

# **D. H. Lawrence Ranch**



## **Feasibility Study on Developing a Conservation Easement and Funding Alternatives to Renovate Historic Buildings and for Other Property Management Costs**

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## **Introduction**

The D. H. Lawrence Ranch is a 160-acre property, about one square quarter mile, in the forested foothills above San Cristóbal, New Mexico, adjacent to the Carson National Forest and the Columbine Hondo Wilderness Study Area. The famous author himself spent time and wrote several of his works there between 1922 and 1925. His wife, Frieda, owned the ranch between 1924 and 1955 when she deeded it the University of New Mexico, on the condition that 10 acres remain open to the public and used for “educational, cultural, charitable, and recreational purposes.”

The property is world-renowned, as was the author, and includes several historic structures in various states of repair. It is listed as a Historic District on the National Register of Historic Places and the New Mexico Register of Cultural Properties. The D. H. Lawrence Memorial, Brett’s Cabin, and the Homesteader’s Cabin are also individually listed on the state register.

This feasibility study is to consider various options that could yield significant income through a conservation easement and associated transferable state income tax credits. Income from the sale of those credits could be used for renovation of the historic buildings and other property management needs. Most tax benefits are available only to individuals and corporations that pay income tax. However, as explained below, this tax credit is available to any incorporated nonprofit that owns property in New Mexico, which opens up many creative avenues.

## **Conservation Easements**

Conservation easements are individually tailored agreements between landowners and a land trust or a government entity that voluntarily retire some or all of the development rights on the land. Landowners still own the land and can continue farming, ranching, sustainable forestry, or other compatible uses, they can reserve limited building envelopes, and they can sell the land or pass it on to heirs, but the protection is permanent and stays with the land forever even if it changes ownership. The federal and state governments recognize that conservation easements provide real benefit to the public and future generations and acknowledge that benefit with significant tax incentives.

To qualify for tax benefits, the conservation easement has to meet at least one (not all) of these conservation purposes:

- The preservation of land areas for the outdoor recreation by, or education of, the general public.
- The protection of a relatively natural habitat of fish, wildlife, or plants, or similar ecosystem.
- The preservation of open space (including farmland and forest land) either for the scenic enjoyment of the general public or pursuant to a clearly delineated governmental conservation policy, and will yield a significant public benefit (Taos County is one of the few counties in the state with such a governmental policy).
- The preservation of an historically important land area or a certified historic structure.

The D. H. Lawrence Ranch property easily meets most, if not all, of these purposes. In addition, the donation of a conservation easement has to be made to a qualified organization, either a land trust or a governmental entity; the protection of the conservation values has to be in perpetuity;

and no surface mining is allowed. That means if a landowners owns the subsurface mineral rights, they can simply retire those rights in the easement; if they do not own the mineral rights, they will need a report from a geologist stating that the “probability of surface mining . . . is so remote as to be negligible.”

## **State Tax Credits**

Not-for-profit organizations are tax exempt and generally do not qualify for tax benefits. The State of New Mexico, however, has a unique transferable state income tax credit that can give nonprofits direct access to some of the financial benefits of a donated conservation easement. Under the 2008 New Mexico Land Conservation Incentives Act (LCIA), most landowners at any income level or under any IRS status who place a voluntary conservation easement on their land can qualify for a transferable state income tax credit equal to up to 50 percent of the appraised value of the conservation easement (i.e., the value of the development rights that are permanently retired), up to a maximum of \$250,000 per easement. The transferability means that the landowner—even a nonprofit—can sell the credit to a third party, typically at a discount, and receive direct income from the sale. In the case of a nonprofit, that income is tax exempt.

Unfortunately, in the course of the feasibility study it was determined that UNM—the current owner of the D.H. Lawrence Ranch property—as an arm of state government would not qualify for the LCIA tax credit. According to 3-13-20 NMAC, which governs this program, qualifying entities include: “a United States citizen or resident, a United States domestic partnership, a limited liability company, a United States domestic corporation, an estate, including a foreign estate, or a trust. A non-profit may be a taxpayer if organized as a United States domestic partnership, a limited liability company, a United States domestic corporation or a trust. A governmental body or other governmental entity is not a taxpayer.”

