



IN THE SUPREME COURT OF THE STATE OF NEW MEXICO

**LISA P. BLUM, as TRUSTEE of the
Lisa P. Mahoney revocable Trust;
and ARTHUR A. BLUM, as TRUSTEE
of the Arthur A. Blum Trust,**

Appellants-Respondents,

v.

NO. S-1-SC-41083

**ISAIAH F. ROMERO, Santa Fe
County Assessor,**

Appellee-Petitioner,

APPELLEE-PETITIONER'S BRIEF IN CHIEF

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ORAL ARGUMENT REQUESTED

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Statement as to Transcript

The transcript of the Protest Board hearing is an audio recording that is measured in elapsed time from the beginning in hours, minutes and seconds at 30-second intervals. E.g., “Tr. 1:01:30”

References to the record are page number to the Record on Appeal (ROA). References to the Decision and Order of the Protest Board (D&O) are by page number in the ROA and paragraph number in the D&O.

Statement of Compliance

The body of this brief is 27 pages and is in compliance with the provisions of Rule 12-318(F)(2), NMRA.

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Petitioner Santa Fe County Assessor submits this Brief in Chief pursuant to this Court's grant of a writ of certiorari.

SUMMARY OF PROCEEDINGS

This case concerns the 2023 valuation and assessment by the Santa Fe County Assessor of property owned by Appellants/Respondents. The Assessor denied a charitable exemption for a portion of the property and the Owners filed a protest with the Santa Fe County Valuation Protests Board ("Board"). The Board held a hearing on November 15, 2023, and issued its Decision and Order ("D&O") on July 22, 2024, upholding the Assessor's denial. (ROA 153-54). The Owners appealed to the District Court pursuant to rule 1-074, NMRA. The District Court reversed the D&O of the Protest Board by Order on June 2, 2025. The Assessor filed a petition for writ of certiorari with the Court of Appeals, which denied the petition on August 4, 2025. Petitioner filed a Petition for Writ of Certiorari pursuant to Rule 12-505(M), NMRA, which this Court granted on October 30, 2025 on all questions presented in the petition. Those questions are:

- 1. Whether the district court erred in finding that the Protest Board's Decision and Order was not supported by substantial evidence.**
- 2. Whether the district court erred in finding that the Decision and Order of the Protest Board is not in accordance with law.**

SUMMARY OF FACTS

The subject property (“Property”) consists of approximately 38 acres of undeveloped land located in the Tano Road area of Santa Fe County. It is adjacent to the city’s 1,500-acre La Tierra trail system. The 38 acres are subdivided into eleven lots. Tract 1E, 19 acres, abuts the Owners’ residence, located on a separate parcel in the Canterbury Subdivision. Tract 1E has three separately-identified (but not separately platted) areas within it: a 6.56-acre Privacy Zone adjacent to the Owners’ residence; a half-acre area identified as “Building Envelope;” and the remainder of the Tract that is not otherwise designated. The south side is bordered by the La Tierra trail system with the remaining sides bordering privately owned parcels. It is the half-acre Building Envelope that is in issue in this case.

In 2022, the Owners executed and recorded a Deed of Conservation Easement to the Santa Fe Conservation Trust for the entire 38 acres. The purpose of the Conservation Easement is to protect, enhance and preserve in perpetuity the scenic, biological, recreational, and open space values of the Property. (ROA 73). The easement contains restrictions that generally prevent development of the Property for other than open space and recreational uses. To that end, the conservation easement provides that it is of perpetual duration. (ROA 86, § 25). The further intent is that uses of the property that are inconsistent with or to the detriment of the values will be prevented or corrected. (ROA 77, ¶ (N)). The conservation values are listed and include scenic values, biological values, recreational values and open space

values. (ROA 74, ¶¶ (G)-(J)). The deed also lists various federal, state and local policies that support the conservation values, including provisions for both federal and state tax credits for the owners. (ROA 74-76, ¶ (J)(1)-(9)).

The deed contains a general prohibition that prevents any act that is inconsistent with or to the detriment of the conservation values. (ROA 77, § 2). It also contains a general prohibition on construction of any kind, but with a significant exception. (ROA 78, § 3(a)). That exception is for development of a .5-acre Building Envelope, and states:

Permitted Structures. The Landowners may construct a single-family house, guest house, and associated outbuildings as permitted by applicable Santa Fe County zoning ordinances, all wholly contained within the Building Envelope. No structure shall be more than 30 feet in height. Temporary construction trailers may be placed in the Building Envelope during construction with prior approval of the Land Trust, but in no event may be used for longer than twelve (12) consecutive months.

