

# Land Owner Testimonial: PA Senate Democratic Policy Committee Hearing re: Anthracite Ridge Wind

Massive Private Climate and Employment Investment Obstructed

**RAUSCH CREEK LAND, L.P.**

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# LAND OWNER TESTIMONIAL: PA SENATE DEMOCRATIC POLICY COMMITTEE HEARING RE: ANTHRACITE RIDGE WIND

## Massive Private Climate and Employment Investment Obstructed

RAUSCH CREEK LAND, L.P. WAS FORMED IN 2003 TO ACQUIRE ASSETS INCLUDING DISTRESSED COAL PROPERTIES ENCOMPASSING APPROXIMATELY 17,000 ACRES IN WESTERN SCHUYLKILL COUNTY. TO DATE RAUSCH CREEK HAS INVESTED TENS OF MILLIONS RECLAIMING THOUSANDS OF ACRES FOR THE EXPRESS PURPOSE OF TURNING THESE VAST BROWNFIELDS BACK INTO MAJOR ECONOMIC AND ENVIRONMENTAL CONTRIBUTORS.

ALL THE WHILE, RAUSCH CREEK CONTINUES THE REGION'S PROUD ANTHRACITE LEGACY, EMPLOYING HUNDREDS OF LOCAL WORKERS WHO PROVIDE STEELMAKERS WORLDWIDE WITH A KEY COMPONENT OF THE HIGH-STRENGTH ALLOYS THAT ENABLE VITAL PRODUCTS LIKE EFFICIENT CARS AND TRUCKS – AND WIND TURBINES. (AS WELL AS COUNTLESS ICONS INCLUDING THE GOLDEN GATE BRIDGE AND THE NAVIES THAT WON BOTH WORLD WARS.)

RAUSCH CREEK GENERATION'S COAL REFUSE-FIRED POWER PLANT CONTINUES TO CHEW THROUGH MOUNTAINS OF ITS ECO-HAZARDOUS DIET (WHICH THE BUREAU OF ABANDONED MINE RECLAMATION ESTIMATES WOULD OTHERWISE BE A TAXPAYER FUNDED \$16 BILLION CLEANUP LIABILITY), FEEDING THE GRID 30+MW OF POWER.

RAUSCH CREEK SUBSIDIARIES REHABILITATE AND REPURPOSE THOUSANDS MORE ACRES IN A VARIETY OF SUSTAINABLE WAYS. ABANDONED STRIPPING PITS ARE IDEAL FOR SAFELY CONTAINING FLY ASH, THE BYPRODUCT OF POWER PLANTS IN THE REGION, RIGHT BACK IN THE HOLES WHERE THE COAL THEY BURN ORIGINALLY CAME FROM. ONE VIRTUOUS CYCLE OF WHICH WE ARE ESPECIALLY PROUD INVOLVES FARMING CROPS ON FORMERLY CONTAMINATED LAND THAT WE REVITALIZED AND NOW ANNUALLY FERTILIZE WITH THE APPLICATION OF COMPOSTED BIOSOLIDS, ADDRESSING THREE VEXING ENVIRONMENTAL CHALLENGES WITH ONE PERPETUAL EXERCISE.

TIMBER HARVESTING JOBS REMAIN IMPORTANT. OUTDOOR RECREATION FLOURISHES TOO, WITH A DOZEN OR SO HUNTING CLUBS LEASING VARIOUS PARTS OF THE PROPERTY, ALONGSIDE FACILITIES CATERING TO OFF-ROAD MOTORCYCLE, ATV AND JEEP ENTHUSIASTS. (WITH A 400-ACRE SEASONAL CAMPGROUND THROWN INTO THE MIX.)

WHERE TRANSPORTATION AND UTILITY INFRASTRUCTURE PERMIT, COMMERCIAL/INDUSTRIAL AND LIGHT MANUFACTURING DEVELOPMENT EFFORTS ARE WELL UNDER WAY, ON A TRULY EPIC SCALE.

SO IN 2004 WHEN THE WIND PRODUCTION TAX CREDIT, ORIGINALLY ENACTED BY CONGRESS WITH THE ENERGY POLICY ACT OF 1992, WAS EXTENDED, RAUSCH CREEK EAGERLY SOUGHT TO EMPLOY ITS OTHERWISE UNUSABLE RIDGE TOPS IN THE FULFILLMENT OF THIS PROMISE.