The value of a conservation easement for tax credit purposes is determined through a specialized appraisal process known as a "before and after" method. The "before" value is a typical real estate appraisal of full market value at highest and best use; the "after" value is the reduced value of what the property will be worth once encumbered by a conservation easement with certain development rights permanently retired; and the difference between the two is the conservation easement value. The conservation easement value is considered a charitable contribution that can be used toward tax benefits. Estimates of the conservation easement value and tax credit potential are below, but this property would easily maximize the \$250,000 ceiling for the LCIA under any scenario.

A word of caution, that the appraisal can be a challenging part of the process and seldom turns out as favorably as landowners expect, but landowners and land trusts have little control over it. To qualify for a state tax credit the appraisal must follow very specific Uniform Standards of Professional Appraisal Practice and State of New Mexico guidelines. As part of the tax credit certification process, the appraisal must go through a thorough review by the New Mexico Taxation and Revenue Department (TRD). If TRD is not satisfied with any aspect of the appraisal methodology or final valuation, they will reject it, leading to far more time, trouble, and expense. As a result of this rigorous process, very few appraisers in New Mexico are qualified to undertake this type of appraisal and they tend to be conservative in their valuations.

Though the preservation of historic properties and buildings qualify as conservation purposes for this tax credit, there is no comparable transferable tax credit accessible to nonprofits specifically for historic preservation of the structures.

### Property and Conservation Easement Value Estimates

I am not an appraiser and this is not an appraisal. The values below are estimates based on the best available information and to be used as ballpark working figures only. There have been very few comparable sales that can be used for appraisal purposes in this area. Fortunately, there was one recent sale on a neighboring property that is comparable in terms of size and vegetation. We are also fortunate to also have an appraisal of a conservation easement on a comparable property just up the road in La Lama that we can look to for that part of the valuation. The estimates below are based primarily on that appraisal.

Real estate listings are not appraisals. And, in general, the larger the parcel, the lower the per-acre price (landowners are often disappointed to learn that the price for a single acre in their neighborhood does not necessarily translate into a per-acre price for a larger parcel). Nonetheless I also surveyed a selection of 17 MLS listings for similar properties of various sizes throughout the region to substantiate general “before” value estimates. Parcels ranging between 160 and 1,610 acres averaged \$5,285 per acre. Smaller parcels between 15 and 71 acres averaged \$17,738 per acre.

In 2008, 172 acres of the neighboring Donner Ranch, with similar vegetation but no improvements, sold for \$1,786,564, which comes to about \$10,400 per acre. The more recent 2009 appraisal of the La Lama property would have taken that 2008 sale into account and is far more useful for these purposes. That property is 105 acres, similarly wooded with some open meadow/pasture areas and some associated water rights. It is not adjacent to national forest land, like the D. H. Lawrence Ranch, but closer to the primary highway and probably comparable in terms of marketability and development potential. The La Lama property, also with no improvements, was appraised with a before value of \$2,205,000, an after value of \$1,660,000, and a conservation easement value of \$545,000. That comes to \$21,000 per acre, \$15,810 per acre, and \$5,190 per acre, respectively.

The buildings and improvements on the D. H. Lawrence Ranch are not included in the estimates below because they would be a “wash” on a conservation easement appraisal. That is, the value (or liability) of the improvements would be the same on the before and the after values, so would not affect the resulting conservation easement value.

#### La Lama per-acre values applied to the 160-acre D. H. Lawrence Ranch:

|  |             |
|--|-------------|
| Total before value   | \$3,360,000 |
| Total after value  | \$2,529,600 |
| Total conservation easement value for charitable contribution purposes | \$830,400   |
| 50% of the conservation easement/total potential tax credit            | \$415,200   |

The LCIA tax credit is capped at \$250,000 per conservation easement. Currently, however, landowners can legally donate conservation easements in annual phases to maximize the tax credit, but **only if each phase qualifies as a stand-alone easement** and only if the New Mexico

Natural Lands Protection Committee (NLPC), which reviews and certifies all tax credit applications, approves each phase. The NLPC has been known to be skittish about phasing or any other approach that appears to be gaming the system and has denied some phased applications.

