

IN THE SUPREME COURT OF THE STATE OF NEW MEXICO

LISA P. BLUM, as Trustee of the Lisa P.
Mahaney Revocable Trust, and
ARTHUR A. BLUM, as Trustee of the
Arthur A. Blum Trust,

Appellants-Respondents,

v.

SC No. S-1-SC-41083
COA No. A-1-CA-42750
DC No. D-1-1-CV-2-24-01905

ISAIAH F. ROMERO,
Santa Fe County Assessor,

Appellee-Petitioner.

APPELLANTS'-RESPONDENTS' ANSWER BRIEF

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by Appellants-Respondents.

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CERTIFICATE OF COMPLIANCE

Pursuant to Rule 12-318(G) NMRA, undersigned counsel certifies that the body of this Answer Brief complies with the limitations and requirements set forth in Rule 12- 318(F)(3) NMRA because it was prepared using Times New Roman, 14-point type, and contains 10,335 words as determined using the word count function in Microsoft Word.

CITATIONS TO RECORD PROPER

The record proper is cited in this Answer Brief as “[RP (page #)].”

CITATIONS TO THE TRANSCRIPT OF PROCEEDINGS

Citations to the transcript of proceedings before the Santa Fe County Valuations Board, which is in electronic format, was listened to using the FTR Player, are made by using the elapsed time, for example, “Tr. 1:30:23.”

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I. STATEMENT OF THE ISSUES

Appellants-Respondents, Arthur and Lisa Blum (the “Blums”) own 37.768 acres, comprised of eleven contiguous lots, in Santa Fe County (the “Property”) that have been conserved and made available for public access and recreational use pursuant to the terms of a conservation easement that they recorded shortly after they purchased the property in 2022. Under the terms of the conservation easement, the Blums retained the right, but subject to various restrictions, to build a home and accessory structures within a one-half-acre area of the property, which is described as the “Building Envelope” in the conservation easement (the “Building Envelope Area”). Except for this one-half-acre area, the Santa Fe County Assessor, Isaiah Romero, recognized all of the Property as exempt from property taxes under Article VIII, Section 3 of the New Mexico Constitution because of the substantial public benefit resulting from the conservation of the land and use by members of the public for recreational purposes. The issue raised by this appeal is whether the Santa Fe County Valuations Board (the “Board”) erred in its decision that the one-half-acre area Building Envelope Area is not similarly exempt. The district court below reversed the Board’s decision because a property’s exempt status is determined by its current use, and the current use of the Building Envelope Area for conservation and recreational purposes is indistinguishable from the use and status of the rest of

the Property that the Assessor correctly recognized as exempt. The Blums request that the decision by the district court be affirmed.

II. SUMMARY OF THE PROCEEDINGS

The Blums deem it necessary to provide the following summary of proceedings in order to submit additional pertinent information that is missing from the Assessor's Brief in Chief.

The Blums purchased the Property in 2022 for \$1,250,000 with the intent to preserve it in perpetuity by submitting it to a conservation easement. [RP 204] The Property, which is vacant and has never been developed, is located immediately north of and adjacent to 1,500 acres of public open space owned by the City of Santa Fe known as La Tierra Trails that includes nearly 30 miles of trails used by the public for hiking, mountain biking and horseback riding. [*Id.* 68-69, 183-185]

On November 14, 2022, the Blums executed and recorded a Deed of Conservation Easement (the "Conservation Easement") that granted a conservation easement for all 37.768 acres of the Property to the Santa Fe Conservation Trust (the "Land Trust"). [*Id.* 92-117, 179] Before the Conservation Easement was recorded, the Land Trust prepared a report entitled "Baseline Documentation Report" (the "BDR") to document the condition of the Property and to identify those features of the Property, described in the report as various "conservation values," that will be preserved and protected by the Conservation Easement. [*Id.* 47-91] The

Conservation Easement states that its purpose is "to protect, enhance and preserve in perpetuity the scenic, biological, recreational, and open space values of the Property described herein," and it describes the numerous conservation values associated with the Property that will be protected and preserved as a result of the numerous restrictions imposed on the Property and its owners. [*Id.* 92-95]

On March 31, 2023, the Blums received Notices of Value from the Santa Fe County Assessor for the Property. In response, the Blums filed a Protest with the Santa Fe County Valuations Protest Board (the "Board") based on their position that the entire Property was exempt from property taxes because the conservation and recreational use of the Property constituted a charitable purpose under Article VIII, Section 3 of the New Mexico Constitution and the decision by the New Mexico Court of Appeals in *Pecos River Open Spaces, Inc. v. Cnty. of San Miguel*, 2013-NMCA-029, 495 P.3d 1129 in which the Court of Appeals held that the conservation of property pursuant to a conservation easement conferred a substantial public benefit and rendered the property exempt from property taxes as a result. [RP 32-45]

On November 15, 2023, the Board held a hearing on the Blums' protest. Just before the hearing was about to begin, the Assessor agreed that approximately half of the Property was exempt, leaving only the status of the larger 18.868-acre parcel, Tract 1E, to be determined. [*Id.* 222] Not long after the hearing began, the Assessor

agreed that the remaining portion of the Property was also exempt with the sole exception of an area equal to one-half of an acre described in the Conservation Easement as a “Building Envelope.” [*Id.*] The Conservation Easement provides that the Blums retained the right to build one single-family residence and associated accessory outbuildings within this one-half-acre area (the “Building Envelope Area”) subject to numerous restrictions. [*Id.* 97-98] As a result, the only issue that remained to be determined by the Board at the hearing was whether this one-half acre area should also be recognized as exempt from property taxes.

It is undisputed that the Building Envelope Area lies within and is part of the 37.768 acres that is subject to the Conservation Easement. [*Id.* 179] The Blums presented undisputed evidence that they have done nothing to develop the Building Envelope Area and that the Building Envelope Area remains vacant, undeveloped, preserved and protected just like the rest of the Property. Therefore, they asserted, this one-half-acre area, representing only 1.3% of the total acreage of the Property, should also be exempt because it is currently being preserved under the restrictions of the Conservation Easement and has all of the same conservation values that caused the Assessor to recognize the balance of the Property as exempt. This includes the same pinon-juniper forest and wildlife habitat described in the BDR that exists throughout the entire Property. [*Id.* 73-84]

The Building Envelope Area also includes the recreation values identified in the BDR and the Conservation Easement. The Property includes trails that provide public access to the Property for “low impact educational, research, charitable and recreational uses” including nature study, hiking, bird watching, dog walking, trail running and mountain biking. [*Id.* 68-69, 103] The trails on the Property connect to the extensive trails network within the La Tierra Trails open space located immediately to the south of the Property. As a result, the trails on the Property provide critically important public access to the city open space to the south. [*Id.* 49-50-102-105; Tr. 01:21:00-01:22:08] In fact, one of the trails goes directly through the Building Envelope Area. [*Id.* 69, 179; Tr. 01:33:30-01:33:40] Ms. Blum testified that a “ton of people” use these trails. [Tr. 01:24:10-01:24:55] The Blums also presented testimony from a resident of one of the surrounding neighborhoods explaining that he and others use the trail through the Building Envelope Area for access to the city open space and that the Building Envelope Area is completely devoid of any development or improvements of any kind and therefore indistinguishable from the rest of the Property. [*Id.* 02:02:45-02:09:24] The Blums also presented letters from several homeowners’ associations in the surrounding area stating that the preservation of the Property and the public access to its trails have resulted in a significant public benefit. [RP 186-192]