### Project Groundwork

To appreciate the atrocious opportunity costs of delaying (let alone killing) this project, it helps to understand the unique potential of this particular site vis-à-vis national and state goals.

For context, consider that The Commonwealth of Pennsylvania currently enjoys only roughly 3.25% of the state's potential wind electric generating capacity,<sup>1</sup> comprising just 1.5% of all in-state electricity production. (Compare that to 7.2% nationally.) Then consider the fact that only two utility-scale projects have come online here in the last decade, one generating just half of Anthracite Ridge's projected capacity and the other less than one-quarter.

Also note that the terrain which lends the State so much beauty has the less fortunate effect of very severely limiting where wind can work. Opponents can pretend that they're just displacing megawatts from one place to another, but even the most cursory look reveals that's untrue.

## Need vs Availability

### National Picture

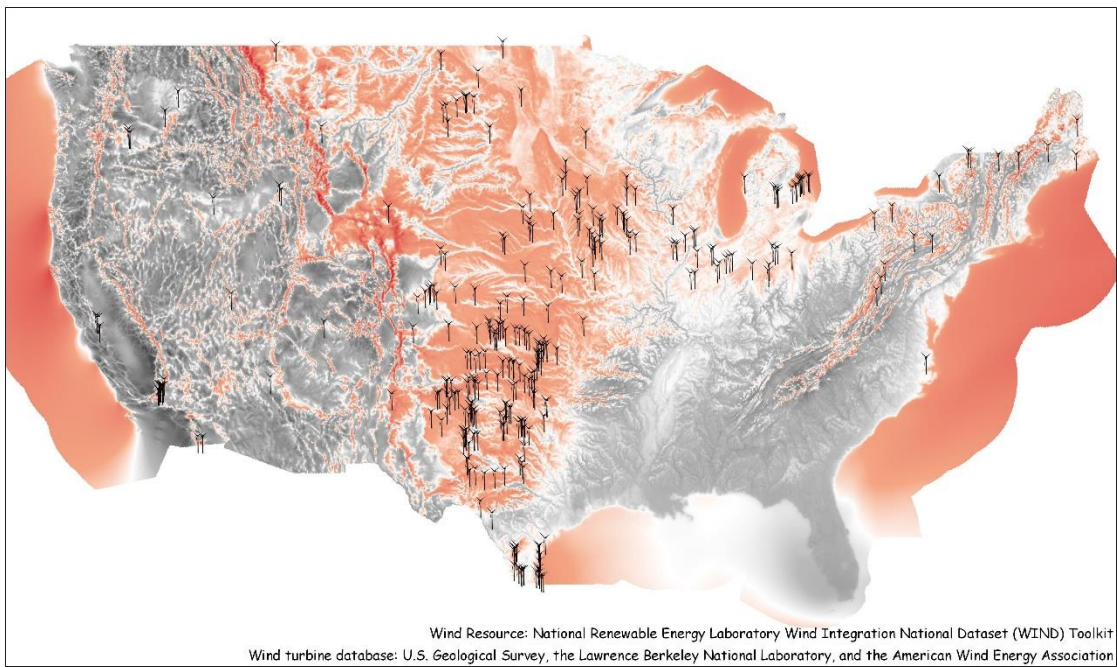


FIGURE 1: RED DENOTES WIND VELOCITY. ONLY DARKEST RED AREAS CAN SUPPORT POWER GENERATION.

