

# NEW MEXICO LAND CONSERVANCY MODEL DEED OF CONSERVATION EASEMENT

*The numbers in brackets [#s] in this document refer to notes at the end.*

This Deed of Conservation Easement ("Deed") is granted on this \_\_\_ day of \_\_\_\_\_, 201\_\_\_, by \_\_\_\_\_ [1], having an address at \_\_\_\_\_, (the "Landowner") to the New Mexico Land Conservancy, a New Mexico nonprofit corporation, having an address at P.O. Box 6759 Santa Fe, New Mexico 87502 (the "Land Trust"), for the purpose of forever conserving the \_\_\_\_\_ values [*tailor as necessary to describe conservation values of property, including scenic, open space, agricultural, wildlife, relatively natural habitat, recreational, educational, historic, etc.*] of the subject property (collectively and hereinafter, the "Conservation Values").

## RECITALS

A. Property. The Landowner is the sole owner in fee simple of the property, which consists of approximately \_\_\_\_\_ (\_\_\_\_) acres of land, located in \_\_\_\_\_ County, State of New Mexico, which is legally described in Exhibit 1 and shown in the map or survey in Exhibit 2 (the "Property"), both attached to and made a part of this Deed.

B. Water Rights. The Property has appurtenant water rights consisting of \_\_\_ acre feet of surface rights from the \_\_\_\_\_ [*name of source*] with a declared priority date of \_\_\_\_\_, which are more particularly described in Exhibit 3 (the "Water Rights").

## **OR IF APPLYING FOR STATE TAX CREDIT; RECOMMENDED LANGUAGE AS FOLLOWS:**

B. Water Rights. The Property has water rights for the irrigation of and appurtenant to \_\_\_ acres of land, from \_\_\_\_\_ (i.e. well, acequia, conservancy district), with a priority date of \_\_\_\_\_, which are more particularly described in Exhibit \_\_ (the "Water Rights"). In addition, the term Water Rights as used herein includes all of the Landowner's right, title, and interest in any and all water or water rights of any kind or nature located on or associated with the Property (including stock wells, domestic wells, and supplemental wells) whether or not adjudicated, permitted, or decreed. Any and all water associated with the Water Rights is sometimes referred to herein as the "Water."

C. Mineral Rights. The Landowner owns all mineral rights with respect to the Property. All mineral rights associated with the Property and owned by the Landowner as of the date of this Deed are governed by the terms of this Deed.

## **OR**

C. Mineral Rights. Certain mineral rights have been severed from the Property, but the possibility of future mining is so remote as to be negligible, as indicated by the geologist's report on

file with the Land Trust. All other mineral rights associated with the Property and owned by the Landowner as of the date of this Deed are governed by the terms of this Deed.

D. Natural Habitat and Biological Values. The Property consists of significant/relatively natural habitat and \_\_\_\_\_ [*List vegetative types, flora and fauna, highlighting any species that are unique, rare, threatened or endangered. Reference riparian areas, wetlands, rivers, streams, lakes, ponds, etc. Reference biologist's report, if any. Reference any adjacent protected areas.*]

E. Scenic Values. The Property includes scenic open space consisting of \_\_\_\_\_ [*Describe location, views and significant aesthetic features.*] The Property is visible from \_\_\_\_\_ [*Describe visibility from public roads and public lands and cite scenic designations, if any.*]

F. Agricultural Values. The Property is primarily [prime farmland or farmland of statewide significance/ranchland] including \_\_\_\_\_ [*Describe property and length of time in agricultural production, if known. Cite USDA soil classifications, if any.*]

G. Cultural/Historical Values. The Property contains \_\_\_\_\_ which is a historically important [*land area/certified historic structure/archeological site*]. [*Cite listing on the National Register, or date of certification by Secretary of the Interior.*]

H. Education and Recreation. The Property possesses educational and/or recreational values which benefit the general public and consist of \_\_\_\_\_ [*trails, lake appropriate for boating, fishing stream, etc.*]

I. Governmental Policies. The Property includes \_\_\_\_\_ [open space/farmland/forest land], the preservation of which is pursuant to the following clearly delineated (*federal, state or local*) governmental conservation policies:

[*Cite County and Municipal ordinances and resolutions, if any.*]

[*Sample state and federal legislation which may be cited if appropriate*]

( ) The New Mexico Land Use Easement Act, NMSA 1978, Sections 47-12-1 through 47-12-6, which aids the landowner who wishes voluntarily to donate a conservation easement intended to restrict the use of a specific parcel of land so as to maintain in perpetuity the character of the land.

( ) The New Mexico Land Conservation Incentives Act, NMSA 1978, Sections 75-9-1 through 75-9-6, which provides a tax credit to New Mexico taxpayers for the unconditional donation in perpetuity of land or interest in land that is conveyed for the purpose of open space, natural resource or biodiversity conservation, agricultural preservation or watershed or historic preservation.

( ) The New Mexico Cultural Properties Preservation Easement Act, NMSA 1978, Sections 47-12A-1 through 47-12A-6, which aids the landowner who wishes voluntarily to donate a conservation easement intended to restrict the use of a specific parcel of land so as to maintain in perpetuity the significant archeological or historical character of that land.

( ) The New Mexico Right to Farm Act, NMSA 1978, Sections 47-9-1 through 47-9-7, which declares the purpose "to conserve, protect, encourage, develop and improve agricultural land ... and to reduce the loss to the state of its agricultural resources."

( ) The New Mexico Watershed District Act, NMSA 1978, Sections 73-20-1 through 73-20-49, which states the Legislature's desire to further the "conservation ... of water, and thereby preserve and protect New Mexico's land and water resources."

( ) The New Mexico Industrial and Agricultural Finance Authority Act, NMSA 1978, Sections 58-24-1 through 58-24-23, which evidences the Legislature's concern for the maintenance of agriculturally productive resources, and its intention to encourage an increase in the inventory of agricultural lands and a resultant increase in the gainful employment of the citizens of the state.

( ) Property tax relief adopted by the State of New Mexico, which provides for tax relief for agricultural properties through a special method of valuation of land used primarily for agricultural purposes. NMSA 1978, Section 7-36-20.

( ) The Federal Farmers Home Administration (FmHA) Instruction 1951-S (7 C.F.R. 1951 Subpart S), which states a public policy to "keep the farmer on the farm."