(ROA 78, § 3(c)). It is the Building Envelope that is the subject of this appeal.

Commercial activity is permitted within the Building Envelope, including home occupations and home businesses, lodging activities such as bed and breakfasts and destination events, agricultural activities including selling and marketing of products, and other low impact uses. (ROA 84, § 18). Access is provided to the City of Santa Fe La Tierra trail system, a 1,500-acre public property used for hiking and biking. (ROA 13, § 21; ROA 49-50, 102-105, Tr. 1:21:00-1:22:08).

The Property cannot be subdivided, and the sale or separation of existing lots from the rest of the Property is prohibited. (ROA 79, § 4). However, the owners retain the right to sell, lease, encumber or bequeath the Property or to assign it for collateral. (ROA 77, § 1). The deed assigns enforcement responsibility to the Trust. (ROA 88, § 29(c)). However, there is no provision that requires either the owners or the Trust to undertake any type of conservation measures or preservation. It is only a passive requirement of prohibiting uses that are inconsistent with the conservation values.

The deed is based on the Baseline Documentation Report prepared by the Trust. That report identifies the conservation values the same as the deed. It also lists the current uses of the Property in terms of those values, including vegetation, wildlife, scenic values, and recreation values. In all cases, however, those uses are described in general terms applicable to the greater Santa Fe region and not specific to the Property.

The Building Envelope is included within the conservation easement, but is subject to different restrictions, or rather, limitations on the general restrictions, as shown above. The Board found that “there is no meaningful restriction in the Conservation Easement on the development within the Building Envelope.” In essence, the Building Envelope has been “carved out” of the Conservation Easement.” (ROA 145, D&O ¶¶ 21-22).

The Owners claimed a charitable exemption for the entire Property based on the conservation values contained in the Conservation Easement. The Assessor approved the charitable exemption for all but the Building Envelope, leaving only the value of the Building Envelope in dispute. (ROA 142, D&O ¶ 6). Tract 1E, the 18-acre parcel, was valued at \$133,023 without the Building Envelope being separately valued. The Owners did not contest the valuation, so the only issue before the Protest Board was whether the Building Envelope should be exempt. (ROA 142, D&O ¶ 7).

The Protest Board, relying on the opinion in *Pecos River Open Spaces, Inc. v. Cnty. of San Miguel*, 2017-NMCA-029, found that the “present, primary, and substantial use of the Building Envelope is as a reserved development site” and “that the Conservation Easement does not materially restrict the development of the Building Envelope.” (ROA 148, D&O ¶ 29). The Board further found that “the undeveloped state of the Building Envelope constitutes ‘routine activity or inactivity’ under *Pecos River* and does not qualify as charitable conservation use of the Building Envelope.” (ROA 148, D&O ¶30). Finally, the Board found that the use of the Building Envelope did not confer a substantial public benefit. (ROA 150, D&O ¶¶ 30, 35-36).

On appeal, the District Court found that the Board’s D&O was not supported by substantial evidence and instead found that the present use of the Building

Envelope is indistinguishable from the remainder of the Property and therefore qualifies for the charitable exemption. (Order at 12-13). The court further found that the Board's D&O is not in accordance with law. The Assessor respectfully disputes both findings.

ARGUMENT AND AUTHORITIES

STANDARD OF REVIEW:

The Standard of Review for evaluating a decision rendered by the District Court of a Rule 1-074 appeal is well established. The reviewing court will “[c]onduct the same review of an administrative order as the district court sitting in its appellate capacity, while at the same time determining whether the district court erred in the first appeal.” *Rio Grande Chapter of the Sierra Club v. New Mexico Mining Comm’n*, 2003-NMSC-005, ¶ 16.

The function of [the Appellate] court is to review the evidence considered by the lower court and not reweigh it. Every reasonable intendment and presumption will be resolved against the petitioner in favor of proceedings in the trial court. This court will also view the evidence in the light most favorable to the successful party. We have defined ‘substantial evidence’ as such relevant evidence as a reasonable mind might accept as adequate to support a conclusion.