### Pennsylvania Picture

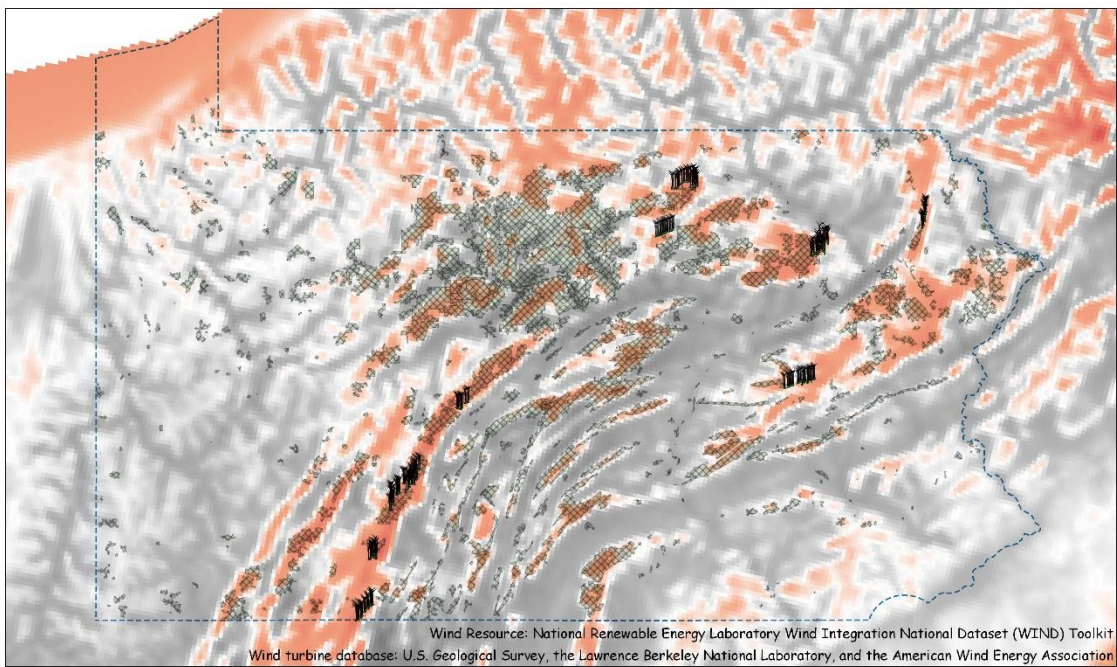


FIGURE 2: STATE FOREST & GAME LAND EXCEPTED, WHAT REMAINS AND HOW TOLERANT CAN YOU BE OF ITS EXPROPRIATION BY FIAT?

## Project History

### Wind Resource Validation

In 2006 meteorological monitoring towers began gathering data which confirms that the wind resource above the miles of ridgeline running through Schuylkill County, particularly but not only Rausch Creek's property, is sufficient for highly efficient modern wind turbines to generate enough electricity to make for a viable project. But only within a very short distance of the absolute summit of each mountain ridge is it accessible.

From inception to date, this critical ongoing program has seen the construction, maintenance, remote and local monitoring of as many as five 60-meter instrument-packed towers and intermittently two mobile SODAR units which employ sonic doppler technology to measure wind characteristics at higher altitudes. This has been and remains a very, very expensive undertaking.

### Power Offtake

No utility-scale power generation project gets off the ground without securing a queue position from the regional transmission organization (RTO) that coordinates the movement of wholesale electricity in its region. Anthracite Ridge's RTO, PJM, has reserved a grid position for Anthracite Ridge at 175 megawatts.

The next level is securing commitment from a utility company to actually consume the power generated. PP&L was so on-board that in 2013 it sent letters notifying all land owners abutting its Eldred 69kV transmission line of an impending upgrade for the sole purpose of accommodating the project.

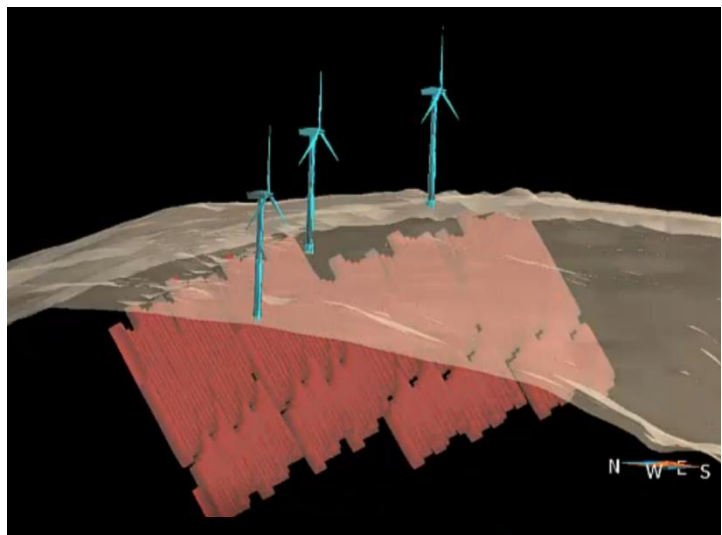
When this is formalized by the signing of a Power Purchase Agreement, "the rubber has met the road" and real monetary damages, in the form of accrued lost operating income due to any impediment to construction, are elevated to a whole new plane.