( ) The Federal Farmland Protection Policy Act, 7 U.S.C. Sections 4201 through 4209, which committed the federal government to the goal of conserving farmland in carrying out its public works and other development projects.

J. Public Benefit. Conserving the Property is consistent with and important to the environment, culture, and economy of the surrounding area; and will result in a significant public benefit because:

*[May also add some or all of the following, and adjust depending upon the specific attributes of the property subject to the easement:]*

( ) The Property possesses significant natural habitat, biological, scenic, open space, and agricultural values of great importance to Landowner, to Land Trust, to \_\_\_\_\_ County, to the State of New Mexico, and to the people of this nation;

( ) Agriculture has been an integral part of the way of life in \_\_\_\_\_ County for centuries and should be preserved in order to protect the area's great natural beauty, scenic vistas, and way of life;

Open space has been an integral part of \_\_\_\_\_ County for centuries and should be preserved in order to protect the area's great natural beauty and scenic vistas;

The Property exists in an area where development is occurring and is expected to occur at an accelerated rate in the future;

The Property includes an acequia, long important to the irrigated farmland, agricultural productivity, traditional way of life and culture of the \_\_\_\_\_ area and northern New Mexico;

The use of the Property as stated in this Deed is intended to be consistent with public programs for conservation in the area, including programs for irrigation, soil protection, and agricultural uses;

The development of the Property would impair the scenic character of the local rural landscape and would contribute to the degradation of the natural character, agricultural productivity, riparian ecology, and wildlife habitat of the area;

The Property has been evaluated for scenic quality and found to be scenic and easily seen by the public; OR the Property has been evaluated for scenic quality using the [Name of Land Trust]'s Review Process for Scenic Attributes, a rigorous review process for scenic attributes, and found to be scenic, and easily seen by the public;

The Property represents a high quality example of a terrestrial/aquatic ecosystem OR is in a relatively natural state, and includes important habitat for \_\_\_\_\_ [provide a list of flora and fauna]

Portions of the Property contain \_\_\_\_\_ [ruins, petroglyphs, etc.] of an archeological and historic nature.

The Property provides public recreational opportunities such as \_\_\_\_\_.

The Property provides public educational opportunities such as \_\_\_\_\_.

K. Baseline Documentation Report. The characteristics of the Property and its current use and the status of improvements and development are described in a Baseline Documentation Report (the "Baseline") prepared by the Land Trust with the cooperation of the Landowner. The Baseline has been acknowledged by the Land Trust and the Landowner to be complete and accurate as of the date of this Deed. Both the Land Trust and the Landowner have copies of this report, and a copy will be retained in the Land Trust's files. The Baseline will be used by the Land Trust to assure that any future changes in the use of the Property will be consistent with the terms of this Deed.

L. Qualifications. The Land Trust is a nonprofit, tax-exempt organization qualified under Sections 501(c)(3) and 170(b)(1)(A)(vi) of the Internal Revenue Code (the "Code"), a "qualified

organization" as defined by Section 170(h)(3) of the Code, a qualified "holder" as defined by Section 47-12-2A of the Land Use Easement Act and an eligible holder pursuant to the Land Conservation Incentives Act.

M. Purpose and Intent. The Landowner intends to make a charitable gift to the Land Trust of the property interest conveyed by this Deed for the purposes of assuring that, under the Land Trust's perpetual oversight, the Conservation Values will be maintained forever, and uses of the Property that are inconsistent with the Conservation Values will be prevented or corrected (the "Conservation Purposes"). [2] Subject only to the Conservation Purposes set forth above, the intent of the parties is to permit all other uses of the Property which are not inconsistent with the preservation and protection of the Conservation Values as determined by the Land Trust in its sole discretion and which are not expressly prohibited herein. Nothing in this Deed is intended to compel a specific use of the Property, such as agriculture, other than the preservation and protection of the Conservation Values. [3] The conveyance of this Deed will not adversely affect contiguous landowners' existing property rights.

### ***AGREEMENT***

NOW, THEREFORE, in consideration of the mutual promises and covenants contained herein, the Landowner voluntarily grants and conveys to the Land Trust, and the Land Trust voluntarily accepts, a perpetual "land use easement" over the Property, as defined by Section 47-12-2B of the Land Use Easement Act (the "Easement"), which is also a "qualified real property interest" as defined by Section 170(h)(2)(C) of the Code, the conveyance of which is the gift of a "qualified conservation contribution" as defined by Section 170(h) of the Code.

1. General Rights Retained by Landowner. Landowner reserves to himself/herself and to his/her personal representatives, heirs, successors, and assigns, all rights not expressly prohibited or limited by this easement, including all rights accruing from his/her ownership of the Property, the right to engage in or permit or invite others to engage in all uses of the Property that are not expressly prohibited herein and are not inconsistent with the purpose of this easement, the right to exclude any member of the public from trespassing on the Property, the right to sell or otherwise transfer the Property to anyone they choose, and the right to mortgage the Property, so long as the mortgage is subordinated to this Deed.

2. Uses of the Property. The Landowner shall not perform, nor knowingly allow others to perform, any act on or affecting the Property that is inconsistent with the Conservation Purposes enumerated in this Deed. The Landowner and the Land Trust acknowledge, however, that the uses of the Property and the improvements to the Property described in this Deed and in the Baseline are consistent with the Conservation Purposes. The Landowner understands that nothing in this Deed relieves them of any obligation or restriction on the use of the Property imposed by law.

