invasive and immensely beneficial. Turbine advocates point out that the turbines occupy only a small amount of ground space, that they lessen America's reliance on foreign oil and native coal, and that they help us combat global warming.

However, the idea that the presence of wind turbines represents but a minimal invasion, is false for three reasons. First, with 97 percent of the tallgrass prairie plowed under, there, in fact, seems little of it remaining. Second, this formula does not consider turbine effects on grass, sky, or wildlife the very elements that make the Flint Hills a unique space. Finally, anything four hundred feet tall is only minimal if we are talking about skyscrapers.

The majority of Flint Hills' biomass is underground. Anyone who has ever seen and heard Wes Jackson of the Land Institute present, with his Big Bluestem demonstrations, clearly understands this.<sup>201</sup> Holding the base of the plant above his head, the roots drape to the ground.

Furthermore, as Flint Hills' artists demonstrate, the sky is an important part of the Flint Hills. When we consider what type of invasion the introduction of

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<sup>200</sup> Simon Romero, "Goldman Sachs buys Zilkha, Expanding Interest in Wind Power," *New York Times*, March 22, 2005.

<sup>201</sup> I've seen Wes Jackson present Big Bluestem during a lecture or talk twice, at "People Speak 2005: Environmentally Sustainable Development: Working Together for People, Prosperity and Peace," Kansas University International Education Week. Dole Institute of Politics, Lawrence, KS, November 14, 2005. And, the opening forum for "Claimed: Land Use in Western America," Spencer Art Museum, Kansas University. Lawrence, KS, June 16, 2007. An illustrated example of Big Bluestem root systems can be found in O.J. Reichman's book *Konza Prairie*.

turbines in the Flint Hills is, we must consider this fact: the surface is important, especially since there is so little left, but the essence of the Flints Hills is not only in the Hills themselves, but also what lies below and above them.

The idea that wind turbines will lessen America's reliance on foreign oil and native coal appeals to everyone. However, there are growing concerns about the validity of this claim. In the Saturday, February 23, 2008 New York Times, a front page article, "Move Over, Oil, There's Money in Texas Wind," an article I would describe as "pro-turbine," casually mentioned, as if this is an unimportant fact, that claims by turbine advocates that wind could "eventually hit 20 percent" of the United States' energy needs overshoots a "realistic goal," which "energy consultants" say is only 5 to 7 percent.<sup>202</sup> Similarly, this brings into question the assertion that wind replaces coal.

I argue that "the necessity of development" is the most dominant of all western modes of production. This is the ideology of Frederick Jackson Turner's Frontier Thesis.<sup>203</sup> In the past quarter century, the scholarship of New Western History exposed its consequences: a violent, capitalistic, and imperial culture. Arguing for turbines in the name of necessity inherits this tradition. The necessity some wind turbine advocates have in mind is not the necessity of combating of global warming but the necessity of getting the job done before the tax and green credits run out.

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<sup>202</sup> "Move Over, Oil, There's Money in Texas Wind," NYT

<sup>203</sup> Frederick Jackson Turner and Martin Ridge, *History, Frontier, and Section: Three Essays* (Albuquerque: University of New Mexico Press, 1993). *Frontier Thesis* originally published in 1893.

There *is* romance to the Flint Hills; it *is* a place of imagination. I want to argue, as Bertrand Russell did, that “science may set limits to knowledge, but should not set limits to imagination.”<sup>204</sup> At the same time, the Flint Hills are a real place inhabited by real people – something, as I’ve said, that is often left, literally, out of the picture. The land can, sometimes, be left to speak for itself, ignoring that there are people who advocate for the land and their place in it, and creating a situation where members of an ecological community are commodified. It would do well to remember Aldo Leopold here, “one basic weakness in a conservation system based wholly on economic motives is that most members of the land community have no economic value.”