Once certified, the tax credit(s) can be sold through a broker at typically about 80 percent of face value, after brokerage fees. If the landowner has an acquaintance or benefactor who can take advantage of the credit and is willing to pay more or even full price for the credit, it still legally has go through a broker but can be transferred for greater return.

Tax credit potential:

|  |           |
|--|-----------|
| Single phase at 80% net price                                | \$200,000 |
| Single phase at 100% sale price less 5% broker fee           | \$237,500 |
| Two phases/full credit at 80% net price                      | \$332,160 |
| Two phases/full credit at 100% sale price less 5% broker fee | \$394,440 |

**Costs**

Taos Land Trust is the local land trust and most appropriate for this project. The costs below are based in part on current Taos Land Trust Conservation Fee and Stewardship Fee policies. After a site visit and inspection, I determined that in addition to standard costs, at least a Phase I Environmental Review would be necessary (if not a Phase II Review), due to the likelihood of asbestos, lead paints, fuels, and other hazardous materials in the historic buildings and elsewhere on the property. Given the nature of this project, I assumed that some interested party may be able to volunteer *pro bono* legal advice.

For a single phase conservation easement:

|   |                  |
|---|------------------|
| Conservation Fee estimate<br>(includes title report, baseline documentation, tax credit applications) | \$9,000          |
| Geologist's Report  | 1,000            |
| Phase I Environmental Review<br>(if necessary)  | 2,500-5,000      |
| Legal counsel   | <i>pro bono?</i> |
| Stewardship Fee estimate  | <u>12,000</u>    |
| Total   | \$24,500-27,000  |

For two phases:

|   |                  |
|---|------------------|
| Conservation Fee estimate<br>(includes title report, baseline documentation, tax credit applications) | \$13,500         |
| Survey to divide into two phases  | 2,000            |
| Geologist's Report  | 1,000            |
| Phase I Environmental Review<br>(if necessary)  | 2,500-5,000      |
| Legal counsel   | <i>pro bono?</i> |
| Stewardship Fee estimate  | <u>12,000</u>    |
| Total   | \$31,000-33,500  |

I will not calculate the net income for all the various conservation easement and cost scenarios above, but the range is between \$173,000 on the low end to \$363,440 on the high end.

## **Timeline**

If a qualifying landowner placed a single conservation easement over the entire property, the process from initial engagement with a land trust to final tax credit sale would take 12 to 18 months. The easement process itself can be completed in a much shorter period, but the LCIA tax credit certification process is very time consuming, including: 1) a tax credit assessment application and comprehensive assessment report (on a shifting application deadline schedule); 2) a review and public hearing of the NLPC to consider the application; 3) the appraisal and other due diligence and submission of the final tax credit certification application; 4) the TRD review of the appraisal before the final tax credit is issued; and 5) the sale of the tax credit, which, due to this particular market, may not take place until the end of the calendar tax year.

If the state approved two phases for the conservation easement, the landowner is legally restricted to only one easement per tax year. The easement process for the second phase would be streamlined, as much of the work would be completed with the first phase, however the tax credit certification process would essentially double the time period to 24 to 36 months total.

## **Recommendations**

Since UNM does not qualify for LCIA tax credits, the first step for a conservation easement on the D. H. Lawrence Ranch would be to explore other legal ownership arrangements. The most obvious solution would be a sale or transfer to a nonprofit organization or other appropriate entity. New Mexico's anti-donation clause may prohibit a direct gift of the property. A knowledgeable attorney will be able to recommend workable ownership scenarios.

If UNM were to transfer ownership to a "Friends of" or other supporting organization, the university could continue to exercise some control over the property through a clear Memorandum of Agreement, which may or may not mitigate some of the anti-donation issues. The Harwood Alliance has established such a relationship with UNM and their MOA may provide an example (see Appendix B).

Once appropriate legal ownership is established, I recommend preparing an initial assessment application for the first of a two-phase project, including approximately 60 percent of the wild and undeveloped part of the property adjacent to the Columbine Hondo Wilderness Study Area, **not** including the historic area. That would maximize an estimated \$250,000 tax credit for the first phase with the estimated remainder of \$165,000 in the second phase. If the LCIA rejects that application due to its skittishness about phasing, then simply reapply for the entire 160 acres of the property and it would certainly be accepted, which would then yield a single \$250,000 tax credit.