A. Subdivision. *[The legal description of the Property in Exhibit 1 may identify or include one or more legal parcels.]* The Landowner and the Land Trust agree that the Property must be sold as a single unit and that any further division or subdivision of the Property is prohibited. *[For agricultural or other non-residential purposes, Grantee may approve limited divisions of the Property in its sole discretion.]* Creation of a condominium or any *de facto* division of the Property is prohibited. Lot line adjustments or lot consolidation without the prior written consent of the Land

Trust is prohibited. The Property [can/cannot] be used to meet density requirements for building or development outside the Property, [*eliminate following phrase or tailor to specific situation*] except for the addition of \_\_\_\_\_ within the [building envelope] as shown on the map or survey. The Landowner may transfer undivided interests in the Property, provided, however, that no cotenant or owner of an undivided interest shall have the right, either independently or through legal action, to have the Property physically or legally partitioned. The Landowner shall notify the Land Trust immediately of the name and address of any grantee of an undivided interest in the Property. [4]

B. Construction. In general, all existing \_\_\_\_\_ (*buildings, and agricultural structures and improvements, etc.*) on the Property may be maintained, repaired, and replaced in their current locations. The construction of any new temporary or permanent buildings, facilities, or structures of any kind is prohibited except as follows:

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[*Tailor to specific situation. Can include language about building envelopes and homesites, size and height limitations, major vs. minor agricultural structures, fences, lighting, colors, building materials, mobile homes/temporary structures, repair, maintenance, replacement, enlargement, etc.*] At least 30 days prior to undertaking any construction permitted herein, and prior to applying for a building permit for such construction, the Landowner shall notify the Land Trust in writing and provide the Land Trust with the opportunity to review the plans for such construction for compliance with the terms of this Deed.

### **SAMPLE LANGUAGE FOR BUILDING ENVELOPES AND MINOR AGRICULTURAL STRUCTURES:**

- i. Building Envelope – As shown on the map set forth in Exhibit \_\_\_ attached hereto and made a part of this Deed, a building envelope is located around a portion of the existing ranch headquarters and is \_\_\_\_\_ acres in size. Within this building envelope the Landowner is allowed to construct, enlarge, maintain, repair or replace existing and new buildings and agricultural structures provided however that the maximum allowable cumulative footprint for all buildings and associated agricultural structures shall not exceed \_\_\_\_\_ square feet. However, as part of the structures allowed within the Building Envelope, the Landowner may construct non-commercial alternative energy infrastructure related to wind energy production for use on the Property (*Tailor to type and use or property, some properties are not conducive to wind energy because of effects on scenic and wildlife habitat conservation values*). The footprint of such infrastructure shall contribute to and be limited by the allowable square footage under the terms of this Deed, but shall not be restricted in height. All other buildings and structures located within Building Envelope shall not exceed \_\_\_ feet in height.
- ii. Minor Agricultural Structures and Improvements. All existing agricultural structures and improvements on the Property may be maintained, repaired, reasonably enlarged and replaced in their current locations. (*Tailor to type and use of property*) New loafing sheds; corrals; windmills; water tanks; above and below ground water transmission pipes; small diesel, gasoline, and solar pumps; earth dams for erosion control and water storage; and other minor agricultural structures and improvements may be constructed anywhere on the Property. Existing fences may be repaired and replaced, and new fences may be

built anywhere on the Property for the purposes of reasonable and customary management of livestock. Major agricultural structures, such as barns, stables, garages and storage sheds, are not permitted outside the Building Envelopes described in paragraphs \_\_\_\_\_ of this Deed.

C. Water Rights. Except as specifically provided below, the voluntary separation of Water Rights from the Property is prohibited. The Landowner shall take all prudent measures, including timely payment of assessments, beneficial use of water, and participation in conservation programs, to avoid forfeiture or abandonment of the Water Rights. Should the Landowner be notified for any reason regarding possible forfeiture or abandonment of any of the Water Rights, the Landowner shall immediately notify the Land Trust in writing and arrange for the beneficial use of the Water Rights on the Property. If for any reason the Landowner is unable to beneficially use the Water Rights on the Property, the Landowner shall (i) transfer the Water Rights to the Land Trust or to a third party designated by the Land Trust, to be used for beneficial conservation purposes on the Property or elsewhere in \_\_\_\_\_ County, or otherwise consistently with the Land Trust's mission; (ii) with the express written consent of the Land Trust, lease the Water Rights to a third party; or (iii) with the express written consent of the Land Trust, place the Water Rights in a conservation program approved by the Land Trust.

**OR IF APPLYING FOR STATE TAX CREDIT; RECOMMENDED LANGUAGE AS FOLLOWS:**

C. Water Rights

(a) *Beneficial Use*. The Landowner shall continue to use the Water Rights in a manner and for a use consistent with the Conservation Values and shall take all prudent measures to avoid loss of the Water Rights, including: (i) beneficially using the Water; (ii) timely paying applicable assessments; (iii) complying with permit requirements, if any, and (iv) applying for extension of time in which to complete any of the foregoing.

(b) *Alternative Uses*. The Landowner may temporarily lease the Water Rights to a third party. Landowner may participate in a conservation program approved by the Office of the State Engineer, acreage reserve program or conservation reserve program established by federal law and recognized under state law, water bank authorized by state law, strategic water reserve administered by the Interstate Stream Commission, or any similar program under which the Water Rights will not be lost, forfeited, or abandoned. Any such alternative use of Water or the Water Rights, however, may only be done with the prior written consent of the Land Trust, in a manner and for a use consistent with the Conservation Values, and in no event for a domestic, municipal, or industrial use.

Any water rights lease agreement shall contain a provision authorizing the Landowner the right to immediately terminate the lease so as to ensure the agricultural, natural habitat, and scenic values of the conservation easement are maintained and preserved in accordance with the terms and conditions of this easement.

In the event the Landowner leases water rights to a third party, the following condition shall be included in any lease agreement: Due to the conservation easement recorded at Book \_\_\_ Page \_\_\_, encumbering the land to which the leased water rights are subject, lessor hereby expressly reserves the right to terminate this lease, at any time, upon thirty days written notice to lessee. Lessee hereby expressly agrees to waive any and all claims against the lessor for any damages resulting from the termination of this lease. Failure to include this condition shall be deemed a violation of the conservation easement.

(c) *No Abandonment.* Abandoning the Water Rights or taking any action from which abandonment might reasonably be implied is prohibited.

(d) *No Forfeiture.* If the Landowner is ever notified or aware of any possible forfeiture of any of the Water Rights, the Landowner shall immediately notify the Land Trust in writing and: (i) arrange for the beneficial use of the Water; (ii) arrange for an extension of time to put the Water to beneficial use; and/or (iii) establish, to the Land Trust's reasonable satisfaction, entitlement to a lawful exemption from the requirements of beneficial use as provided by state law. Similarly, if the Land Trust ever independently becomes aware of any possible forfeiture of any of the Water Rights, the Land Trust may require that the Landowner take advantage of one or more of the options described above.

(e) *No Severance.* Changing any element of the Water Rights (including priority, amount, purpose, and place of use) is prohibited. In no event shall any use or disposition of the Water or the Water Rights permitted by this Section (Water) be allowed to result in the severance of the Water Rights from the Property.