Ms. Blum testified that she and her husband, Arthur Blum, have no present intention of building any structures on the Building Envelope Area and that they might never develop the Building Envelope Area, especially given the prohibitive cost of constructing a road that would be necessary to provide access to the Building Envelope Area due to the Property's difficult and hilly terrain and the fact that the road would have to cross several arroyos. [*Id.* 1:29:58- 1:32:35,1:35:39-1:37:37] Ms. Blum also testified under oath that if the Building Envelope Area was recognized as exempt that she and her husband understood that they have the legal obligation under New Mexico law to inform the County Assessor should there be a change in its status. [*Id.* 1:36:03-1:36:30]

During the hearing, the Blums argued that the current preservation of the Building Envelope Area and its use by the public confer a substantial public benefit, and that the Building Envelope Area should be recognized as exempt like the rest of the Property because it is subject to the Conservation Easement just like the rest of the Property, and that its status should be determined based on the current condition and use of the Building Envelope Area and not on the remote possibility that some day in the future the owner of the Property might elect to build a home within the Building Envelope Area.¹ In addition to other legal authority cited below, the Blums

¹ The arguments raised in this Answer Brief were made and preserved during the protest hearing below and copies of legal authority provided to the Board that are included in the record.[Tr.01:45:30-01:47:11,01:48:13-01:50:49;01:52:25-01:55:00,

relied on the holding in *Ret. Ranch, Inc. v. Curry Cnty. Valuation Protest Bd.*, 1976-NMCA-010, ¶ 8, 89 N.M. 42, in which the New Mexico Supreme Court held that a property’s exempt status under Article VIII, Section 3 of the New Mexico Constitution “requires a focus on the present use of the facility, rather than concern with hypothetical changes which might alter appellant's status in the indefinite future.”

The Board issued its Decision and Order dated July 22, 2024 (“Decision”) in which it held that the Building Envelope Area is not exempt from property taxes. [RP 221-234] However, the Board did agree with the Assessor that the balance of the Property is entitled to exempt status as a result of its conservation and the public access established by the Conservation Easement. [*Id.*] In fact, the Board concluded that the “Conservation of the Easement includes protection of the Conservation Values of the [entire] Property” and that the “donation of the Conservation Easement over the Property *as a whole (all eleven lots)* resulted in significant conservation gain.” [RP 225, 227 (emphasis added)] As grounds for its decision that the Building Envelope Area is not exempt, the Board found that “the present, primary and substantial use of the Building Envelope is as a reserved development site” and that

01:52:25-1:54:57; 02:26:17-02:32:47; RA 19-27; 131-134]. They were also raised and preserved below in the appeal to the district court in the Blums’ Statement of Appellate Issues and their Reply Brief. [RP 290-314, 333-342] and during the hearing on the merits held by the district court.

“the undeveloped state of the Building Envelope constitutes ‘routine activity or inactivity’ under Pecos River Open Spaces and does not qualify as a charitable conservation use of the Building Envelope.” [RP 228] The Board recognized that “[r]ecreation is recognized as a beneficial and/or charitable use in a number of different contexts” and that “the framework of charitable use, potentially as an element of charitable conservation use, when further addressed by the courts, is likely to be broad enough to to include recreation depending on the circumstances.” [RP 229] The Board concluded, however, that the recreational activity occurring within the Building Envelope Area “constitutes ‘routine activity or inactivity’ under *Pecos River Open Spaces, Inc.* and does not qualify as charitable recreational use of the Building Envelope.” [RP 230]

The Blums timely filed an administrative appeal on August 8, 2024 in which they asserted that the decision by the Board is not supported by substantial evidence, is arbitrary and capricious and contrary to law and should be reversed as a result.

In her Order Reversing July 22, 2024 Decision and Order of the Santa Fe County Valuation Board (“Order”), Judge McGarry Ellenwood reversed the Board’s decision on the grounds that the Board’s decision is not supported by substantial evidence and is not in accordance with law. [RP 359-363] She held that under New Mexico law it is the current use and status of the Building Envelope Area, and not hypothetical and potential uses, that determine whether it is exempt. [RP 358] Based

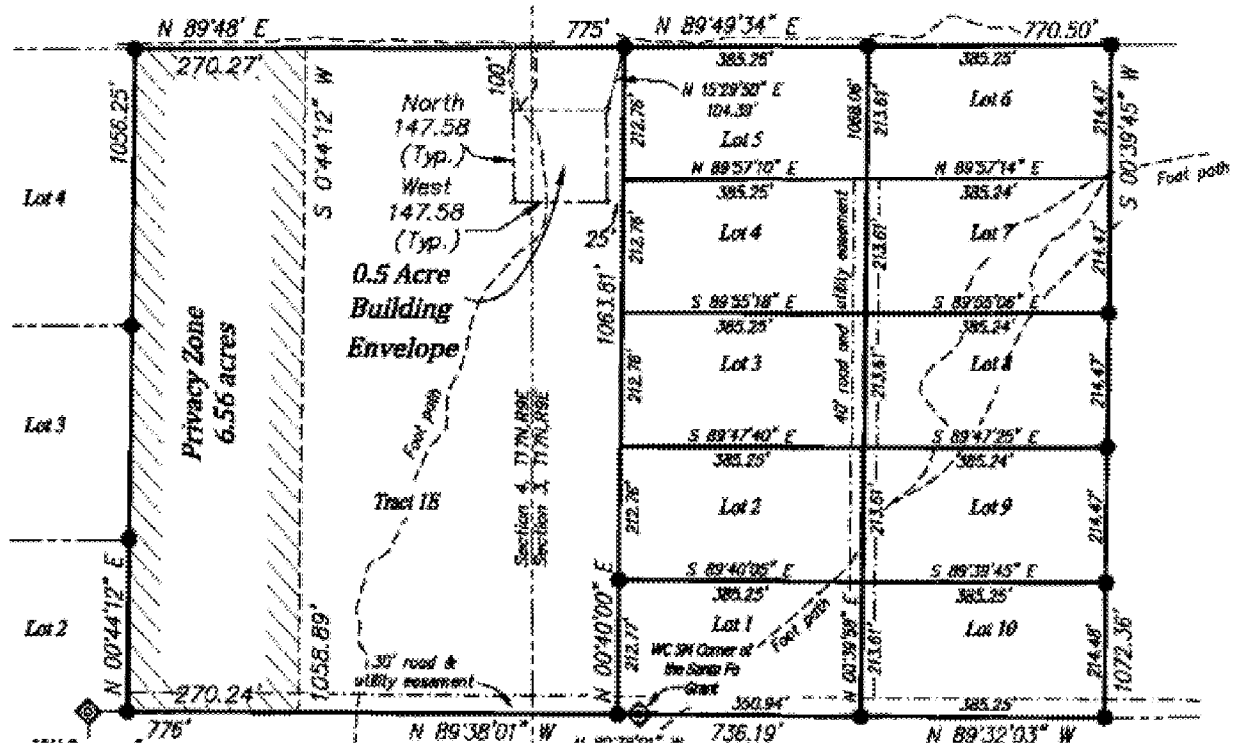
on the undisputed evidence presented to the Board, the Building Envelope Area “is virtually indistinguishable from the remainder of the Property [which the Assessor recognized as exempt] except for the trail running through it.” [RP 12] Although the Conservation Easement “allows Appellants to construct within the Building Envelope subject to several limitations....Appellants have no present intention to develop within the Building Envelope.” [RP 360] “The Board’s findings,” she concluded, “ignore significant, contravening evidence that establishes that the immediate, direct, primary and substantial use of the Building Envelope is virtually identical to that of the encompassing Property.” [RP 361] The record also established that the Building Envelope Area is currently used by neighbors for hiking and biking connection to the adjoining open spaced owned by the City of Santa Fe known as La Tierra Trails. [RP 360] In sum, the Board’s decision was contrary to law, she concluded, because it “fails to evaluate the present use of the land within the Building Envelope...” and focused instead on the “limited construction rights, applicable to the Building Envelope....” [RP 363]

On July 7, 2025, the Assessor filed his Petition for Writ of Certiorari with the New Mexico Court of Appeals, which it denied. [RP 366-381] On October 30, 2025, this Court granted its Writ of Certiorari.

