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Open Space in New Mexico: An Analysis of Land Trusts and Land-Use Regulations

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Land trusts have used voluntary, financially compensating tools such as land purchases and conservation easements to protect more than four million acres of significant private land in the United States. In New Mexico, all of the state's trusts are located in the north, within the cultural melange of Albuquerque, Santa Fe, and Taos. Even in a state with intense land-development pressure and a large contingent of environmentally aware residents, trusts have conserved only 25,000 acres. Southern New Mexico has no trusts and no open-space protection efforts except for the work of The Nature Conservancy. Statewide, as long as trusts continue to achieve only modest success, regulatory land-use planning must suffice to conserve open space. Yet, subdivision regulations, zoning, comprehensive planning, and state-sponsored efforts are proving inadequate. At present, neither approach is achieving significant results in preserving New Mexico's open landscapes. *Key Words: land trusts, open space, land-use regulation, New Mexico.*

Land trusts are the most rapidly growing vernacular mechanism for shaping the character of rural and urban-fringe environments in the United States (Wright 1998, 1993a). Land trusts are non-profit organizations that focus on landscape conservation—the protection of culturally and ecologically important properties from inappropriate types and densities of development (Miller and Wright 1991; Wright 1992). Geographers and planners are just now beginning to consider the role of this technique of landscape protection.

Previous research indicates that historical geography, development pressures, and prevailing cultural ideologies largely explain the distribution and effectiveness of land trusts from place to place (Wright 1998, 1994a, 1993b; Sargent *et al.* 1991; Parsons 1985). Other workers, however, largely attribute the pattern and degree of land trust "success" to disparities in technical expertise (Mantell *et al.* 1990;

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Stokes and Watson 1989; Brenneman and Bates 1984; Whyte 1959). On the whole, insufficient work has been done that dispassionately compares trusts with regulatory land-use planning systems as instruments of open-space conservation.

In this study, we will: (1) briefly review the origin and national pattern of land trusts, (2) locate New Mexico's land trusts and review their goals and accomplishments, and (3) discuss the effectiveness of trusts and compare this record with that achieved by New Mexico's local land-use regulatory systems.

Land Trusts

Land trusts are private, non-governmental organizations (NGOs) formed to conserve tracts of land that are deemed to have agricultural, scenic, ecological, recreational, or historical importance. These distinctive NGOs employ voluntary, negotiated, financially compensating tools to achieve their diverse missions. "Conservation real estate" transactions are structured to meet the needs of the land, landowner, and land trust. These techniques include: conservation easements, purchased development rights, fee-simple purchases, land donations, transferred development rights, and land exchanges. In 1995, the Land Trust Alliance reported that trusts had conserved more than four million acres in the United States (Land Trust Alliance 1995).

Conservation easements are a particularly important land-trust mechanism and account for 740,000 of the total protected acreage. In a conservation easement, private landowners donate land-use rights to a trust in exchange for income, estate, and other tax benefits (Wright 1994b, 1993c). The land stays in private hands and on the tax rolls. Only those rights of use that would significantly alter the landscape, such as subdivision, mining, timber clearcutting, and industrial enterprises, are perpetually restricted. Unlike governmental regulatory devices such as subdivision regulations and zoning, a conservation easement is a permanent, legally binding agreement to essentially maintain the land-use *status quo*. Easements, however, can be designed to incorporate some development and responsible resource use. It is this suppleness and strength that makes easements so appealing to both conservationists and concerned landowners.

Critiques of the land-trust approach tend to focus on its voluntary nature

(owners of key lands may not choose to conserve), its lack of linkage to comprehensive planning efforts (protected lands may already be served by expensive, publicly funded infrastructure), and the expenditure of tax revenues for the conservation of spatially isolated shards of open space (Wright 1992; Whyte 1968). Yet, counterarguments have been asserted that also debunk the "mandatory" nature of regulatory systems of land-use control (Little 1990; Collins *et al.* 1988; Wolf 1981). In practice, traditional subdivision and zoning schemes are often greatly weakened by politically expedient decision-making, variances, and re-zonings. This is particularly true in rural settings; for example, between 1975 and 1995, in Montana, over ninety percent of all lots were created without any review by planning agencies, despite the existence of a subdivision law requiring it (Wright 1993d).

Regulatory and voluntary systems each have assets and liabilities (Wright 1993a). Each state or county presents a different regulatory setting that must be considered when land trusts are assessed. Counterintuitive patterns sometimes emerge. A lack of effective land-use regulation might be seen as an incentive for trusts to form. The data, however, reveal that jurisdictions with the most stringent regulatory systems often have the most land-trust activity—*i.e.,* the most concern for "place." Yet, some states with relatively weak subdivision regulations have achieved tremendous gains in open-space protection through land-trust activity (Montana, Wyoming, and Texas, for instance).