D. Agriculture. All farming, ranching, and agricultural practices shall be conducted in a sustainable manner, and in keeping with practices that are best suited for the conservation of soil and water, the maintenance of soil and water quality, and so as to avoid erosion, overgrazing, soil contamination, and water pollution. The establishment of any feedlot (defined as a permanently constructed confined area or facility within which the land is not grazed or cropped annually, and which is used for the concentrated feeding and/or slaughter of animals) on the Property is prohibited. The Landowner and the Land Trust desire to encourage the continuation of agricultural activities on the Property and to provide sufficient flexibility so that the Landowner can take advantage of appropriate practices and technologies in the future, all in a manner consistent with and in furtherance of the Conservation Purposes.

[*Optional language*]: Agricultural practices shall use stewardship and management practices generally consistent with the standards of the U.S. Natural Resources Conservation Service or other commonly accepted sound management practices.]

E. Timber. Clear cutting is prohibited. Notwithstanding, limited cutting and removal of timber or wood products, consistent with the Conservation Values, is permitted to thin stands appropriately for fire management, to control insects or disease, to prevent personal injury and property damage, to maintain the character and nature of the existing natural habitat, and to prevent encroachment into agricultural fields and pastures; and to provide firewood for use on the Property and posts for maintaining and constructing fences on the Property. [*If Landowner wants to retain the right*



*for future use of the Property as a tree farm, or for limited, sustainable timber harvesting, add language relevant to those activities and a statement that these activities may not compromise the Conservation Values. Working forest easements or easements which contemplate substantial timber harvesting require additional language and should include the preparation of a forest management plan, at the Landowner's expense, along with notice to or approval by the Land Trust.]*

F. Utilities. Above ground utilities (including electric, sewer, water, telephone, cable, gas, *etc.*), except for those currently located on the Property or specifically anticipated by the Landowner and described in the Baseline, are prohibited. Prior to placing any utilities underground, the Landowner shall notify the Land Trust in writing, specifying the type and location of such utilities and the steps to be taken to protect the Conservation Values. (*May need to make exceptions to this in some cases to allow for cell towers, solar panels, etc.*)

G. Roads and Trails. In general, the maintenance, repair and reconstruction of existing roads and trails are allowed. The construction of new roads and trails, or the widening or paving of existing roads or trails, is allowed at the sole discretion of the Land Trust. In addition, the following roads and associated construction are allowed under the terms of this Deed:

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*[Tailor to specific situation; specify access roads, improved vs. unimproved, surface requirements, temporary roads for agricultural purposes, and prohibitions if desired.]* At least 30 days prior to undertaking any the construction of any new roads permitted herein, and prior to applying for any permits necessary for such construction, the Landowner shall notify the Land Trust in writing and provide the Land Trust with the opportunity to review the plans for such construction for compliance with the terms of this Deed.

*[Optional language]:* Temporary, unimproved, unpaved roads for agricultural and property management purposes (i.e. roads used to maintain fences and water systems) may be constructed provided that these temporary roads are allowed to return to a natural condition after their use is discontinued.

*[Optional language]:* Wherever possible, construction and reconstruction of any roads shall be consolidated so as to minimize the number and length of roads and road cuts on the Property, and to minimize the visibility of roads and road cuts from areas surrounding the Property.

H. Off-road vehicle use. Use of snowmobiles, ATVs, motorcycles or other motorized vehicles off of roads or travelways, is prohibited except for agricultural, hunting, property maintenance or emergency access purposes.

I. Impervious Surfaces. Paving, covering, or treating the soil with an impervious surface including concrete, asphalt, or any other material, is prohibited except for existing or new paved roads specifically permitted by this Deed or as foundations for construction specifically permitted by this Deed. Any use of the Property which causes any of its surfaces, other than roads permitted pursuant to subparagraph G above, to become relatively impervious or eroded (either through compaction, denuding the land, or otherwise) is prohibited. Helicopter landing pads and airstrips are prohibited.

J. Mining. Soil, sand, gravel, and rock may be extracted from the Property provided that such extraction is solely for use on the Property, that not more than one-quarter acre of the Property is disturbed at any one time by such extraction, that the Grantor restores the extraction site to a natural condition after the extraction has occurred, and that such extraction is done in a manner consistent with the Conservation Purposes and is consistent with Section 170(h) of the Code and the Treasury Regulations adopted pursuant thereto. Any other mining or extraction, or consent by the Landowner to any mining or extraction, of soil, sand, gravel, rock, hydrocarbons, or any mineral substance, using a surface mining method or any other extractive technique that is inconsistent with the Conservation Purposes, is prohibited. Consent to any mining or surface mining on the Property under the New Mexico Surface Mining Act, Sections 69-25A-1 to 69-25A-35 NMSA 1978 or its successor statute, or any other New Mexico surface mining consent law, is prohibited. In addition, no mining shall be conducted within \_\_\_\_\_ (\_\_\_\_) feet of \_\_\_\_\_. [*Specify any distances such activity must be from public roadways, property boundaries, wetlands and other sensitive areas.*]

K. Refuse. The dumping, accumulation, or storage of any kind of refuse on the Property is prohibited. Should accumulations of refuse be found on the Property, it is the Landowner's responsibility to remove it. Nothing in this section ("Refuse"), however, shall prevent composting of biodegradable materials, the storage of agricultural supplies, agricultural equipment, agricultural products and timber products on the Property, so long as such storage is done in a manner consistent with the Conservation Purposes. [*May want to consider designating a specific dumpsite on larger, agricultural properties*].

[*Optional language*]: The dumping, accumulation, or storage of any kind of refuse on the Property, with the exception of reasonable accumulations of ranch-related materials (including barbed wire, metal parts, and other ranch related non-combustible materials), is prohibited. Should the accumulation of ranch-related refuse produce a detrimental impact on the Conservation Values of the Property, it shall be the Landowner's responsibility to remove it.

L. Hazardous Materials. Landowner may use agri-chemicals on the Property in accordance with all applicable federal, state, or local laws. Otherwise, the treatment, permanent storage, disposal or release of hazardous materials on, from or under the Property is prohibited. For the purpose of this Deed, hazardous materials shall mean any hazardous or toxic material or waste that is subject to any federal, state, or local law or regulation ("Hazardous Materials").