### Geotechnical

The animated 3D analysis from which this picture was excerpted depicts actual deep mine workings for the purpose of preliminary analysis and planning (understood to be subject to significant modification during pre-construction "micro-siting" phase) and consideration of foundation requirements.

Validating the suitability of sub surface conditions within the very narrow corridors where the wind resource is concentrated was by no means an inexpensive undertaking.

But here, where generations of surface and deep mining have resulted in what we locally





characterize as “the world’s biggest ant hill,” it is not an area where a responsible developer scrimps.

## Environmental

As a practical matter, property with such a long and active history of extractive industries like coal mining and timber harvesting offers some clear advantages over relatively undisturbed lands for developers seeking environmental clearances. Not that NIMBY objectors aren’t trying, but it’s a pretty heavy lift if your fundamental objection is on the order of “Don’t let them mess up that abandoned strip mine!” When there’s not a tree in the project area older than yourself, except the ones the last generation of professional foresters planned to be harvested later, it’s pretty obvious that your motivation for objecting to cutting a narrow corridor to accommodate green energy development is ulterior.

That’s not to minimize the very real impacts and tradeoffs inherent in any utility-scale energy project, or to deny the crucial role state and federal agencies play in regulating them.

Bats, birds large and small, turtles, snakes, mammals such as Allegheny woodrats, protected plants including something called a minnibush, wetlands... all have been the subject of expensive studies for eventual clearance by the state and federal agencies with jurisdiction over each. Since these studies have varying but generally limited life spans during which they remain valid, project delays caused by obstructionism have many studies in their second and third generation (and counting).

## Aeronautical

Fact: The Federal Aviation Administration (FAA) has sole jurisdiction and authority over all matters air-safety related. No private, municipal or public airport or military installation may assert or enforce mitigation of any presumed off-airport hazard on its own. However, the FAA’s evaluation process for any development activity under its jurisdiction (so everything over 200’ tall) includes robust mechanisms for including them and protecting their interests. Specifically with respect to military impacts, FAA rules require consideration of Department of Defense input prior to issuance of its ultimate determinations.

This project first filed with the FAA in January of 2016. Preliminary response was encouraging, indicating typical, far from insurmountable possible impacts. But six months in, no actual determination was yet issued. When asked, FAA said it was waiting for DoD. Unfortunately, nobody had thought to impose a deadline! As this crucial obstacle had the entire effort completely stymied, the following steps were taken to elicit a response from DoD to FAA:

In August of 2016 I arranged (with the much-appreciated help of Senator Dave Argall and particularly his Chief of Staff) a meeting at Fort Indiantown Gap among the wind developer with its aviation and military consultants and large contingents from the DMVA and PA Army National Guard. DMVA counsel led off the meeting asserting both a duty and a willingness to collaborate on solutions, and ended the encounter with discussion of plans to exchange information for that purpose. But in between, uniformed flight operations officers unequivocally rejected any such possibility. Yet neither PA ARNG nor DMVA subsequently responded to the FAA, which had actual statutory authority to offer effective, durable protection of their interests and was literally standing pat waiting to do so.

Recognizing that there would be no difference between Fort Indiantown Gap coming back to the FAA with fatal objections, versus The Gap continuing to stonewall for whatever reason, I sought help from Senator Pat Toomey. After meeting in person with The Senator's constituent services people, I wrote a letter in late September of 2016 very clearly requesting "not so much intervention, but rather representation and assistance with gleaning DMVA's objections, working through those that we can accommodate without unduly compromising Rausch Creek's legitimate interests, and most expediently getting a final response from the DoD to the FAA." On December 6<sup>th</sup> of that year, Senator Toomey sent me a copy of the letter he'd gotten back from DMVA, dated November 21<sup>st</sup>. Without any reference at all to the primary matter, that being the duty to respond to the FAA, the letter grossly misconstrued the whole thing as me seeking "Fort Indiantown Gap's *permission* [emphasis added] to allow the installation of wind turbines." Perhaps in tacit acknowledgment of the total absence of any authority to confer or deny any such "permission," the letter went on to catalog multiple benefits of having the unfettered access to hundreds of square miles of private property. Perhaps to the author's credit, he did not mischaracterize a related key issue prominently raised in my initial letter; rather, he simply ignored the question of whether any of the *implied* rights to private airspace that would have to exist for The Gap's demands to have any force or effect actually do exist, versus having been simply assumed over time. Much to the chagrin of everyone invested in the project, the opportunity to press either case would prove elusive.