III. ARGUMENT

The district court correctly reversed the Board's decision because it is not supported by substantial evidence and is contrary to law.

As explained above, in 2022, the Blums purchased eleven, contiguous vacant and undeveloped lots, totaling 37.768 acres, and promptly submitted the entire property to the Deed of Conservation Easement (defined herein as the "Conservation Easement") that was recorded on November 14, 2022. [RP 92-117, 179] Figure 1 below shows the eleven lots comprising the Property. [*Id.* 179]



The Property is located immediately north of and adjacent to the City of Santa Fe's public open space known as La Tierra Trails comprised of 1,500 acres with an extensive network of trails for hiking, mountain biking and horseback riding. [*Id.* 68-69, 182-185] As shown in Figure 1 above, the Property includes trails (denoted

as “foot path” on Figure 1) that provide public access to the Property itself and through the Property and to the City open space immediately to the south. [*Id.*] Figure 1 also shows the location of the one-half-acre Building Envelope Area located in the northeast corner of Tract 1E and one of the trails running through it that is used by members of the public.

All 37.768 acres of the Property, *including the Building Envelope Area*, are subject to the Conservation Easement. [*Id.* 179] The Conservation Easement states that its purpose is “to protect, enhance, and preserve in perpetuity the scenic, biological, recreational, and open space values of the Property described herein (collectively, the ‘Conservation Values’).” [*Id.* 92] The “Conservation Values” as described in the Conservation Easement derive from the forty-five page Baseline Documentation Report (“BDR”) regarding the Property that was prepared by the Santa Fe Conservation Trust (the “Land Trust”) before the Conservation Easement was recorded. [*Id.* 47-91] The conservation values of the Property, which will be preserved in perpetuity, as described in the Conservation Easement and the BDR, include the following.

- “Scenic Values” because the “Property provides an undeveloped scenic buffer between La Tierra and adjacent residential neighborhoods, improving the visual experience of trail users.”

- “Biological Values” because the “Property consists of healthy pinon juniper woodland and features an arroyo that connects to a drainage system on City of Santa Fe's La Tierra open space to the south. Protection of the Property expands upon the 1,500-acre block of intact habitat on La Tierra. Dominant plant species include pinon pine, oneseed juniper, cane cholla, and blue grama grass. Wildlife likely to use the Property include cougar, coyote, bobcat, mule deer, badger, gray fox, jackrabbit, skunk, burrowing owl, woodrat, pinon jay, golden eagle, Swainson's hawk, Cooper's hawk, kestrel, red-tailed hawk, and great homed owl.”
- “Recreation Values” because the “Property provides recreational opportunities to the general public...including, but not limited to, the approximately one-third of a mile of natural-surface trail that connect to 27.25 miles of trails on the City of Santa Fe's La Tierra trail system to the south. The Property provides access to the La Tierra trail system for residents of the neighborhoods north of the Property. Additionally, the trail on the Property functions as a spur trail opportunity for the general public hiking or biking on the La Tierra trails.”
- “Open Space Values” because the “Property includes open space including undeveloped and scenic pinon juniper woodland.”

[*Id.* 53-55, 93-95] The preservation of these values, as stated in the Conservation Easement, comports with numerous and “clearly delineated governmental policies” including the Santa Fe County General Plan, the Santa Fe County Growth Management Plan, the Santa Fe County Open Land and Trails Plan and the Santa Fe County Open Space, Trails, and Parks Strategic Management Plan, the Santa Fe County Sustainable Growth Management Plan, the New Mexico Land Conservation Incentives Act, the New Mexico Land Use Easement Act, the Natural Heritage Conservation Act, the New Mexico Watershed District Act, the Comprehensive Wildlife Conservation Strategy for New Mexico, the New Mexico Statewide Natural Resource Assessment & Strategy Response Plan, the New Mexico State Trails System Act and the New Mexico Night sky Protection Act. [*Id.* 93-94]

As explained in the BDR, the foregoing conservation values exist throughout the entire Property, including the one-half-acre Building Envelope Area. [*Id.* 53-55]

The Conservation Easement explains the substantial public benefit resulting from the conservation of the foregoing values: “Conserving the scenic, biological, recreational, and open space values of the Property, collectively, the Conservation Values...is consistent with, and important to, the history, culture, and economy of the area, which is under increasing threat of development and fragmentation, and will result in a significant public benefit to the people of Santa Fe County, the people of the State of New Mexico, and the people of this nation.” [*Id.* 95-96] The

Conservation Easement, which will remain in effect in perpetuity, further explains that its intent and purpose is “to assure that the Conservation Values, as they exist and as they may evolve, will be forever preserved and protected and that uses of the Property that are inconsistent with or to the detriment of the Conservation Values will be prevented or corrected.” [*Id.* 96]

In order to protect and preserve the conservation values of the Property, the Conservation Easement imposes restrictions on the use and development of the entire Property including the Building Envelope. For example, as a general overarching prohibition, the Conservation Easement states that the “Landowners shall not perform, nor knowingly allow others to perform, any act on or affecting the Property that is inconsistent with or to the detriment of the Conservation Values.” It states further: “All rights reserved by the Landowners under this Deed shall be exercised, if at all, in a manner consistent with and not to the detriment of the Conservation Values.” [*Id.*] The “sale, transfer, or separation of any existing lot or portion of the Property from any other existing lot or portion of the Property is prohibited.” [*Id.*] Also prohibited are any further division or subdivision of the Property and any form of condominium ownership, meaning that the Building Envelope Area cannot be conveyed separately from the entire 37.768 acres of the Property. [*Id.* 98] Cutting timber or harvesting wood products are prohibited except for very limited purposes such as for fire management. [*Id.* 99-100] Any exterior

lighting must comply with the New Mexico Night Sky Protection Act and other additional restrictions stated in the Conservation Easement. [*Id.* 101] The Blums are prohibited from making any substantial topographic changes to the land without the prior approval of the Land Trust. [*Id.* 102] Mining or other extraction of soil, sand, gravel, rock or minerals that are inconsistent with the conservation values identified in the Conservation Easement are prohibited. The dumping, disposal, accumulation, or storage of any kind of waste or refuse on the Property is prohibited except for the temporary accumulation of household waste and construction materials associated with the use and development of the Building Envelope Area. [*Id.* 102-103]