M. Commercial Activity.

(a) *Generally*. Commercial or industrial activity related to the producing, buying, or selling of goods or services are prohibited, with the exception of home occupations or recreational activity (both described below), and commercial activity related to agricultural products grown on the Property and agricultural services performed on the Property.

(b) *Home Occupations*. Nothing in this section ("Commercial Activity") shall prohibit the conduct of "home occupations" permitted by applicable zoning codes, if any, which home occupations are carried out exclusively within structures permitted by the terms of this Deed, and which home occupations are consistent with the Conservation Purposes.

(c) *Commercial Recreation.* Use of the Property for more than “*de minimis*” commercial recreational activity is prohibited. The term “*de minimis*” shall have the meaning set forth in as per 2031(c)(8)(B) of the Code and the Treasury Regulations adopted pursuant thereto. Golf courses are prohibited on the Property.

N. Recreation. Only those low-impact recreational uses such as wildlife viewing, hiking, biking, horseback riding, cross-county skiing, snowshoeing, hunting and fishing not inconsistent with the preservation and protection of the Conservation Values are permitted. Buildings and facilities for public or private recreational use may be built on the Property only in accordance with Section 2(B), and then only in a manner that is consistent with the preservation and protection of the Conservation Values of the Property. Off road use of all-terrain vehicles and snowmobiles is not permitted on the Property except as provided in subparagraph H above. [5]

O. Public Access. This Deed is not intended to provide for public access to the Property. The Landowner retains the right to allow public access to the Property in the future provided that such public access complies with the terms of this Deed and is consistent with preservation of the Conservation Values. The Land Trust shall have no obligation to take any action to prevent trespassing on the Property. [6]

P. Signs. Signs are permitted for purposes of identifying the Property as private property, posting the Property against trespassing or hunting, identifying the Property as protected by the Land Trust, trail markers, “for sale” signs or any posting or notice required by law. All other signs are prohibited. Signs shall not exceed two (2) by two (2) feet in size, be made with reflective surfaces, or be artificially illuminated. *[In some cases, may want to consider allowing for a limited number of entrance signs on larger properties.]*

3. Perpetual Duration. The Easement shall run with the land in perpetuity. Every provision of this Deed that applies to the Landowner or Land Trust shall also apply to their respective heirs, executors, administrators, assigns, and all other successors in interest as their interests may appear. A party's rights and obligations under this Deed terminate upon transfer of the party's interest in this Deed or the Property except that liability for acts or omissions prior to transfer shall survive transfer.

4. Responsibilities of Landowner. Other than as specified herein, this Deed is not intended to impose any legal or other responsibility on the Land Trust, or in any way to affect any obligation of the Landowner as owner of the Property. Additionally, unless otherwise specified below, nothing in this Deed shall require Landowner to take any action to restore the condition of the Property after any Act of God or other event over which Landowner had no control. Landowner shall continue to be solely responsible and Land Trust shall have no obligation for the upkeep and maintenance of the Property and Landowner understands that nothing in this Deed relieves Landowner of any obligation or restriction on the use of the Property imposed by law. Among other things, this shall apply to:

(a) *Taxes.* The Landowner is solely responsible for payment of all taxes and assessments levied against the Property. If the Land Trust is ever required to pay any taxes or assessments on its interest in the Property, the Landowner shall reimburse the Land Trust for

the same, and until such reimbursement occurs, such payment shall constitute a lien on the Property.

(b) *Upkeep and Maintenance.* The Landowner is solely responsible for the upkeep and maintenance of the Property.

(c) *Liability and Indemnification.* The Landowner is solely responsible for liability arising from or related to the Property, including injury (bodily or otherwise) or damage to any person or organization directly or indirectly caused by any action or omission of the Landowner. If the Land Trust is ever required by a court to pay damages resulting from personal injury, property damage, loss, or theft that occurs on the Property, the Landowner shall indemnify and reimburse the Land Trust for these payments, as well as for the Land Trust's costs and reasonable attorneys' fees and other expenses of defending itself, unless the Land Trust or any of its agents have committed a deliberate act that is determined by a court to be the proximate cause of the injury or damage.

(d) *Insurance.* Landowner warrants that the Land Trust is and will continue to be an additional insured on Landowner's liability insurance policy covering the Property. Landowner shall provide certificates of such insurance to Land Trust within thirty (30) days after the date of recordation of this Deed and subsequently, upon Land Trust's written request therefor. Landowner shall advise Land Trust at least thirty (30) days in advance of cancellation of any insurance policy.

5. Landowner Warranties.

(a) *Title Warranty.* The Landowner warrants that the Landowner has good and sufficient title to the Property, and that there are no liens on, leases to, pending or threatened litigation relating to the Property, or other interests in the Property, including verbal agreements, that have not been disclosed to the Land Trust in writing. The Landowner hereby promises to defend the Property and the Easement against all claims from persons claiming by, through, or under the Landowner.

[OR, if there is a mortgage on the property:]

(a) *Title Warranty.* The Landowner warrants that the Landowner has good and sufficient title to the Property, that the lien on the Property held by \_\_\_\_\_ dated \_\_\_\_\_, has been subordinated to this Deed as shown in Exhibit 4, and that there are no other liens on, leases to, or other interests in the Property that have not been disclosed to the Land Trust in writing. The Landowner hereby promises to defend the Property and the Easement against all claims from persons claiming by, through, or under the Landowner.

(b) *Environmental Warranty.* The Landowner warrants that the Landowner has no knowledge of a release or threatened release of Hazardous Materials on the Property. The Landowner shall indemnify, defend, and hold harmless the Land Trust against all litigation, claims, demands, penalties, damages, losses, and expenses of any kind, including reasonable

attorneys' fees, arising from or connected with any release of Hazardous Materials or violation of federal, state, or local laws. Nothing in this Deed shall be construed as giving rise to any right or ability in Land Trust, nor shall Land Trust have any right or ability, to exercise physical or managerial control over the day-to-day operations of the Property, or otherwise to become an operator with respect to the Property within the meaning of the Comprehensive Environmental Response, Compensation and Liability Act of 1980, as amended, or successor statutes.