Hinojosa v. State ex rel. Employment Sec. Dept., 1986-NMCA-118, ¶ 6, 105 N.M. 212, 213, 730 P.2d 1194, 1195. (Internal citations omitted). “The question is not whether substantial evidence exists to support the opposite result, but rather whether such evidence supports the result reached.” *Las Cruces Prof'l Fire Fighters v. City*

of Las Cruces, 1997-NMCA-044, ¶ 12, 123 N.M. 329, 940 P.2d 177. Reviewing courts “resolve all disputes of [the] facts in favor of the successful party and indulge all reasonable inferences in support of the prevailing party.” *Id.* Further, reviewing courts “will not reweigh the evidence nor substitute our judgment for that of the factfinder.” *Id.*

The district court found that the Board’s decision was not supported by substantial evidence, and further found that the decision was contrary to law. Those two findings are connected and the Assessor will address them together in section 2 below in terms of the underlying issue, that is, whether the owners established a charitable use of the Property. However, since a substantial evidence question has its own standard of review, as shown immediately above, the Assessor will initially address it to show that the court erred in substituting its own judgment for that of the Board.

3. Whether the district court erred in finding that the Protest Board’s Decision and Order was not supported by substantial evidence.

The Board found that the Owners failed to overcome the presumption of correctness in favor of the Assessor’s valuation, and further found the Owners failed to prove that the Building Envelope was entitled to a charitable exemption. (ROA 153, D&O ¶ 47). Those conclusions were based on its analysis of whether the conservation uses of the Building Envelope provided a substantial public benefit. (ROA 147-48). The standard for determining a charitable exemption is whether the

property is used primarily, directly, immediately and substantially for charitable purposes that impart a substantial public benefit. *Temple Lodge No. 6, A.F. & A.M. v. Tierney*, 1933-NMsC-013, ¶¶ 41-42, 37 N.M. 178; *Grand Lodge of Ancient and Accepted Masons v. Tax. & Rev. Dept.*, 1987-NMCA-081, ¶ 17, 106 N.M. 179. The Board reviewed the evidence as detailed above in the summary of facts and determined that the standard was not met. Based on the reservation of rights to develop the Building Envelope, the Board found that the “present, primary, and substantial use of the Building Envelope is as a reserved development site.” (ROA 148, D&O ¶ 29).

The Board also cited to *Pecos River Open Spaces, Inc. v. County of San Miguel*, 2013-NMCA-029, 495 P.3d 1129. That case involved a charitable exemption for undeveloped property that was preserved and protected in perpetuity by a conservation easement, similar to this case. The opinion is discussed in detail below. For present purposes, the Board referred to that portion of the opinion that held that a charitable exemption would not apply 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.” *Id.* ¶ 17. The Board found that the undeveloped state of the Building Envelope constituted such routine activity or inactivity. (ROA 148, D&O ¶ 30). These findings are abundantly supported by the evidence outlined above that shows that the Building Envelope is exempted from the restrictions on the rest

of the Property and, in fact, is presently available for development according to the conditions of the deed. As the Board determined, the Building Envelope was essentially carved out of the Property.

The district court did not consider any of this. Instead, the court referred to the Baseline Documentation Report's description of the uses of the entirety of the Property. (Order at 12). The Court then found that the use of the Building Envelope "is virtually indistinguishable from the remainder of the Property except for the existence of a recreational trail running through it." (Order at 12). The court discounted the provisions of the easement that permit development of the Building Envelope by finding that it is presently not developed and that the Owners have no intention of doing so. (Order at 12). Regarding the Board's determination that the Building Envelope's primary and substantial use is as a reserved development site, the court stated:

The Board's findings 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.

...

The reservation of limited construction rights in the Building Envelope does not change the immediate, direct, primary, and substantial use of the land within Building Envelope as the use existed when under consideration by the Board.

In other words, the reservation of limited construction rights within the Building Envelope for potential development at a future, indeterminate

time does not alter, and does not constitute, current use of the land within the Building Envelope.

(Order at 13-14). The Assessor disputes the court's analysis in detail in section 2 below. But for present purposes, it is clear that the court was substituting its own judgment for that of the Board, stating that the Board's findings "ignore significant, contravening evidence." This finding departs from the substantial evidence standard that requires the court to determine whether the evidence supports the Board's decision, not whether it could support a different result. The court clearly looked only to evidence supporting a different result and therein erred.

4. Whether the district court erred in finding that the Decision and Order of the Protest Board is not in accordance with law.

The starting point under this section is to determine what the law is. In *El Castillo Retirement Residences v. Martinez*, 2017-NMSC-026, 401 P.3d 751, this Court cited to longstanding precedent that the purpose of "Article VIII, Section 3 [is] to exempt only property that creates substantial public benefit through use that directly, immediately, primarily, and substantially furthers its exempt purpose." *Id.* ¶ 31. "This is not a mechanical test of eligibility for exemption but instead requires a flexible inquiry allowing fact-specific determinations informed by history and policy considerations. Accordingly, the interpretation of these limits may vary

depending upon the particular property and use at issue.” *Id.* (Internal citations omitted).