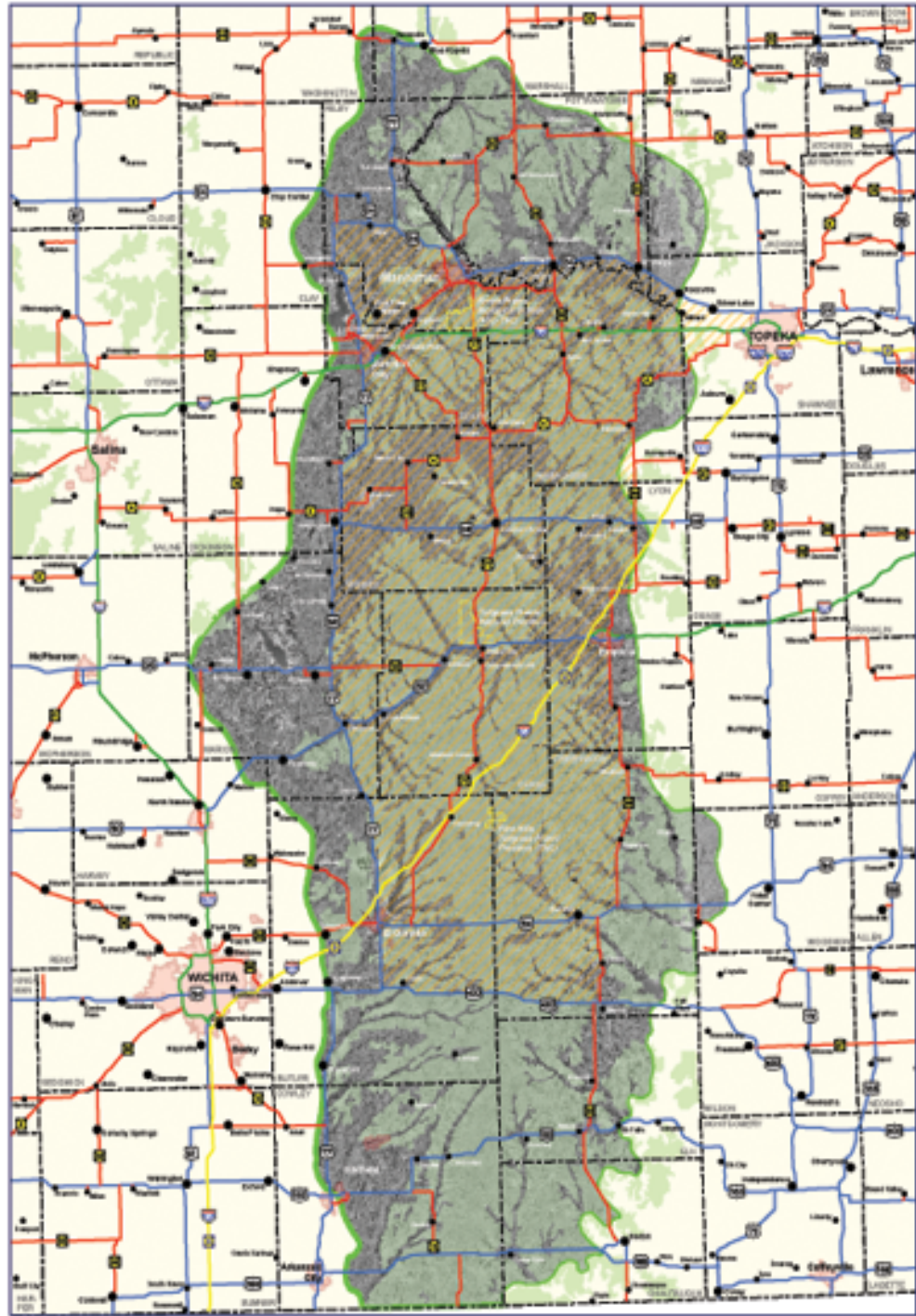
The wind controversy that embroiled Wabaunsee County between 2002 and 2006 demonstrates that a growing number of people who live in the Flint Hills don’t want industrial scale wind turbines there. Furthermore, a growing number of environmental groups also do not believe the Flint Hills are an appropriate space for the wind turbines.

My position is this: the Flint Hills inspire. There is no other place in North America, perhaps in the Western Hemisphere, when we consider topography, geology, biology, and culture that inspires like here. Wind turbines, no matter how little ground space they take up, how much energy they produce, how little noise they make, will make that inspiration extinct.

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<sup>204</sup> Bertrand Russell, *The History of Western Philosophy* (New York: Touchstone Books, 1945) 2.

# Heart of Flint Hills Area



- | Legend                  |                   |
|-------------------------|-------------------|
| Population 1,000        | Interstate        |
| Population 10,000       | State Route       |
| Population 100,000      | City Boundary     |
| Heart of the Hills Area | Metropolitan Area |
| State Boundary          | Metropolitan Area |
|                         | Metropolitan Area |

Scale: 1 inch = 20 miles  
 0 20 40 Miles  
 0 20 40 Kilometers  
 STATE OF KANSAS  
 DEPARTMENT OF TRANSPORTATION

This map is a product of the Heart of Flint Hills Area Metropolitan Planning Area (MPO) and is intended for informational purposes only. It is not intended to be used for any other purpose. The MPO is a designated Metropolitan Planning Area (MPA) under the Federal Highway Administration (FHWA) and is responsible for the development and implementation of the Metropolitan Transportation Plan (MTP) for the area. The MPO is a partnership of local government entities and is committed to providing a safe, efficient, and sustainable transportation system for the Heart of Flint Hills Area.



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