6. Inspection.

(a) *Annual.* With reasonable advance notice to the Landowner, representatives of the Land Trust may enter the Property at reasonable times for the purpose of inspecting the Property to determine if there is compliance with the terms of this Deed. Inspections will generally occur once a year but may occur whenever the Land Trust deems appropriate.

(b) *Emergency.* If the Land Trust believes or has reason to believe that there is an ongoing, imminent, or threatened violation of the terms of this Deed, the Land Trust may enter the Property for the purpose of inspecting the Property to determine if there is compliance with the terms of this Deed. The Land Trust will use good faith efforts to contact the Landowner, but the Land Trust may enter the Property without the Landowner's knowledge or presence.

7. Enforcement. The Land Trust has all the rights, remedies, and powers to enforce the terms of this Deed against the Landowner that are provided by law or in equity, including mediation or arbitration, which shall be pursued prior to court action, if in the sole discretion of the Land Trust such is feasible. Except when an ongoing or imminent violation could irreversibly diminish or impair the Conservation Values, the Land Trust shall give the Landowner written notice of the violation and thirty (30) days to correct it before filing any legal action. If a court with jurisdiction determines that a violation may exist or has occurred, the Land Trust may obtain an injunction to stop the violation, temporarily or permanently, and to restore the Property to its condition prior to the violation. In any case where a court finds that a violation has occurred, the Landowner shall reimburse the Land Trust for all its expenses incurred in stopping and correcting the violation, including reasonable attorneys' fees and court costs. If the court finds no violation, the Landowner and Land Trust shall each bear their own expenses and attorneys' fees. The Landowner and the Land Trust agree that this allocation of expenses is appropriate in light of the potential disparate financial incentives of the Landowner and the Land Trust and the Land Trust's public benefit mission.

8. Transfer of Easement. The Easement, and the rights and responsibilities contained in this Deed, may be transferred by the Land Trust to another organization only pursuant to the subsections below:

(a) *Involuntary.* If the Land Trust ever ceases to exist or no longer qualifies under Section 170(h)(3) of the Code or applicable state law, a court with jurisdiction shall transfer the Easement to another organization having similar purposes, that is qualified under Section 170(h)(3) of the Code, the Land Use Easement Act, the Land Conservation Incentives Act, and other applicable state law, and that agrees to monitor the Easement and enforce the terms of this Deed.

(b) *Voluntary.* If the Land Trust ever wishes voluntarily to transfer the Easement, the Land Trust will notify the Landowner in writing and give the Landowner sixty (60) days from receipt of notification in which to deliver any preferences the Landowner may have regarding a successor organization. The Land Trust shall give due consideration to Landowner's choice of successor grantee. The Easement may be transferred only to another organization having similar purposes, that is qualified under Section 170(h)(3) of the Code and applicable state law, and that agrees to monitor the Easement and enforce the terms of this Deed.

9. Amendment. The Landowner and the Land Trust recognize that circumstances could arise which might justify the modification of certain provisions of this Deed. The Landowner and the Land Trust have the right to agree to amendments to this Deed provided that, in the reasonable discretion of the Land Trust, such amendment has a neutral effect or enhances the Conservation Values. In no event, however, shall any amendment be made that: (i) adversely affects the qualification of the Easement under any applicable laws, including the Land Use Easement Act, the Land Conservation Incentives Act, and Section 170(h) of the Code; (ii) adversely affects the status of Land Trust under any applicable laws, including Section 501(c)(3) of the Code; (iii) affects the perpetual duration of this Deed; or (iv) permits any additional homesites. This Deed shall not be altered, changed, or amended other than by a written instrument executed by the parties and recorded in the Office of the County Clerk of the county in which this Deed was recorded. Nothing in this section ("Amendment") shall require the Landowner or the Land Trust to agree to, or negotiate regarding, any proposed amendment.

10. Termination.

(a) *Condemnation.* If all or a part of the Property is taken for public use (or sold to a public authority under threat of condemnation), and the Easement is terminated in whole or in part, then the Land Trust shall be entitled to a percentage of the condemnation award or sale proceeds equal to the ratio, as of the date of this Deed, of the appraised value of the Easement to the unrestricted fair market value of the Property. The parties stipulate that the Land Trust's share of said proceeds is equal to \_\_\_\_% and the Landowner's share of the proceeds is equal to \_\_\_\_% of the value of the fee unencumbered by this Easement as determined on the date of this Deed and that such percentage shall remain constant.

(b) *Changed Conditions.* The Landowner and the Land Trust recognize that conditions on or surrounding the Property could change so much in the future that it becomes impossible to protect and preserve the Conservation Values. The Landowner and the Land Trust have the right to jointly request that a court with jurisdiction terminate all or a portion of the Easement created by this Deed and order the sale of the Property. The irreversible loss of all of the Conservation Values is the only grounds under which this Deed may be terminated. Upon such termination of the Easement and sale of the Property, the Land Trust shall be entitled to a percentage of the sale proceeds equal to the ratio, as of the date of this Deed, of the appraised value of the Easement to the unrestricted fair market value of the Property. This percentage shall remain constant. The parties stipulate that the Land Trust's share of said

proceeds is equal to \_\_\_\_% and the Landowner's share of the proceeds is equal to \_\_\_\_% of the value of the fee unencumbered by this Easement as determined on the date of this Deed and that such percentage shall remain constant.

[If the Landowner is not seeking a tax deduction for the donation of the Easement, a specific percentage from the appraisal should be substituted for the ratio described in subsections (a) and (b) above.]

(c) *Other Termination Provisions.* The Easement conveyed by this Deed constitutes a property right, immediately vested in the Land Trust, which the parties stipulate to have a fair market value determined as set forth above. Nothing in this section ("Termination") shall require the Landowner or the Land Trust to agree to, or negotiate regarding, any proposed termination. Any funds received by the Land Trust pursuant to this section ("Termination") shall be used by the Land Trust in a manner consistent with the Conservation Purposes exemplified by this Deed.

(d) *Economic Value.* The fact that any use of the Property that is expressly prohibited by this Deed, or any other use determined by the Land Trust to be inconsistent with the Conservation Purposes of this Easement, may become greatly more economically valuable than permitted uses hereunder, or that neighboring properties may in the future be put entirely to uses that are not permitted hereunder, has been considered by the Landowner in granting this Easement. It is the intent of both Landowner and Land Trust that any such changes should not be assumed to be circumstances justifying the termination or extinguishment of this Easement. In addition, the inability to carry on any or all of the permitted uses, or the unprofitability of doing so, shall not impair the validity of this Easement or be considered grounds for its termination or extinguishment.