In the present instance, the property owners, and now the district court, asserted that the Subject Property had been deeded to a Conservation Easement with prohibitions on development *except* for the half-acre Building Envelope, and that alone entitled the owners to total tax relief. The Assessor, instead, looks to statute, which dictates that “real property owned by a nongovernmental entity is presumed to be subject to taxation under the Property Tax Code unless an exemption is claimed and allowed.” *See CAVU Co. v. Martinez*, 2014-NMSC-029, ¶ 13, 332 P.3d 287 and NMSA 1978 §7-36-7(A). The necessary inquiry, as established by *El Castillo*, *CAVU*, as well as *Sisters of Charity v. Bernalillo*, 1979-NMSC-044, 93 N.M. 42, 596 P.2d 255, and *NRA Special Contribution Fund v. Board of County Commissioners*, 1978-NMCA-096, 92 N.M. 541, 591 P. 2d 672 is whether the use of the property proposed to be exempt from taxation is the “primary and substantial use of the property.” *NRA Special Contribution Fund*, ¶ 17. The property owners and Assessor came to an agreement with respect to the majority of the Subject Property, as the Conservation Easement mirrors *Pecos River Open Spaces, Inc. v. Cnty of San Miguel*, 2013-NMCA-029, 495 P.3d 1129 in many ways. The remaining portion of the Subject Property which the Board determined was subjected to taxation is the

Building Envelope expressly reserved by the property owners as a buildable property within the Conservation Easement.

The Building Envelope is a non-fixed, reserved right to develop the property at any future point; it necessarily is removed from the tax-exempt purpose, which is to “[c]onserv[e] the scenic, biological, recreational, and open space values of the Property...consistent with, and important to, the history, culture, and economy of the area, which is under increasing threat of development.” (ROA 76-77, ¶ M). The Building Envelope, pursuant to the same agreement, enables the development of the half-acre property. The mere fact that the property owners testified that they had “no present intention to develop” was a false equivalency to the Building Envelope being subjected to the Conservation Easement in such a way that the half-acre parcel was not in direct conflict with the Easement’s stated purpose.¹

The district court based its Order on its findings regarding the current use of the Building Envelope. The court erred, however, in determining what that current use is. The court specifically found:

With respect to the Building Envelope, the Building Envelope is virtually indistinguishable from the remainder of the Property except for the existence of a recreational trail running through it.

¹ The Assessor notes again that the Building Envelope is defined in the exhibit attached to the Conservation Easement, yet the language of the Easement in addition to testimony at the Board hearing highlight the flaws in the District Court’s finding that “no present intention to develop” equated furtherance of the tax-exempt purpose. (Order pp. 12).

(Order at 12). The court prefaced that finding by identifying the current use of the remainder of the 37-acre Property, referring to the findings recorded in the Baseline Documentation Report:

Specifically, “[t]he Property is currently used by neighbors as an informal hiking and biking connection to the La Tierra trails. Otherwise, the land is left undisturbed to serve as natural habitat and an open space buffer between surrounding neighborhoods and the La Tierra trail system. No residential or agricultural uses occur on the Property.” Further, “[t]here are currently no roads, structures, or utilities on the Property.”

(Order at 12). The court thus found that there is no use whatever of the Property other than “an informal hiking and biking connection to the La Tierra trails.”

Moreover, it must be stressed that the description of the Property is from the Baseline Documentation Report, which described the property *prior* to the grant of the easement. There is no evidence of any other use following the grant of the easement. If that non-use of the Property qualifies it for a charitable exemption in the absence of the conservation easement, then the same qualification would apply to any moderately-sized tract of privately-owned land that is available for development, as is the case here. No case has so held, but such a holding would be necessary for the 37-acre Property to qualify for a charitable exemption absent the conservation easement.

Yet when the court connected the current use of the half-acre Building Envelope to the current use of the remainder of the Property, the court was

necessarily finding either that the Property qualified as a charitable use without the conservation easement, or that it was the easement itself that provided the charitable benefit. The court made this patently clear when it stated: “The Board’s findings ignore significant, contravening evidence that establishes that the immediate, direct, primary, and substantial use of the Building Envelope is virtually identical to the of the encompassing Property.” (Order at 13). And therein lies the court’s error.