The construction of new roads is prohibited by the Conservation Easement except for a single road to serve the Building Envelope Area, which has not been installed. [*Id.* 101] Before that one road can be constructed, the Blums must obtain approval from the Land Trust to ensure that its design and construction comport with the terms of the Conservation Easement, which would include the conservation values. [*Id.*]

The construction of any temporary or permanent structures on the Property is prohibited except as allowed within the Building Envelope Area but subject to the restrictions contained in the Conservation Easement. Within the Building Envelope Area, the Blums are permitted only to construct one single-family house, guest house

and associated outbuildings as permitted by the Santa Fe County zoning code. No structure shall exceed 30 feet in height. [*Id.*]

Importantly, the Blums do not have the unfettered right or discretion to build whatever they want within the Building Envelope Area. The Conservation Easement expressly states that prior to any construction within the Building Envelope Area, the Blums “shall notify the Land Trust in writing and provide the Land Trust with the opportunity to review the proposed construction for compliance with the terms of” the Conservation Easement. [*Id.* 97] In addition, prior to any construction within the Building Envelope Area, the Blums must “contract with a state permitted archeologist to conduct an archeological resource inventory of the Building Envelope....” [*Id.*] The Conservation Easement explains: “It is the intent of the parties that any construction shall to the greatest practical extent, avoid or minimize any adverse impact on any significant cultural resource discovered in the course of the survey.” [*Id.*] All new utilities must be installed underground and within the Building Envelope Area unless the Land Trust permits otherwise. [*Id.* 100] In addition, before installing any new utilities, the Blums must obtain the Land Trust’s prior approval to ensure that their installation complies with the terms of the Conservation Easement. [*Id.*]

In addition to the conservation of the Property, the Conservation Easement also preserves the public recreational value of the Property in several respects. As

the BDR explains: “In addition to increasing neighborhood access to the La Tierra Trails, the proposed conservation easement will provide recreational opportunities for all trail users” and that the general public using the La Tierra Trails can also access the Property from the south such that the trails on the Property become an extension of the network of trails on the city’s open space.” [*Id.* 66] The Conservation Easement itself “formalizes the public’s right to the approximately 1/3-mile natural surface trail that runs across the Property.” [*Id.* 65] In fact, the Board expressly recognized the recreational value of the Property resulting from the Conservation Easement, stating:

The Conservation Easement "provides for public access to the Property via an existing trail system[.]" (Conservation Easement, ¶ 21, "Public Access.") The Property is adjacent to, and the ***Property's trails are used in concert with the City of Santa Fe's La Tierra Trails system.*** (Property Owner's Exhibit H, "La Tierra Trails" Map; Testimony of Property Owner; Testimony of Mr. Parker.) ***Current trail usage of the Property passes through the Building Envelope*** (see Conservation Easement Appendix B "Foot path" and Appendix C "Existing trail"). ***Neighbors of the Property use the trail that passes through the Building Envelope.*** (Testimony of the Property Owner; Testimony of Mr. Parker; Property Owner's Exhibit J.) (emphasis added).

[*Id.* 146]

The Blums applied for and were deemed eligible for a land conservation incentives tax credit by the State of New Mexico under the Land Conservation Incentives Act, NMSA 1978, Sections 75-9-1 to 75-9-6 and Section 7-2-18.10 or 7-2A-8.9. This eligibility was based on a finding by the Secretary of the Energy, Minerals and Natural Resources Department of the State of New Mexico that “the proposed donation of a conservation easement on 37.8 acres to the Santa Fe Land [sic] Trust has significant public conservation values.” [*Id.* 193]

The New Mexico Court of Appeals has held that “conservation is a charitable use under Article VIII, Section 3 of the New Mexico Constitution if conservation of the particular land at issue provides a substantial benefit to the public.” *Pecos River Open Spaces, Inc. v. Cnty. of San Miguel*, 2013-NMCA-029, ¶ 1, 495 P.3d 1129. In *Pecos River Open Spaces, Inc.*, the appellant owned land that was subject to a conservation easement, similar to the one at issue in this case, that preserved the property in its natural state. As with the property owned by the Blums, the Secretary of the New Mexico Department of Energy, Minerals and Natural Resources determined that the property at issue in *Pecos River Open Spaces, Inc.* “is an important habitat area or contains significant natural, open space or historic resources, under the provisions of the New Mexico Land Conservation Incentives Act.” *Id.* ¶ 14. The Court also held:

There can be little question that conservation of land in its natural and undeveloped state generally benefits the public in the context of environmental preservation and beautification of the State of New Mexico. The substantial benefit derived from conservation is manifested in New Mexico's strong public policy encouraging conservation. The New Mexico Legislature has enacted the Land Conservation Incentives Act, to incentivize and reward acts of conservation. Section 75-9-2 states that: The purpose of the Land Conservation Incentives Act...is to encourage private landowners to be stewards of lands that are important habitat areas or contain significant natural, open space[,] and historic resources by providing private landowners with incentives that encourage the protection of private lands for *open space, natural resources, biodiversity conservation, outdoor recreation*, farmland and forest land preservation, historic preservation[,] and *land conservation purposes*.

Id. ¶ 11 (emphasis added). The Court of Appeals concluded: “In sum, owing to the substantial public benefit derived from conservation of the Property, conservation in this case constitutes a charitable purpose that qualifies the Property for a tax exemption under Article VIII, Section 3 of the New Mexico Constitution.” *Id.* ¶ 25.

In this case, the Board did not dispute the general principle established in *Pecos River Open Spaces, Inc.* that the conservation of land may constitute a charitable purpose that qualifies land as exempt from property taxes under Article VIII, Section 3 of the New Mexico Constitution. In its Decision, the Board actually agreed that the “donation of the Conservation Easement on the [Blums’] Property ***as a whole (all eleven lots)*** resulted in a significant conservation gain.” [RP 225 (emphasis added)] The Board also agreed with the Assessor’s decision to recognize all of the Property, excluding only the Building Envelope Area, as exempt under the holding of *Pecos River Open Spaces, Inc.* Specifically, the Board stated: “The Assessor, ***appropriately in the Board’s opinion***, recognized a majority of the Property as meeting the requirements for tax exempt status based on charitable conservation use.” [*Id.* 227 (emphasis added)] Thus, there is no question, and in fact, the Assessor, the Board and the Blums all agree that the conservation of the Property pursuant to the terms of the Conservation Easement results in a substantial public benefit.

With respect to the recreational values of the Property that are established and preserved by the Conservation Easement, the Board agreed that “[r]ecreation is a recognized beneficial and/or charitable use in a number of contexts,” including the New Mexico’s Supreme Court’s decision in *State ex rel. State Game Commission Red River Valley*, 1945-NMSC-034, Internal Revenue Code 26 U.S.C. § 170(h) and

the New Mexico Land Conservation Incentives Act on which the New Mexico Court of Appeals relied in *Pecos River Open Spaces, Inc.* [*Id.* 229] The Board also recognized that the Conservation Easement includes “recreation values” among the “Conservation Values” set forth in the document and that the “Conservation Easement includes broad protection of the Conservation Values of the Property....” [*Id.* 224-225]

Nevertheless, the Board concluded that the Building Envelope Area was not exempt because the Blums retained the right to develop the Building Envelope Area in the future. That conclusion was in error for the reasons stated by the district court and discussed below.