11. Approvals. Before doing anything that requires the Land Trust's consent or approval pursuant to this Deed, the Landowner shall seek such approval from the Land Trust in writing. Any consent or approval by the Land Trust permitted or required by this Deed for uses or acts that are conditional or not expressly reserved by the Landowner may be granted only if the Land Trust has determined in its reasonable discretion, that the proposed use or act conforms to the intent of this Deed, meets any applicable conditions stated herein, and is consistent with and not to the detriment of the Conservation Purposes. The Land Trust shall respond in writing within forty-five (45) days of receipt of the Landowner's written request thereof.

[Optional language]: Compliance Certificates. Within thirty (30) days following receipt of written request from the Landowner, the Land Trust shall execute a compliance certificate and deliver it to the Landowner to certify to the best of the Land Trust's knowledge the Landowner's compliance (or noncompliance) with any obligation of the Landowner contained in this Deed.

12. Notices.

(a) *Generally.* Any notices permitted or required by this Deed shall be in writing and shall be personally delivered or sent by certified U.S. mail, return receipt requested.

(b) *Current Addresses.* As of the date of this Deed, the addresses for the Landowner and the Land Trust are as follows:

To the Landowner: \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

To the Land Trust: New Mexico Land Conservancy  
P.O. Box 6759  
Santa Fe, NM 87502

All parties shall be notified of any change of address.

(c) *Permanent Addresses.* In addition to the foregoing, the address of the Property, as stated in the recitals, shall always be a valid address for notices to the Landowner, and the address of the Land Trust's registered agent, on file with the State of New Mexico, shall always be a valid address for notices to the Land Trust.

13. Transfer of the Property. The Landowner reserves the right to transfer the Property in its entirety at any time. Anytime the Property itself, or any interest in it, is transferred by the Landowner to any third party, the Landowner shall notify the Land Trust in writing at least thirty (30) days prior to the transfer of the Property, and the document of conveyance shall expressly refer to this Deed.

[**Optional language:** The Landowner reserves the right to transfer the Property in its entirety at any time. If the Property consists of more than one legal parcel and the Landowner wishes to transfer a portion of the Property, the Landowner must request approval for such partial transfer of the Property from the Land Trust at least sixty (60) days prior to the transfer of the Property, which approval the Land Trust may in its sole discretion grant or deny. Anytime the Property itself, any approved portion of it or any interest in it, is transferred by the Landowner to any third party, the Landowner shall notify the Land Trust in writing at least thirty (30) days prior to the transfer of the Property, and the document of conveyance shall expressly refer to this Deed.]

14. Subsequent Mortgages. No provision of this Deed should be construed as impairing the ability of Landowner to use the Property as collateral for subsequent borrowing. Any mortgage or lien arising from such a borrowing is subordinate to this Deed.

15. Waiver. No term of this Deed shall be deemed waived unless such waiver is in writing signed by the party making the waiver. No forbearance, delay, or failure to exercise any right, power, or remedy shall impair such right, power, or remedy, shall be construed as a waiver of such right, power, or remedy, or shall prevent the exercising of such right, power, or remedy in the future.

16. Incorporation. The recitals set forth at the beginning of this Deed, and any exhibits referenced herein and attached hereto, are incorporated herein by this reference.



17. Interpretation. This Deed was negotiated and entered into in the State of New Mexico and shall be governed by the laws of the State of New Mexico. This Deed shall not be interpreted for or against any party on the basis of authorship, but rather shall be interpreted so as to give maximum protection to the Purpose of this Deed. The captions and section headings of this Deed are not intended or represented to be descriptive of all the terms thereunder, and such captions and section headings shall not be deemed to limit, define, or enlarge the terms of this Deed. The use of the words "include" and "including" shall be construed as if the phrases "without limitation" or "but not [be] limited to" were annexed thereafter.

18. No Third Party Beneficiaries. This Deed is entered into by and between the Landowner and the Land Trust, and is intended solely for the Landowner and the Land Trust and their respective successors and assigns, and does not create rights or responsibilities in any third parties.

19. Counterparts. The parties may execute this Deed in two or more counterparts which shall, in the aggregate, be signed by all parties; each counterpart shall be deemed an original instrument as against any party who has signed it; all counterparts, when taken together, shall constitute a single agreement.

20. Severability. If any provision of this Deed or the application thereof to any person or circumstance is found to be illegal, invalid, or unenforceable, the remainder of the provisions of this Deed shall not be affected thereby.

21. Integration. This Deed sets forth the entire agreement of the parties with respect to the easement and supersedes all prior discussions, negotiations, understandings, documents, or agreements relating to this Deed or the Easement.

22. Recording. The Land Trust shall record this Deed in a timely fashion in the official records of \_\_\_\_\_ County, New Mexico, and Land Trust may re-record it at any time to preserve its rights in this Easement.

23. Acceptance. Pursuant to the Resolution of the Board of Directors of the Land Trust adopted on \_\_\_\_\_, 200\_\_, attached hereto as Exhibit 5, the Land Trust has accepted the Easement conveyed by this Deed and the rights and responsibilities described in this Deed.

To Have and To Hold, this Deed of Conservation Easement unto the Land Trust, its successors and assigns, forever.

In Witness Whereof, the Landowner and the Land Trust, intending to legally bind themselves, have set their hands on the date first written above.





Exhibit 1 to Deed of Conservation Easement

**LEGAL DESCRIPTION**

*[To be added.]*

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Exhibit 2 to Deed of Conservation Easement

**MAP OR SURVEY OF PROPERTY**

*[To be added.]*

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Exhibit 3 to Deed of Conservation Easement

**WATER RIGHTS**

*[To be added.]*

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**MORTGAGE SUBORDINATION AGREEMENT**

For good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the undersigned \_\_\_\_\_, a \_\_\_\_\_, as Mortgagee of that certain Real Estate Mortgage recorded \_\_\_\_\_, 20\_\_ in Book \_\_\_\_\_ at page \_\_\_\_\_ in the records of the \_\_\_\_\_ County Clerk, \_\_\_\_\_ County, New Mexico, hereby consent to the execution of that certain Deed of Conservation Easement by \_\_\_\_\_, as Landowners, to the New Mexico Land Conservancy, a New Mexico nonprofit organization, as Land Trust, subordinate the lien of the Real Estate Mortgage to the Deed of Conservation Easement, and agree that any foreclosure of the Real Estate Mortgage shall not adversely affect the existence or continuing validity of the Deed of Conservation Easement, which Deed of Conservation Easement shall run with the land and remain in full force and effect as if such Deed of Conservation Easement were executed, delivered, and recorded prior to the execution, delivery, and recording of the Real Estate Mortgage. This subordination of \_\_\_\_\_ mortgage shall pertain only to the property described in the attached exhibit.