The Building Envelope has no current use; it is the same as it was prior to the grant of the easement. The Building Envelope does not qualify for a charitable use exemption, and there is no suggestion that it qualifies for a charitable use exemption absent the conservation easement. Indeed, both the state’s tax credits and those of the federal government are explicitly conditioned on the preservation of the conservation purposes in perpetuity. The state’s Income Tax Act specifies that the conservation on which the tax credit is based “shall be assured in perpetuity.” NMSA (1978), § 7-2-18.10(E). The federal act, on which the state act is based, is the same. *See* 26 USC § 170(h)(5)(A)(conservation purpose must be “protected in perpetuity”); *Id.* § 170(h)(2)(c)(“restriction (granted in perpetuity) on the use which may be made of the real property”).

In this case, it is precisely the preservation in perpetuity that distinguishes the 37-acre Property from the half-acre Building Envelope. The district court focused on the “conservation values,” but did not connect those values to the actual uses of

the Property. The court overlooked the fact, and the legal requirement, that the charitable use of the Property is necessarily and inextricably bound up with the perpetual preservation of the values. The Property has it, while the Building Envelope does not. The Assessor specifically argued this distinction, stating that “the Conservation Easement, or some other written and recorded restriction on the property, was necessary to ensure the substantial public benefit of that use.” (D&O ¶ 38). The Board concurred, stating:

In the present protest this question isn’t purely hypothetical since, it appears to the Board, that the conservation Easement protects portions of the Property and the uses thereon but specifically carves out the Building envelope. Thus, the Building Envelope is, arguably, an area of land without the assurance of “substantial public benefit” that a conservation easement might provide.

(ROA 151, D&O ¶ 39). The court’s Order to the contrary simply does not account for this crucial element.

The court’s opinion is that the Board’s decision is not in accordance with the law as determined by *Pecos River, CAVU and Retirement Ranch, Inc. v. Curry County Valuation Protest Board*, 1976-NMCA-010, 89 N.M. 42. The conclusion requires a two-step process. First, the court cites to the *Pecos River* requirement of considering “whether the Property is being directly, immediately, primarily, and substantially used for conservation . . .” (Order at 14, citing *Pecos River*, ¶ 24). Second, the court discards the potential future development of the Building Envelope by citing to the *Retirement Ranch* principle that “the determination of [the property

owner'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." (Order at 15, citing *Retirement Ranch* ¶ 8). The court ties these two steps together by finding that the Board erroneously focused on the future rather than the present. (Order at 15).

The Assessor respectfully submits that the court misinterpreted and misapplied those cases. An examination of those cases, and others that were considered therein, is necessary. The issue is one of idleness, or non-use of the subject property. As discussed above, the Assessor submits that the Building Envelope is idle, that there is no actual charitable use apart from the permanent restrictions imposed by the conservation easement. That is the distinguishing feature.

CAVU is the most recent case. This Court took the opportunity there to review the history of educational and charitable exemptions and the relevance of *Pecos River* along with *NRA*. The starting point was the Court's recitation of the history of exemptions in which the rule was laid down that the educational or charitable use of the property must be both primary and substantial. *Temple Lodge No. 6, A.F. & A.M. v. Tierney*, 1933-NMsC-013, ¶¶ 41-42, 37 N.M. 178. The significance is that this Court examined the actual educational and charitable uses of the property in comparison to uses that did not qualify. That type of analysis has been consistently applied through an unbroken line of cases. See, e.g., *Grand Lodge of Ancient and*

Accepted Masons v. Tax. & Rev. Dept., 1987-NMCA-081, ¶ 17, 106 N.M. 179 (primary, substantial, direct and immediate use for charitable or educational purposes); *Benevolent & Protective Order of Elks, Lodge No. 461 v. N.M. Prop. Appraisal Dep't.*, 1972-NMSC-006, ¶ 5, 83 N.M. 445, *Albuquerque Lodge No. 461, B.P.O.E. v. Tierney*, 1933-NMSC-022, ¶ 20, 39 N.M. 135 (describing actual charitable uses); *Mountain View Homes v. State Tax Comm'n.*, 1967-NMSC-092, ¶ 15, 77 N.M. 649 (describing actual use of rent-controlled apartments).