Under New Mexico law, the question of whether property should be recognized as exempt from property taxes is based solely on its current use and not on the hypothetical potential or possible future use of the property. Article VIII, Section 3 of the New Mexico Constitution states that “all property used for educational or charitable purposes...shall be exempt from taxation” (emphasis added). In *Ret. Ranch, Inc. v. Curry Cnty. Valuation Protest Bd.*, 1976-NMCA-010, 89 N.M. 42, the New Mexico Supreme Court was asked to determine whether the use of a property as a nursing home for the “aged sick and infirm” was a charitable purpose under Article VIII, Section 3 of the New Mexico Constitution. The Supreme Court held: “This determination of Retirement Ranch's primary use of its property

requires a focus on the present use of the facility, rather than concern with hypothetical changes which might alter appellant's status in the indefinite future.”

Id. ¶ 8 (emphasis added). In its Decision, the Board actually recites this holding. [RA 144] Similarly, in *Georgia O'Keeffe Museum v. Cnty. of Santa Fe*, 2003-NMCA-003, ¶ 40, 133 N.M. 297, the Court of Appeals held: “We must also bear in mind that it is the taxation of real property, not the taxation of income or receipts or other subjects of taxation, with which we are concerned. It is therefore *the use of the property*, not the ownership, that is the determinative factor in property taxation” (emphasis added).

In *Albuquerque Lodge, No. 461, B.P.O.E., v. Tierney*, 1935-NMSC-022, 39 N.M. 135, the New Mexico Supreme Court considered whether the use of property as an Elks Lodge was a charitable use that rendered the property exempt from property taxes. In that case, the lodge acquired a lot that was formerly the site of a hotel that had burned down. The lodge first constructed a building that included “a theater, lodge rooms, ballroom, banquet hall and buffet.” *Id.* ¶ 7. Years later, “changes were made involving abandonment of the use of any part of the building for theater purposes and its use confined to that of a home for the lodge with rooms” for members of the lodge. *Id.* ¶ 7. The modified building burned down and was replaced with a building that included “a lounge and reading room, lodge room, and a room devoted to pool, billiards, and cards” and rooms on the upper floors that were

rented to members of the Lodge. *Id.* ¶ 8. Relying on the then-current use of the property, the Court held that its use was charitable. *Id.* ¶ 30.

The decision in *Albuquerque Lodge, No. 461, B.P.O.E* confirms the obvious: the same parcel of land can have different uses over time and can be developed differently over time to accommodate those different uses, only some of which might qualify as charitable under the New Mexico Constitution. The property where the Elks Lodge was located in 1935 at the time of the Supreme Court's decision may or not be an Elks Lodge today, but the facts of the case reveal that the property had the potential to be used as a hotel, a theater, a ballroom and a banquet hall, as it was in the past. Those past uses and other potential future uses were not relevant to the Court's decision, which was based solely on the current use of the property at that time.

The approach taken by the Board in the Blums' case, which was based on the potential future use of the Building Envelope Area, completely undermines Article VIII, Section 3 of the New Mexico Constitution because it is founded entirely on speculation as to how the land might be used in the future. All property owners, including those who commit their property to a charitable use, reserve the right to change the use of the property in the future. If the test for what constitutes a charitable use rests on how the property might be used some time in the future, including the possibility that the property might be used for something other than a

charitable purpose, then the Article VIII, Section 3 is rendered meaningless because virtually all property can be used at some time in the future for uses that are not charitable.

In the Blums' case, the Building Envelope Area is not a separate subdivided parcel of land but is only an area described in the Conservation Easement where the owners of the Property retain the right construct one residence and accessory structures. [RP 179] In this respect, the Assessor is incorrect in his characterization of the Building Envelope that it has been "essentially carved out of the Property." [BIC 13] It is undisputed, based on the evidence and testimony presented below, that the Blums have not exercised any of their rights under the Conservation Easement that pertain to the Building Envelope Area. Ms. Blum testified below that there are virtually no buildings, structures or improvements, or modifications to the natural land, within the Building Envelope Area. [Tr. 1:33:46-1:34:06] Photographs of the Building Envelope Area in the BDR show the area as vacant forested land just like the rest of the Property. As a result, the Building Envelope Area at this time is completely indistinguishable from the rest of the Property that has been recognized by the Assessor as exempt. In short, the Building Envelope Area is nothing more than an unrealized right that may never be exercised, as Ms. Blum testified. In the meantime, however, the Building Envelope Area remains subject to the various restrictions and prohibitions in the Conservation Easement that apply to the Property

as a whole including the overarching prohibition that the “Landowners shall not perform, nor knowingly allow others to perform, any act on or affecting the Property that is inconsistent with or to the detriment of the Conservation Values,” which would include the “”Scenic Values,” the “Open Space Values,” and the “Biologic Values” described in the BDR and the Conservation Easement. [RP 96]

The “Recreation Values” associated with the Property are also preserved within the Building Envelope Area because one of the trails on the Property goes directly through the Building Envelope Area. [*Id.* 68-69] That trail, which is unobstructed because the Building Envelope Area is entirely vacant and undeveloped, can be used by members of the public for visitations to the Property itself. [*Id.* 104] It can also be used, and in fact, is used, by members of the public for access to and from the La Tierra Trails open space, as established by the undisputed testimony below. [*Id.* 65-66] One such member of the public, Jeff Parker, testified that he lives in one of the neighborhoods to the west of the Property and that he and his wife use the trail through the Building Envelope Areas for access to and from the La Tierra Trails. [Tr. 02:02:45-02:09:20] He also testified that he “sees lots of people” doing the same thing and is “one of many who use these trails” through the Property. [*Id.*] Mr. Parker explained that as he travels along the trail through the Building Envelope Area, there are no improvements of any kind that impede his passage through the area. [*Id.*] Mr. Parker testified that the public’s right to use the

trail that goes through the Building Envelope Area is a “big plus” because he was worried that lot owners in the area were starting to put up “no trespassing signs” that caused him to be concerned about losing access to the La Tierra open space. [*Id.*] The public access through the Property owned by the Blums has eliminated that concern, he testified. [*Id.*] The public access through the Property, he explained, is “something that’s very beneficial and positive.” [*Id.*] The Blums also presented several letters from homeowners’ associations for surrounding neighborhoods stating the trails on the Property, as well as the preservation of the land as an open space buffer for the surrounding neighborhoods, results in a “substantial public benefit.” [RP 186-192]

Because the Building Envelope Area is currently being preserved in the same manner as the rest of the Property and is accessible to the public, like the rest of the Property, it confers the same substantial public benefit as the rest of the Property and should be exempt from property taxes, just like the rest of the Property.

The Board’s Decision included the finding that “the present, primary and substantial use of the Building Envelope is as a reserved development site.” [*Id.* 228] Related to this finding, the Board also found that the “Conservation Easement does not materially restrict the development of the Building Envelope.” [*Id.*] Those findings are not supported by substantial evidence and the Board’s reliance on those findings is contrary to law. The undisputed testimony and evidence presented at the

hearing regarding the Building Envelope Area, including the photos of its present condition contained in the BDR, established conclusively the Blums have not exercised any of the rights to develop the Building Envelope Area and that the Building Envelope Area has and retains all of the conditions comprising the conservation and recreation values that are shared with the rest of the Property, including most particularly its recreation value because one of the trails used by the public goes right through the Building Envelope Area. [*Id.* 68-69, 73-86] At this time, the Building Envelope Area is nothing more than a box shown on an exhibit to the Conservation Easement with associated but limited rights that have not been exercised. [*Id.* 68] There is nothing on the land that would indicate to a person visiting the Property that the Building Envelope Area exists or where it is. It is merely a legal concept with no palpable existence. In this respect, there is no “*use of* the Building Envelope... as a reserved development site” *per se*. The current “use” of the Building Envelope Area is comprised only of the conservation and recreational uses of the Property as a whole that the Assessor and the Board have recognized as conferring a substantial public benefit.