The date of that DMVA response letter, November 21<sup>st</sup>, 2016, also appears atop another bit of correspondence Rausch Creek would soon receive – from the development company at the time, abandoning the project.

Which brings us to more recent history, when Doral LLC, having stepped in to see the project through, re-filed with the FAA in September of 2019. By June of 2020 the FAA began echoing a familiar refrain, "still missing responses from the US Army and DoD."

### **Municipal Planning and Zoning**

The project area spans multiple townships, all within Schuylkill County. Only one of those, Hegins Township, handles its own planning and zoning. The rest defer those functions to the County.

### **Schuylkill County**

Schuylkill County's Comprehensive Plan, which predates this project, explicitly identifies wind energy as a beneficial developmental use. All Rausch Creek property under County zoning jurisdiction and proposed to host wind turbines is in a zoning district which specifically includes wind energy development as a use-by-right. Preliminary talks were well under way and proceeding in a positive vein when in September of 2019 Doral filed a permit application.

All indications pointed to a rigorous but fair application of law enabling a successful project – until Fort Indiantown Gap intervened and explicitly entreated County officials to deny approval, both directly and at public hearings. The machinations which ensued are public record; further commentary here would inappropriately risk prejudicing possible and/or pending litigation.

## Hegins Township

In 2010 a small contingent of strident objectors prompted the Township to enact a Wind Energy Safety Ordinance, which the objectors pleaded to be so restrictive as to forever stymie our budding effort which they'd been hearing about. The solicitor admonished them and the Supervisors that he would only draft a document with reasonable requirements to protect safety and property that would withstand legal challenge. In August of 2019 Doral filed a permit application under the resulting ordinance. It is worth noting that in the meantime, specifically the summer of 2016, the same objectors had presented a new solicitor with a proposed amended ordinance that advanced way farther than it should have, until withering analysis revealed it to be so blatantly exclusionary that it was abandoned – the notable part being the accompanying promise that no future action would be taken until there was a permit pending, and that any such action would be non-adversarial. The 2019 application appeared likely to proceed accordingly – until Fort Indiantown Gap intervened and explicitly entreated Township officials to deny approval at executive meetings and planning and zoning hearings. The machinations which ensued are public record; further commentary here would inappropriately risk prejudicing possible and/or pending litigation.

## Military Compatibility

The United States Department of Defense, with the backing of Congress, has instituted a very comprehensive Pentagon-implemented process for reconciling alternative energy development with safe and effective military operation, and national security. (Referred to herein as DoD “Clearinghouse.” It is well beyond this scope, but will be the subject of upcoming expert testimony.) If allowed to run its course, it might well result in drastic reduction or even termination of the project. Yet here we are, concerned with the damage inflicted by Fort Indiantown Gap circumventing the entire procedure, instead making the following assertions in all manner of municipal proceedings, to legislators at every level of government, and in the media:

- Threat to air safety
  - again, the sole province of the FAA.
- Diminution of training capacity that would:
  - Threaten national security
    - again, the sole province of the Pentagon
  - So reduce throughput that Washington would up and shut the whole base down
    - A purely commercial argument dependent upon abusing government-inferred authority to disenfranchise private property
- Environmental Concerns
  - Whereby the base Director for the Bureau of Environmental Management opines about impacts a distant, highly regulated construction project that he does not know anything about will inflict on rattlesnakes (that he's unaware could not be found in the project area), bats, birds, etc.
  - One might wonder what business the manager of one environment a dozen miles and two counties away from another completely ecologically and geologically alien environment has second-guessing the DEP, PA Game Commission, Fish and Boat Commission, US Fish and Wildlife Services, etc.