All of these cases involved active educational or charitable uses of property, and the courts had no occasion to examine such uses of idle property. The first case to do so was *NRA Special contribution Fund v. Board of County Commissioners*, 1978-NMCA-096, 92 N.M. 541. That case involved 36,000 acres of land owned by the organization, of which a small portion was used for educational purposes. The issue concerned whether the remainder of the property would qualify. The court of appeals noted that “a large portion of this land is idle, unimproved, and unused for any immediate or future purpose.” *Id.* ¶ 59. The court disallowed an education exemption for the idle property, holding as follows:

Article VIII, s 3 must be construed to free from taxation only *property that is presently and actually in substantial use* for educational purposes. Where the land is idle, unimproved and not in actual use, because of its present unsuitability to the actual activities of the use of the land, it will not qualify for tax exemption in the absence of legislation. The justification for requiring present use arises as a matter of public policy; it is premised on the philosophy of substantial public benefit. If a tax burden is placed on idle, unimproved, and unused land,

it will create an incentive to avoid idleness and make a substantial use of the land to carry on educational purposes.

Id. ¶ 61 (emphasis added). The *NRA* opinion thus clearly held that an actual, active use of the property was required, and disallowed an exemption for idle property. It is in this context that *CAVU* and *Pecos River* must be considered.

CAVU involved an educational exemption. The subject property had previously been used as a school for over fifteen years, but became vacant when the then-current school tenant moved out. The assessor denied an educational exemption because the property was not, on the relevant valuation date, used directly and immediately for educational purposes. *CAVU Co. v. Martinez*, 2014-NMSC-029, ¶¶ 2-4, 332 P.3d 287. But the protest board approved an exemption, finding that “this case might present one of the rare instances in which temporary nonuse actually constitutes an exempt use of property.” *Id.* ¶ 8. The district court reversed the board and the court of appeals affirmed the district court on the basis that the educational use was not primary, substantial, present and actual during the previous year. *Id.* ¶ 10. This Court reversed and remanded.

While the property was, in fact, idle during the relevant time frame, this Court examined the owner’s educational efforts during that period. The facts showed that the owner had reduced the rent in order to accommodate the school, had actively sought to lease the property to other educational tenants, had declined to lease the building to a commercial tenant at a higher rate in favor of continuing to try and find

an educational tenant, and ultimately did lease it to a school at a rental rate far below market value. *Id.* ¶¶ 4-6.

The Court cited the *NRA* holding that idle land would not qualify, but found that the *CAVU* situation “presents a unique set of circumstances that does not fit neatly within the parameters of the *NRA* test.” Instead, it referred to *Pecos River*, where the charitable conservation of land provided a substantial public benefit in its idle state.

The Court determined that a fact-specific analysis was necessary, and it stated the overarching principle: “[T]he proper focus of an inquiry into the propriety of an exemption is whether the use of the property furthers exempt purposes.” *Id.* ¶ 21. The district court in the current case treated that principle as a holding to be applied. (Order at 15). But that application misreads *CAVU*. This Court did not simply determine whether the use furthered exempt purposes. Rather, it returned to the *NRA* criteria as a guide in applying a fact-specific analysis as to the validity of the exemption. *Id.* ¶ 22. Citing the facts shown above, the court found the owner’s efforts to be an active educational use of the property: “By working with various potential tenants and negotiating a deal for the educational use of the property, Taxpayer used the temporarily vacant property in a direct and immediate effort to further its educational use.” *Id.* ¶ 26. The court also found that those efforts resulted in a substantial public benefit. *Id.* ¶ 31. However, rather than simply reversing, the court

remanded to the board for it to determine whether the use of the property was in furtherance of its exempt purpose. *Id.* ¶ 32.

The significance of *CAVU* is that it did not simply find that idle property, even with an overlay of an exempt purpose, could be exempt. There still had to be an active, current use by the owner that is direct, immediate, primary and substantial and that furthers exempt purposes. In the current case, the district court merely found that the current use was the same as the rest of the Property, and that it supported conservation values. The values, however, are not the same thing as “use.” Other than some use as an access trail for recreational purposes, the evidence in this case shows no active use at all of either the Building Envelope or the larger Property. *CAVU* thus does not support the district court’s decision. To the extent that an idle use could be found to be a charitable use, the relevant case is *Pecos River Open Spaces, Inc. v. Cnty of San Miguel*, 2013-NMCA-029, 495 P.3d 1129.

The district court cited to *Pecos River* as requiring that a consideration of “whether the Property is being directly, immediately, primarily, and substantially used for conservation” and then faulted the protest board for not making that determination based on the present use of the land within the Building Envelope. (Order at 14-15). But *Pecos River* is not so simple.