The Board’s reliance on the characterization of the Building Envelope Area as a “reserved development site” to deny its exempt status is contrary to law for the reasons stated above—the reserved rights associated with the Building Envelope Area have not been and may never be exercised. Ms. Blum testified that she and her

husband have no present intention to develop the Building Envelope Area. [Tr. 1:36:50-1:36:60] In fact, New Mexico law requires that upon the cessation of a charitable use, the owner must report the change in status to the Assessor. NMSA 1978, § 7-38-17.B; *see also* NMAC § 3.6.7.16 (“Should the eligibility status or ownership of the property change, the change shall be reported to the valuation authority....”). This legal requirement further confirms that the charitable status of property depends on its current use, not some possible or potential future use. If the use changes in the future the owner is required to report the change so that the property is then taxed. In the Blums’ case, if the Building Envelope Area is ever developed in the future for the limited residential use permitted by the Conservation Easement, then the Blums would report that change to the Assessor so that the one-half-acre area can be appropriately taxed, as Ms. Blum confirmed during her testimony below. [Tr. 01:36:10-01:36:30] Until then, the Building Envelope Area should be recognized as exempt based on its current status.

The Board also found that “the undeveloped state of the Building Envelope constitutes ‘routine activity or inactivity’ under the *Pecos River Open Spaces Inc.* that does not qualify as a charitable conservation use of the Building Envelope.” [RP 228] Related to this finding, the Board also found that “even if this ‘routine activity or inactivity’ occurring on the Building Envelope could be classified as ‘conservation’ use, it would not rise to the level of creating a substantial public

benefit.” [*Id.*] These findings, for which the Board offered no factual support or explanation, are not supported by substantial evidence, and the Board’s reliance on these findings is arbitrary and capricious and contrary to law.

It is true that in *Pecos River Open Spaces, Inc.* the Court of Appeals stated that “the exemption from property taxes pursuant to Article VIII, Section 3 in this context is not applicable to routine activity or inactivity summarily denoted to be ‘conservation,’ but which benefits only the owner or a limited number of people or interested parties.” *Pecos River Open Spaces, Inc.*, 2013-NMCA-029, ¶ 17. However, and as explained above, the “undeveloped state of the Building Envelope” means that it is presently indistinguishable from the “undeveloped state” of the balance of the Property. The current state of the Building Envelope Area, therefore, confers the same substantial public benefit as the rest of the Property because it is being preserved and protected as part of the entire Property pursuant to the restrictions imposed by the Conservation Easement.

It is also nonsensical to describe the Building Envelope Area’s “current undeveloped state” as “routine activity or inactivity” unless of course “inactivity” includes the preserved condition of the Building Envelope Area that confers a substantial public benefit. The undeveloped condition of the Building Envelope Area means that it shares with the rest of the Property all of those features and attributes comprising the conservation values of the Property as described in the Conservation

Easement and the BDR, including, for example, “the healthy pinon juniper woodland,” the “undeveloped scenic buffer between La Tierra and adjacent residential neighborhoods,” and wildlife habitat for “cougar, coyote, bobcat, mule deer, badger, gray fox, jackrabbit, skunk, burrowing owl, woodrat, pinon jay, golden eagle, Swainson's hawk, Cooper's hawk, kestrel, red-tailed hawk, and great horned owl.” [RP 65, 93] To the extent that there is any “activity” within the Building Envelope Area, it is only the public’s use of the trail that goes through it, which by itself is a substantial public benefit.

The Board also found “that the recreational activity on the Building Envelope constitutes ‘routine activity or inactivity under the Pecos River Open Spaces and does not qualify as charitable recreational use of the Building Envelope.” [*Id.* 230] Related to this finding, the Board found that “the recreational activity on the Building Envelope, which is neither permanent nor protected, does not rise to the level of creating a substantial public benefit.” [*Id.*] The Board did not provide any factual support or explanation for these findings, which are not supported by substantial evidence.

Obviously, the Blums as the owners of the Property had the right, before the Conservation Easement was recorded, to prevent members of the public from trespassing on the Property. *Holcomb v. Rodriguez*, 2016-NMCA-075, ¶ 12, 387 P.3d 286 (all that the plaintiff must show to prove trespass is that the defendant

entered the plaintiff's land without authorization and remains on the land). They voluntarily relinquished that right by committing the Property to the Conservation Easement that includes the provision stating the Conservation Easement “provides for public access via an existing trail system.” [RP 230] There is nothing “routine or ordinary” about that commitment, which runs contrary to the established right of every property owner to keep members of the public from entering upon their property. And, in fact, the Board expressly recognized that, as a matter of public policy, “[r]ecreation is a recognized beneficial and/or charitable use in a different number of contexts.” [*Id.* 229] The Board also recognized that the provision of public access throughout the Property was a legitimate factor in the Assessor’s decision to recognize the rest of the Property as exempt. [*Id.* 227]

The Board also erred in finding that the recreational activity taking place within the Building Envelope is “not protected or permanent.” [*Id.* 230] The Conservation Easement expressly provides that it “provides for public access to the Property via an existing trail system, as documented in the Baseline Documentation Report,” and it is undisputed that one of those trails goes right through the Building Envelope Area and is being used by members of the public. [*Id.* 68-69, 104,179] The permanence of a charitable use is not required under New Mexico law because exempt status is based on the property’s current use.

Moreover, the conservation of the land alone, independent of the public access granted by the Blums, is by itself sufficient for the current preservation of the Building Envelope Area to qualify as a charitable use. After all, in *Pecos River Open Spaces, Inc.*, the conservation easement in that case did not provide for public access or any recreational use of the property, which was surrounded by a perimeter fence. *Pecos River Open Spaces, Inc.* 2013-NMCA-029, ¶ 14. Here, the Conservation Easement granted by the Blums goes one step further because it includes public access to and through the Property, which by itself is a substantial public benefit sufficient to justify its exempt status.