IN WITNESS WHEREOF, the undersigned has executed this Subordination as of \_\_\_\_\_, 20\_\_.

[Name of Mortgagee]

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

*[Add acknowledgment block for representative of mortgagee]*

Exhibit 5 to Deed of Conservation Easement

**RESOLUTION BY THE BOARD OF DIRECTORS OF  
THE NEW MEXICO LAND CONSERVANCY  
REGARDING THE \_\_\_\_\_ CONSERVATION EASEMENT**

The following Resolution was passed by the Board of Directors of the New Mexico Land Conservancy on \_\_\_\_\_, 200\_\_, as recorded in the Minutes of the Board Meeting:

"RESOLVED by the Board of Directors of the New Mexico Land Conservancy that a Deed of Conservation Easement from \_\_\_\_\_ to the New Mexico Land Conservancy, conserving certain conservation [*natural habitat, agricultural, scenic open space, educational, recreational or historic*] values on \_\_\_\_\_ (\_\_\_\_) acres of land, be accepted by the New Mexico Land Conservancy, and that the New Mexico Land Conservancy accepts all of the rights and responsibilities described in said Deed, and that the Chair of the Board of Directors of the New Mexico Land Conservancy is hereby authorized by the Board of Directors to act on its behalf to finalize and execute said Deed on behalf of the New Mexico Land Conservancy."

By: \_\_\_\_\_  
(Print Name)  
Secretary, Board of Directors

Date: \_\_\_\_\_

## NOTES TO MODEL DEED

[1] Individuals: if property is owned by a single person, the landowner should be described as “John Doe a single person.” If a married couple dealing in community property, the description would read “John and Jane Doe, husband and wife.” If a married person dealing in their separate property (acquired before the marriage or after the marriage by gift or bequest), then “John Doe, dealing in his sole and separate property, joined *pro forma* by his wife Jane Doe.” There should be a signature line for Jane Doe on page 16, and a separate notary block for her on page 17. If property is owned jointly, also state whether they hold the property as joint tenants with right of survivorship (which means that the property passes automatically to the survivor upon the death of the other), or as tenants in common (in which the decedent’s partial interest does not automatically pass to the survivor). All joint tenants and tenants in common (including holders of undivided partial interests) must sign the deed.

Corporations, etc.: if property is owned by a corporation, partnership, limited liability company, professional association, or other form of business entity, the deed should be signed by someone authorized by the organization’s bylaws and by resolution (Exhibit 5). The notary block should read “The foregoing instrument was acknowledged before me this \_\_\_\_ day of \_\_\_\_\_, 20\_\_, by \_\_\_\_\_, the \_\_\_\_\_ of the \_\_\_\_\_ [name of organization]. The signer is generally the president, executive director, general partner of a partnership, or managing member of an LLC.

[2] If the easement is purchased rather than donated, substitute the following language: “The Landowner intends that, under the Land Trust’s monitoring and enforcement, the Conservation Values of the Property will be maintained forever , and that uses of the land that are inconsistent with these Conservation Values will be prevented or corrected (the “Conservation Purposes”). The parties agree that the current uses of and improvements to the Property described in this Deed are consistent with the Conservation Purposes of this Deed.” If the easement is conveyed through a bargain sale, then retain the original language of this recital (because there is a charitable gift involved, although not as large a gift as with an outright easement donation).

[3] The land trust may wish to seek the landowner's input in this Recital to aid in judicial interpretation in the future.

[4] As noted above, if property is held in joint tenancy, upon the death of one joint tenant, the property automatically passes, by operation of law, to the survivor. In the case of tenants in common, any one of the co-tenants can seek physical partitioning of the property by a court.

[5] Internal Revenue Code Section 2031(c) provides for the exclusion of an additional percentage of the value of the property from an estate, in addition to the reduction in value already attributable to the easement. In order to qualify, the easement must prohibit all but minimal (“de minimis”) commercial recreational use of the land. A golf course is clearly a commercial recreational activity. A hunting area to which the landowner charges an admission fee may be considered more than “minimal” commercial recreational use, depending on the frequency and intensity of this activity (and perhaps the income derived from the activity, compared to income derived from agricultural or ranching operations). In order to determine whether commercial recreational use is more than

“minimal,” the land trust will need to rely on instinct. As a U.S. Supreme Court justice described pornography: “I can’t define it, but I know it when I see it.”

[6] Easements that are exclusively for historic preservation require some public access – at a minimum, three or four days per year for easements that are designed to protect the interior of a property, or a property that is not readily visible from a public roadway or area. If a preservation easement concerns a fragile archaeological site, or an area that poses a threat to public safety (i.e., an open mineshaft or the La Brea tar pits), then public access is not required.

Here is sample language regarding historic preservation easement access:

Public Access. The parties acknowledge that as of the effective date of this Easement, the Building is used for residential purposes, and is not open to the public. At times deemed reasonable by Landowner and approved by Land Trust, but no fewer than three times per year, persons affiliated with educational organizations, professional architectural associations, and historical societies may be admitted to study the Building. Land Trust may take photographs, drawings, or other representations documenting the significant historical, cultural and architectural character and features of the Building and distribute them to magazines, newsletters, or other publicly available publications, or use them to fulfill its charitable and educational purposes.

#### Contact Information:

New Mexico Land Conservancy  
Mailing Address: P.O. Box 6759, Santa Fe, NM 87502  
Physical Address: 5430 Richards Ave., Santa Fe, NM 87508  
Tel: (505) 986-3801  
Fax: (505) 986-3806  
Email: [info@nmlandconservancy.org](mailto:info@nmlandconservancy.org)  
Web: [www.nmlandconservancy.org](http://www.nmlandconservancy.org)