The land at issue there was a 60-acre tract in the Pecos River Canyon near the Pecos River. The owner was a nonprofit corporation whose sole purpose was the

acquisition of vacant, undeveloped land and to preserve it in its natural state. *Id.* ¶ 2. To accomplish this purpose, the owner granted a conservation easement to the Santa Fe Conservation Trust. “The easement prevents, in perpetuity, development or construction of any kind on the Property. Plaintiff’s intention in acquiring and holding the Property is exclusively to preserve the Property in its natural state, to enforce and adhere to the terms of the conservation easement, and to take seasonable steps to enhance the natural qualities of the Property, such as reduction of erosion and the repair of damage to the Property.” *Id.* ¶ 3.

Considering it a question of first impression, the court of appeals identified the sole issue as “whether conservation of the Property is a charitable use, justifying exemption of the Property from taxation.” *Id.* ¶ 7. The protest board had found that the owner’s purposes and actions were consistent with state and local conservation policies and that conservation confers a substantial public benefit. *Id.* ¶ 14. The court of appeals concurred. *Id.* ¶ 16.

Citing to *NRA* and *Grace, Inc. v. Board of County Commissioners*, 1981-NMCA-136, 97 N.M.260, however, the defendant county had argued that the conservation required an actual use, not an idle use. *Id.* ¶ 19. The court of appeals distinguished both cases. Regarding *NRA*, the court noted that educational use inherently requires “some educational activity to occur on the land” and that “the land must be an integral part of a use for such purposes.” *Id.* ¶ 21. Regarding *Grace*,

which involved vacant property owned by the church and intended for future development, the court noted that prior jurisprudence concerning religious exemptions required a showing that the property “was required for the use of the church.” *Id.* ¶ 20. Distinguishing those cases, the court found that the proof necessary to establish a charitable use of idle property required a showing “that the Property is being used for purposes of conservation for the substantial benefit of the public.” *Id.* ¶ 22. Applying that standard to the facts of the case, the court found such a substantial public benefit. *Id.* ¶ 13.

The *Pecos River* court determined, as a matter of first impression, that conservation could be a charitable use. The court did not attempt to define how charitable use is to be established. It was operating, instead, on the facts of that case. As noted, those facts showed completely undeveloped property that was protected from development of any kind in perpetuity. This is the essential factor overlooked by the district court in the present case. Without the complete and permanent restriction on development and the permanent protection and preservation accorded by the conservation easement, there is no conservation rising to the level of a substantial public benefit.

This precise question was argued at length before the protest board. The board’s attorney, Matthew McQueen, asked the owners’ attorney, Frank Herdman, whether a conservation easement was necessary, that if everything was the same

except for the absence of an easement, would it establish a charitable purpose? (Tr. 1:43:00). Mr. Herdman responded that *Pecos River* talks about conservation values, and that while the easement provides perpetuity, there is no constitutional requirement for perpetuity. (Tr. 1:43:30). Mr. McQueen then asked what if the half acre Building Envelope was totally carved out, not subject to the easement at all? (Tr. 1:47:00). Mr. Herdman replied that it could be argued that the owner could say it is committed to conservation purposes, that perpetuity was not a requirement, and until changed, it would be exempt. (Tr. 1:47:00). This is the essence of Plaintiffs' argument, that permanent protection is not required, and that the owner's own intentions are all that matter. It is contrary to established law that it is the use of the property, not the owner's intentions, that determine charitable use. *Georgia O'Keeffe Museum v. County*, 2003-NMCA-003, ¶ 40, 62 P.3d 754.

Board member Frank Katz, also an attorney, asked the same question, whether the easement was necessary, or whether the owner could carve out a larger tract, for example, a mansion on twenty acres? (Tr. 1:51:00). The Owner's response was that it remained an open question. (Tr. 1:58:30). Asked the same question by the Board, Cori Strife, the Assessor's attorney, stated that the conservation easement was required in order to establish the substantial public benefit. (Tr. 2:10:30; 2:12:30). Turning to the hypothetical question of a 20-acre parcel with one acre used for a home, she said that there would have to be something in writing, a guarantee, in

order to establish a substantial public benefit. She distinguished the Building Envelope as having value in the ability to build, while the remainder of the property had a public benefit due to the protections in perpetuity. (Tr. 2:13:30). Mr. McQueen asked whether the easement was necessary in Pecos River, and the Assessor's attorney replied that the facts established the easement in that case and that the benefit was not in issue. (Tr. 2:18:30). In further inquiry by Mr. McQueen, she stated that some written mechanism assuring the public benefit, a covenant or similar restriction was necessary. (Tr. 2:22:00).