In its Decision, the Board also stated that there is “no meaningful restriction in the Conservation Easement on the development within the Building Envelope” and that “the Building Envelope has in effect been ‘carved out’ of the Conservation Easement.” [RP 226] If those statements were intended as a finding, they are not supported by substantial evidence. As explained above, the Building Envelope Area, whether it is developed or not, will forever be subject to the general prohibition in the Conservation Easement that nothing shall be done on or to the Property “that is inconsistent with the or to the detriment of the Conservation Values.” [*Id.* 96] Moreover, any use or development of the Building Envelope Area is subject to the restrictions found in Section 3 of the Conservation Easement, including the requirements relating to the preservation of archeological sites, the maximum height

of structures, and the requirement that the owners must “notify the Land Trust in writing and provide the Land Trust with the opportunity to review the proposed construction for compliance with this Deed.” [*Id.* 97]

The Board’s decision contains a discussion about the fact that the owner of the property in *Pecos River Open Spaces, Inc.* was a non-profit corporation. [*Id.* 231-232] Although the Board does not appear to rely on that fact as the basis for its decision, the issue is not relevant to the issue presented on this appeal. The New Mexico Court of Appeals, *Georgia O’Keefe Museum v. Cnty. of Santa Fe*, 2003-NMCA-003, ¶ 40, 133 N.M. 297, unambiguously held: “It is therefore the use of the property, not the ownership, that is the determinative factor in property taxation.” The Court of Appeals also stated: “Furthermore, in the context of the educational and charitable purpose exemptions, Article VIII, Section 3 appears to make no distinction between private non-profit and for-profit entities.” *Id.* Moreover, there is no indication in *Pecos River Open Spaces, Inc.* that the owner of the property in that case was a tax-exempt organization under Section 501(c) or similar provisions of the Internal Revenue Code. The Board also acknowledges in its Decision that “lack of nonprofit ownership doesn’t defeat charitable use....” and that “the Conservation Easement...is held by a nonprofit public charity, the Santa Fe Conservation Trust....” [RP 232]

In his Brief in Chief, the Assessor claims that the district court substituted its judgment for that of the Board based on the district court's conclusion that the "Board's findings ignore significant, contravening evidence that establishes the immediate, direct, primary and substantial use of the Building Envelope is virtually identical to that of the encompassing Property." [BIC 13] In reaching this conclusion, the district court did not substitute its decision for that of the Board. Rather, it merely summarized the undisputed facts presented below that the Building Envelope Area is presently indistinguishable from the rest of the Property that the Assessor concluded is entitled to exempt status.

The Assessor attempts to compare the Building Envelope Area to any "moderately-sized tract of privately owned land that is available for development...." [BIC 17] The Board made no such finding, and this characterization contravenes the undisputed evidence presented below. As explained above, the Building Envelope Area is only an area. It is not a separately subdivided parcel of land and cannot be subdivided or separated from the entire 37.768 acres comprising the Property. [RP 98] The Conservation Easement expressly states: "The sale, transfer, or separation of any existing lot or portion of the Property from any other existing lot or portion of the Property is prohibited." [*Id.*] Moreover, the Building Envelope Area, *in perpetuity*, is subject to various overarching restrictions contained in the Conservation Easement including, for example, (a) the requirement

that the Blums “shall notify the Land Trust in writing and provide the Land Trust with the opportunity to review the proposed construction for compliance with the terms of” the Conservation Easement, (b) the requirement that prior to any construction within the Building Envelope Area, the Blums must “contract with a state permitted archeologist to conduct an archeological resource inventory of the Building Envelope....” and (c) the requirement that “any construction [within the Building Envelope Area] shall to the greatest practical extent, avoid or minimize any adverse impact on any significant cultural resource discovered in the course of the survey.” [RP 97]. The Building Envelope is also subject to the overarching prohibition contained in the Conservation Easement that the “Landowners shall not perform, nor knowingly allow others to perform, any act on or affecting the Property that is inconsistent with or to the detriment of the Conservation Values” as well as the requirement that “[a]ll rights reserved by the Landowners under this Deed shall be exercised, if at all, in a manner consistent with and not to the detriment of the Conservation Values.” [RP 96.] As a result, the Building Envelope Area is most definitely not a typical moderately-size parcel of land that is “available” for development.

For this same reason, the Assessor’s contention that the Building Envelope is not subject to protections lasting in perpetuity is unfounded. In fact, the decision in *Pecos River Open Spaces Inc.* did not turn on whether the conservation of the land

at issue in that case was perpetual. In its summary of the facts, the Court of Appeals mentions that the conservation easement granted in that case was perpetual, as is the Conservation Easement granted by the Blums. However, the decision in that case turned on the “pertinent findings of the” property tax valuation board, which made no mention of the perpetual nature of the conservation easement. *Pecos River Open Spaces, Inc.*, 2013-NMCA-029, ¶ 14. Instead, those findings included the fact that the owner’s intention in acquiring and holding the property was to preserve it in its natural state and that the Secretary of the New Mexico Department of Energy, Minerals and Natural Resources had determined that the Property is an important habitat area or contains significant natural, open space or historic resources, under the provisions of the New Mexico Land Conservation Incentives Act. *Id.* Those facts align with the undisputed facts in the present appeal. The Blums received the same determination, and Ms. Blum confirmed in her testimony that she and her husband purchased the Property after they discovered that the land was for sale in order to preserve the land as a “gift” and “for the benefit of everybody.” [Tr. 01:16:00-1:17:38]

The Assessor is also incorrect in stating that the “Building Envelope has no current use; it is the same as it was prior to the grant of easement.” [BIC 18] Prior to the recording of the Conservation Easement, there were no restrictions on the use and development of the Property including the Building Envelope Area. Like the

rest of the Property, without the Conservation Easement, the Building Envelope Area could have been subdivided, developed and sold as a separate parcel of land. That is no longer possible as a result of the Conservation Easement, and that prohibition alone is a substantial public benefit. Moreover, the Conservation Easement established the right of public access to the Property, including public access to the trail that goes right through the Building Envelope Area. That right, which also confers a substantial public benefit, did not exist prior to the recording of the Conservation Easement, and it is now a right that is actually enjoyed by members of the public.

The Assessor asserts that the state and federal tax credits require “the preservation of the conservation purposes in perpetuity,” citing NMSA 1978 Section 72-18.10(E), 26 U.S.C. § 170(h)(5)(A) and 26 U.S.C. § 170(h)(2)(c). [BIC 18] This argument was not raised below, and so it cannot be raised for the first time on appeal. *In re Mahdjid B.*, 2015-NMSC-003, ¶ 41, 342 P.3d 698, 710 (issue not preserved in the district court cannot be raised for the first time on appeal). In fact, the Assessor has not complied at all with Rule 12-318(A)(4) NMRA, which requires that his Brief in Chief include a statement explaining how the arguments presented in this appeal were preserved below. *Glaser v. LeBus*, 2012-NMSC-012, ¶ 13, 276 P.3d 959, 963 (appellate court may decline to consider an issue when a party fails to indicate how an issue was preserved below). In any event, it is undisputed that the Blums

submitted an application for a land conservation incentives tax credit under NMSA 1978, Sections 75-9-1 et seq. and 72-2-18.10 et seq. and that Secretary of the Energy, Minerals and Natural Resources Department determined that “the proposed donation of a conservation easement on **37.8 acres** to the Santa Fe Land Trust has significant public conservation value.” [*Id.* 113 (emphasis added)] It is also undisputed that the restrictions and protections contained in the Conservation Easement, including those applicable to the Building Envelope Area, are perpetual and bind all future owners of the Property. [RP 105]

The Assessor states that “the district court focused on the ‘conservation values,’ but did not connect those values to the actual uses of the Property.” [BIC 18-19] That is simply not true. Judge McGarry Ellenwood’s Order is founded largely on the undisputed evidence and testimony presented to the Board describing the current condition of the Building Envelope, including the fact that its condition “is virtually indistinguishable from the rest of the Property except for the existence of the recreational trail running through it,” the use of that trail by members of the public and the undisputed fact that the Blums have not developed the Building Envelope and have no present intention to do so. [RP 360]