## In Relation to Fort Indiantown Gap

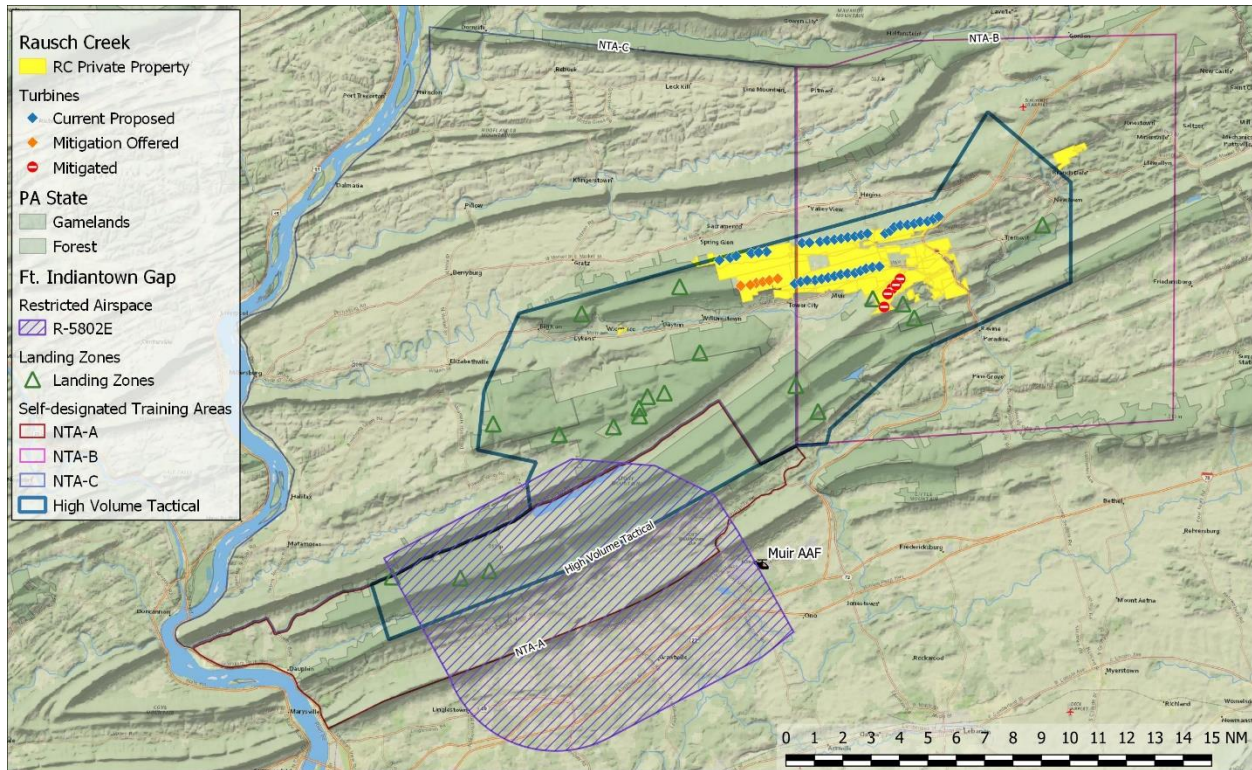


FIGURE 3: PA ARNG and DMVA are both empowered by and limited to the Military Aviation and Installation Assurance Siting Clearinghouse to secure durable, enforceable guarantees limiting private development.

### Land Owner Rights

Rausch Creek has not challenged the technical merits of any of PA ARNG or DMVA’s arguments, which have been pressed so emphatically and publicly. As the landowner being denied rights to a perfectly legitimate and publicly beneficial use, in a manner that circumvents the federal agencies that have exclusive statutory authority to press these claims, we have simply maintained that it is neither viable nor defensible for PA ARNG and DMVA to use threats based on unauthorized, pre-decisional claims (threats to air safety, national security, the natural environment and job losses) to persuade any municipal or legislative entity to *supplant the FAA and United States Department of Defense as the sole authorized advocates for Fort Indiantown Gap’s safety and operational and national security concerns, respectively.*

Rausch Creek heartily supports the United States military and Pennsylvania National Guard. We have enthusiastically participated in the DoD Clearinghouse process from the earliest opportunity. It is gratifying to know of such a forward-looking institution dedicated to “timely, transparent, and science-based analysis of potential impacts,” which “works to identify mitigation strategies to minimize those impacts.”<sup>2</sup> We implore you, Senators, to compel state entities to cease subverting it. Please, help us head off an unwanted confrontation over the Fifth and Fourteenth Constitutional Amendment due process and just compensation implications.

<sup>2</sup> DoD Military Aviation and Installation Assurance Siting Clearinghouse Process and Mission Statement