The Board's repeated interest in the protections of the easement is significant, and the fact that it was an integral piece of the evidence in Pecos River supports the Board's decision that the Building Envelope did not support a substantial public benefit absent the easement.

The district court relied on the conservation values as shown in the Baseline Development Report. However, that report did not focus on any unique attributes of this Property; it simply noted that the Property's ecosystem and habitat were consistent with the greater region in which it is located. The acquisition of the Property by Plaintiffs and its use for biological, scenic, open space and habitat purposes is no different than it was prior to acquisition. The only thing that confers a substantial public benefit is the permanence of the restrictions. There is no such permanence, and in fact no restriction at all, on the Building Envelope.

While the court of appeals in *Pecos River* did not hold that a conservation easement was required, it had no occasion to do so since the easement was in fact present in that case and applied to the entirety of the property. By focusing on present use without regard to the easement, the district court in this case has extended the *Pecos River* holding to include the exemption of any idle land that is consistent with conservation values regardless of public benefit. There is absolutely nothing to distinguish this property from the surrounding undeveloped residential property that is held for sale. In fact, ten of the parcels had already been subdivided into parcels less than two acres each and were held out for sale. Lisa Blum testified that she acquired the property to prevent it from being sold for development. (Tr. 1:16:00). Her acquisition added nothing to the preservation of the property in the absence of the easement that permanently prohibits development. Regarding the Building Envelope, she testified that while she had no intention of building on it, carving it out was a “good idea because one never knows.” (Tr. 1:35:45). She further testified that she would pass the Building Envelope to her kids and that they might want to. (Tr. 1:37:00).

Finally, the court’s reliance on *Retirement Ranch* is misplaced. The court there was concerned with the present charitable use of a nursing home. The evidence showed that the facility’s focus on underprivileged patients supported by Medicare and Medicaid while turning away fully-paying patients was a charitable use. 1976-

NMCA-010, ¶ 9. If the facility were to accept such patients, it would enhance the financial viability of the home which in turn could impact whether the use was “primarily and substantially for charitable purposes.” *Id.* ¶ 7. It was in this context that the court stated the focus was on present use, not on “hypothetical changes which might alter appellant’s status in the indefinite future.” *Id.* ¶ 8. Notably, the facts clearly established the existing charitable use and the possible future financial changes were not relevant to the existing use.

The district court in this case used this statement to discard the future development potential of the Building Envelope as hypothetical. (Order at 14). This was error for two reasons. First, the court determined that the present use of the Building Envelope was for conservation purposes the same as the remainder of the 37 acres. But as explained above, the use of the 37 acres is distinguishable from the Building Envelope based on perpetual protection not applicable to the Building Envelope. Second, the Board found the present use of the Building Envelope to be that of a “reserved development right.” While construction of a house within the envelope might be hypothetical, the right to do so is not hypothetical; it is locked in now and forever. The easement prohibits the construction of all buildings and structures “except as described below.” (ROA 78, § 3(a)). What is permitted “below” is the construction of “a single-family house, guest house, and associated outbuildings as permitted by applicable Santa Fe County zoning ordinances, all

wholly contained within the Building Envelope.” (ROA 78, § 3(b)). This not only a complete exception to the easement’s restrictions, it is, as the Board found, a carve-out of a piece of the property that can be developed. Moreover, while the Building Envelope cannot be legally separated from the 18-acre tract in which it is included, the entire tract can be sold, leased, encumbered, bequeathed or used as collateral. (ROA 77, § 1). All of these are present, primary uses that enjoy no protection in perpetuity whatever. The district court’s reliance on hypothetical future construction thus misses the point.

The court determined that the Board’s decision was not in accordance with law. For the reasons explained above, the Assessor respectfully submits that the court erred in this determination.

CONCLUSION

For the foregoing reasons, the Assessor submits that the district court erred in determining that the Board’s Decision and Order was not supported by substantial evidence and was not in compliance with law. Accordingly, the Assessor requests that this Court reverse the Order of the district court and affirm the Decision and Order of the Board.

Respectfully submitted,

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Certificate of Service

I HEREBY CERTIFY that on this 2nd day of February, 2026, I filed the foregoing pleading via the Court's Odyssey file and serve system, which caused it to be filed on all parties of record. I further certify that a copy was served via e-mail to the following:

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