Citing *CAVU Co. v. Martinez*, 2014-NMSC-029, 332 P.3d 287 and several other cases, the Assessor asserts that the Building Envelope is non-exempt because it is “idle.” [BIC 20] This argument was not raised below and so it cannot be raised

for the first time in this appeal. In any event, the argument is without merit because all of the cases cited by the Assessor involve uses other than the conservation of land, which is, by its very nature “idle” but nevertheless qualifies as charitable use as recognized in *Pecos River Open Spaces Inc.* For example, in *NRA Special Contribution Fund v. Bd. of Cnty. Com’rs*, 1978-NMCA-096, 92 N.M. 541, the sole issue was whether the plaintiff’s property was being used for educational purposes. *Id.* ¶ 4. The property in question was 36,300 acres of land, some portion of which was used for survival leadership training, a youth conservation training camp, leadership workshop, archaeological and historical tours, firearms training and hunting. *Id.* ¶¶ 9-17. Based on these educational activities, the owner claimed that the property was exempt from property taxes based on Article VIII, Section 3 of the New Mexico Constitution, which recognizes, separately from “charitable purposes,” that land used for educational purposes, is exempt from property taxes. This Court held that Article VIII, Section 3 “must be construed to free from taxation only property that is presently and actually in substantial use for educational purposes.” *Id.* ¶ 60. In contrast, land that is idle, the Court held, will not qualify as exempt. *Id.*

NRA Special Contribution Fund has no relevance to the present appeal because the exemption requested by the Blums involves the conservation of land as a charitable purpose under Article VIII, Section 3 and does not involve the educational use of the Property. This is precisely the distinction made by the Court

of Appeals in *Pecos River Open Spaces, Inc.* in which the Court of Appeals distinguished *NRA Special Contribution Fund* and *Grace, Inc. v. Bd. of Cnty. Com'rs, Bernalillo Cnty.*, 1981-NMCA-136, 97 N.M. 260, also cited by the Assessor, holding that those “deal specifically with plaintiffs seeking property tax exemptions for religious or educational uses which are of a category verifiable only by affirmative observation.” In *CAVU Co. v. Martinez*, 2014-NMSC-029, ¶ 19, 332 P.3d 287, 292, this Court endorsed this distinction made by the Court of Appeals.

In *CAVU Co.*, this Court embraced a flexible approach to determining whether the use of property qualifies as exempt under Article VIII, Section 3 by adopting the rule that “[t]he proper focus of any inquiry into the propriety of an exemption is whether the use of the property furthers exempt purpose.” *Id.* ¶ 21 (internal quotations and citation omitted). The Court also recognized that this rule must be applied while “keeping in mind the drafters' deliberate intent to liberalize the policy of tax exemption....” *Id.* ¶ 22 (internal quotations and citation omitted). Although *CAVU Co.*, like *NRA Special Contribution Fund*, is distinguishable because the present appeal involves a charitable use and not the educational use of land, *CAVU Co.* is nevertheless instructive because it confirms the “flexibility the drafters granted to our administrative boards and courts for making fact-specific determinations concerning exempt use” and recognizes that “there is no mechanical formula for determining eligibility for the constitutional exemption in our

constitution.” *Id.* ¶ 16, 20. In *CAVU Co.*, this Court held that the property in question was being used for exempt education purposes even though it was vacant at the time because the owner was engaged in negotiations that, if successful, would continue the prior use of the property for educational purposes. *Id.* ¶ 26. Those negotiations alone, this Court held, resulted in a substantial public benefit even though the building was empty, confirming that land that is idle may in fact qualify as exempt. *Id.* ¶ 31. Contrary to the Assessor’s analysis, the district court below correctly employed this Court’s guidance in *CAVU Co.* in its decision to reverse the Board’s decision based on the undisputed facts that the current conservation status and the public’s recreational use of the Building Envelope Area is indistinguishable from the use and status of the balance of the Property that the Assessor recognized as exempt and confers a substantial public benefit. [RP 359]

In further response to the Assessor’s argument that the Building Envelope Area is merely idle land, it is critically important to recognize the active, ongoing recreational use of the Building Envelope Area by members of the public and the fact that the Conservation Easement provides for that use. In this respect, the current use of the Building Envelope Area is obviously far more than that of a mere “reserved development right” as the Board concluded. To the contrary, the recreational use of the Building Envelope Area is a use that “creates substantial public benefit through use that directly, immediately, primarily and substantially

further its exempt purpose” similar to those types of uses that have been recognized as a “charitable purpose” under Article VIII, Section 3. *See, e.g., Albuquerque Lodge, No. 461, B. P. O. E., v. Tierney*, 1935-NMSC-022, ¶ 20, 39 N.M. 135; *Ret. Ranch, Inc. v. Curry Cnty. Valuation Protest Bd.*, 1976-NMCA-010, ¶ 1, 89 N.M. 42. In this respect, the use of the Building Envelope Area includes the conservation of land that has been recognized as exempt under *Pecos River Open Spaces, Inc.* but also a “concurrent affirmative, active, non-taxable use” that is “verifiable...by active observation” and confers a substantial public benefit. *Grace, Inc. v. Bd. of Cnty. Com’rs, Bernalillo Cnty.*, 1981-NMCA-136, ¶ 10, 97 N.M. 260; *Pecos River Open Spaces, Inc.*, 2013-NMCA-029, ¶ 19. For so long as the Building Envelope Area is being used for this legitimate charitable purpose, it should be treated as exempt under Article VIII, Section 3.

The Assessor’s attempts to surmise the Blums’ intentions regarding the Building Envelope Area based on their counsel’s answers to hypothetical questions posed by the Board should be rejected. [BIC 26-28] The question posed to the Blum’s counsel was whether a conservation easement is necessary for land to be exempt if the land is otherwise used for conservation purposes. [Tr. 01:43:00-1:44:42] The Blum’s counsel responded that “it’s an unresolved question under New Mexico law” and restated that New Mexico law looks to the current use of the land to determine its exempt status. [*Id.* 01:44:43-1:45:46] Distinguishing the facts of the

hypothetical question from the undisputed evidence presented to the Board, he emphasized: “But what we know right now is that this property is overlaid with a conservation easement and that, except for the very, very limit right that has not been exercised, the Building Envelope is subject to all of those conservation values, and I want to point out that that half-acre building envelope cannot be conveyed separately [because] the Conservation Easement prohibits any subdivision of these lots and so you can’t sell it to anybody. It’s not a half-acre residential lot and should not be compared to that.” [*Id.* 01:45:47-1:46:25] In short, the Conservation Easement does provide real and meaningful restrictions on the Building Envelope Area in perpetuity; however, under New Mexico law, it is the current use of the Building Envelope Area that determines whether it is exempt. Here, it is undisputed that the current use of the Building Envelope Area is indistinguishable from the current use and status of the rest of the Property that was appropriately recognized by the Assessor, as the Board itself acknowledged. [RP 22]

IV. CONCLUSION AND RELIEF REQUESTED

For the reasons stated above, the Blums request that the decision of the district court be affirmed.

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CERTIFICATE OF SERVICE

I hereby certify that on March 12, 2026, a true and correct copy of this Answer Brief was served by email on counsel for the Santa Fe County Assessor, Charles Rennick at charles@nmlgl.com, and Lea Corinne Strife, Esq. at cori@nmlgl.com.

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