A point of concern that has been raised by UNM regarding public access is liability, and that same issue would concern any owner. However, a New Mexico State statute (17-4-7 NMAC) essentially waives liability for landowners who allow public access for recreational purposes free

of charge. Depending on future status and activities on the property, this statute could be invoked to allow free access, at least on an interim basis while management plans are being formulated.

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Ernest Atencio is former executive director of the Taos Land Trust and has over 15 years of experience in land conservation planning, historic preservation, and land management. He holds a Masters degree in applied sociocultural anthropology.

## Appendices

Appendix A

Property Area Map

Appendix B

Harwood Alliance MOA [*not included in this version*]

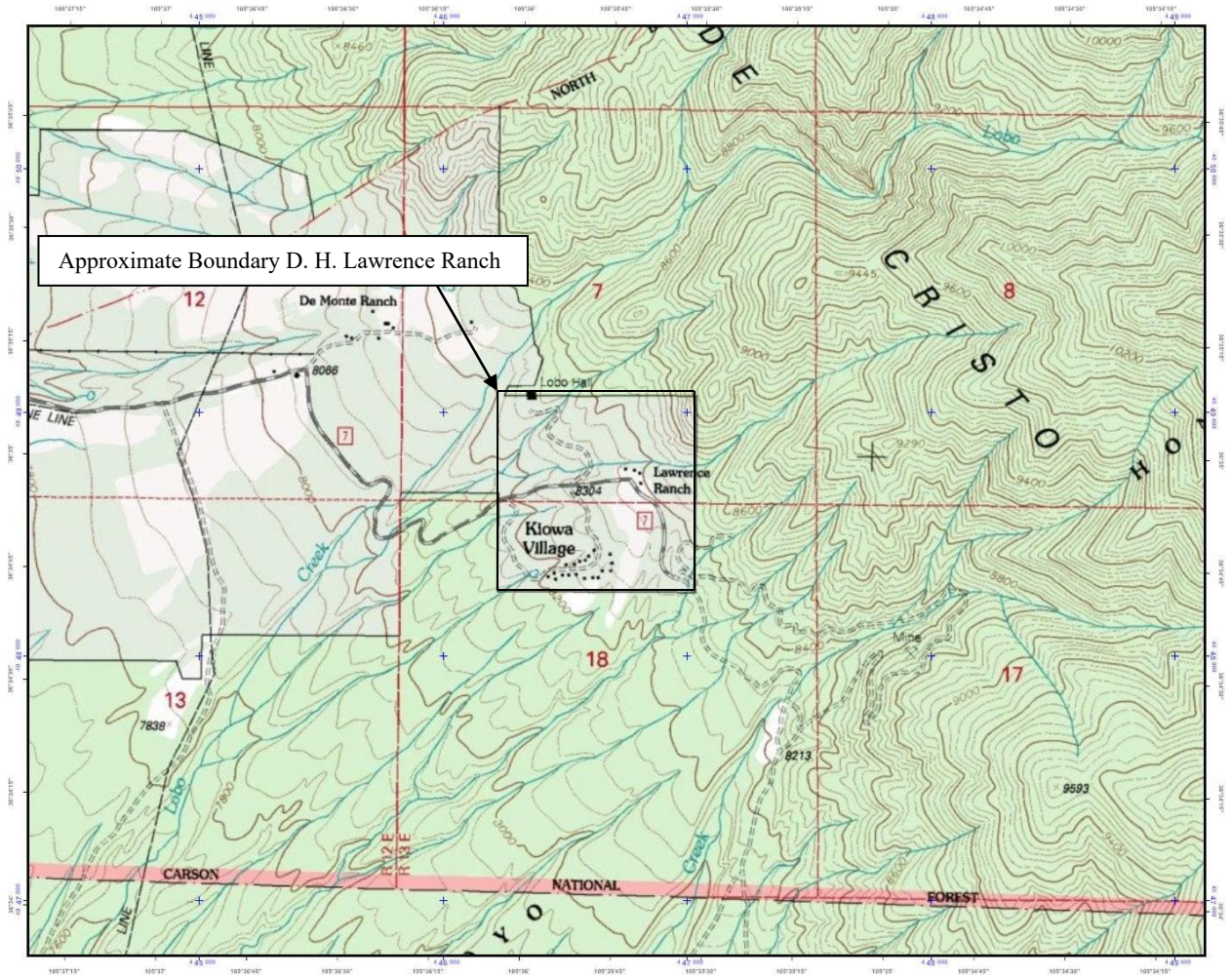
Appendix C

17-4-7 NMAC Regarding a Waiver of Landowner Liability

Appendix D

Photographs of Property

# Appendix A Property Area Map



Taken from a 1:10,000 Scale Map of the USGS Arroyo Seco Quad Topographic Map.

**Appendix C**  
**17-4-7 NMAC Regarding a Waiver of Landowner Liability**

**17-4-7. Liability of landowner permitting persons to hunt, fish or use lands for recreation; duty of care; exceptions.**

A. Any owner, lessee or person in control of lands who, without charge or other consideration, other than a consideration paid to said landowner by the state, the federal government or any other governmental agency, grants permission to any person or group to use his lands for the purpose of hunting, fishing, trapping, camping, hiking, sightseeing or any other recreational use does not thereby:

- (1) extend any assurance that the premises are safe for each purpose; or
- (2) assume any duty of care to keep such lands safe for entry or use; or
- (3) assume responsibility or liability for any injury or damage to, or caused by, such person or group;
- (4) assume any greater responsibility, duty of care or liability to such person or group, than if such permission had not been granted and such person or group were trespassers.

B. This section shall not limit the liability of any landowner, lessee or person in control of lands which may otherwise exist by law for injuries to any person granted permission to hunt, fish, trap, camp, hike, sightsee or use the land for recreation in exchange for a consideration, other than a consideration paid to said landowner by the state, the federal government or any other governmental agency.

**Appendix D  
Photographs of Property**



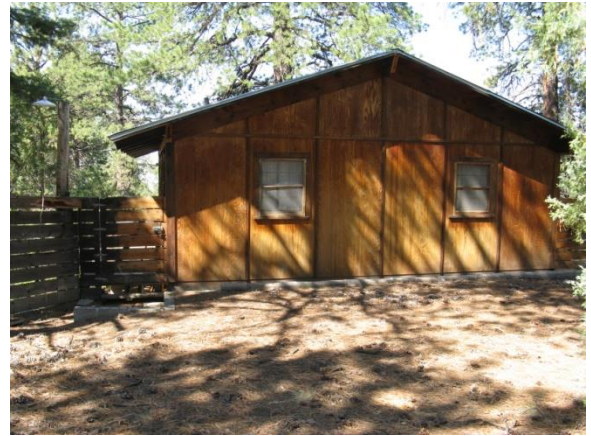
1. D. H. Lawrence Memorial



2. Homesteader's Cabin



3. Brett's Cabin



4. Fellowship Cabin



5. Representative "cabin" in Kiowa Village



6. Modified "cabin" in Kiowa Village



7. Lobo Hall



8. Lobo Hall



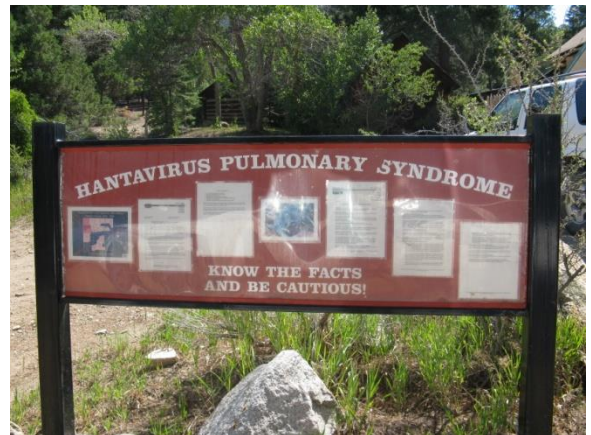
9. Pasture near historic buildings



10. Enclosed reservoir



11. Propane tank



12. Hantavirus warning