Land trusts originated in Boston in 1891 with the formation of the Trustees of Reservations (Miller and Wright 1991). The idea of land-saving was accepted but spread slowly. By 1950, there were just fifty-three trusts in the country, most of which were in New England. By 1965, some 132 trusts existed in twenty-six states. Ten years later, the tally had risen to 308 as environmental concern rose following the first nationwide Earth Day celebration, in 1970. In 1981, the Land Trust Alliance (LTA) was formed (originally called the Land Trust Exchange). Spurred on by the technical assistance of this "umbrella" organization, local land trusts began to grow in number and diffuse widely. By 1989, there were 743 groups (Land Trust Alliance 1989). Two years later, this number had climbed to 857 (Land Trust Alliance 1992). A 1995 national survey found 1,095 trusts in operation (Land Trust Alliance 1995). We estimate that there are now approximately 1,250 local

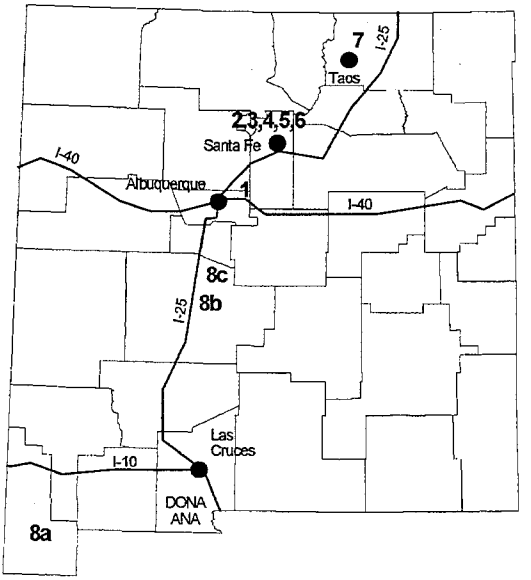
groups working in forty-eight states. New England still contains the most (450), with Massachusetts and Connecticut each having over a hundred trusts. The Southwest has the fewest organizations (15), with Arizona having eight, and New Mexico, seven.

The astonishing rise in the number and accomplishments of local land trusts is a significant fact with which geographers who study landscape change must contend. Yet, over three-quarters of all groups have formed in the last twenty years, and they have yet to create a significant geographical imprint. Data from LTA surveys indicate that voluntary conservation requires a long learning-curve for both staff members and the general public. Of those groups with more than 10,000 acres protected, seventy-five percent have been in existence for more than twenty-five years (Land Trust Alliance 1995). The intricacies of real estate and tax law (Small 1997; Wright 1994b), negotiation, open-space planning, and fundraising are skills that take years for trust staff members to acquire. Previous analysis revealed that, in general, those groups that have been in existence the longest, employ trained personnel, and have budgets in excess of $50,000 have the greatest success (Wright 1992). Examples exist, however, of relatively rapid success in settings where development pressure is extreme and experienced conservationists are on staff (Wright 1993a). The Montana Land Reliance has secured donated conservation easements on more than 225,000 acres in twenty years, with at least 105,000 acres of this total coming since 1995 (Wright 1998).

But what is the case in New Mexico? How are land trusts faring in this rapidly growing state? To what degree are regulatory systems of planning playing a role in conserving landscapes?

Land Trusts in New Mexico

There are seven local and regional land trusts in New Mexico, all of them located in the northern half of the state and clustered around the rapidly growing communities of Albuquerque, Santa Fe, and Taos (Figure 1). The Nature Conservancy, an international group, has a strong presence in the state but will be largely excluded from this analysis. The emphasis here is on *local* actions to protect open space within the Rio Grande corridor, where 80 percent of New Mexicans reside.



1. Albuquerque Conservation Trust
2. Forest Trust
3. Santa Fe Conservation Trust
4. Canyon Preservation Trust
5. Arroyo Hondo Land Trust
6. Tesuque Land Trust
7. Taos Land Trust
8. The Nature Conservancy
   a. Gray Ranch
   b. Bosque del Apache National Wildlife Refuge
   c. Sevilleta National Wildlife Refuge

60 0 60 120 180 Miles

Figure 1. Land trusts in New Mexico.

The more cosmopolitan north is the first part of New Mexico to manifest the national trend of land-trust formation. No trusts are yet functioning in the remainder of the state, even in Las Cruces, which is the fastest growing community in the "Land of Enchantment." While this pattern is striking, it does not mean

that trusts are widely accepted in northern New Mexico. A phone survey of land-trust directors in that region revealed that the success of the approach has been very uneven.

The Albuquerque Conservation Trust operates in the metropolitan region around the rapidly growing city of Albuquerque. Open space of various types, including urban growth buffers, natural habitat, and scenic lands, are targeted by the organization. Their projects thus far have involved cooperative efforts, such as the creation of Petroglyph National Monument. The controlling of growth has not been widely accepted by citizens of the robustly booming "Duke City."

The village of Corrales has now largely been absorbed by Albuquerque. Small building lots in the community now sell for between $50,000 and $80,000. William O'Connor of the Corrales Land Trust attributes the group's lack of success to these high land values and the fact that, in his view, "we were ten to twenty years too late." This small trust, incorporated in 1992, failed to complete any land-protection projects before shutting down operations in 1997.

The Santa Fe area is home to five of New Mexico's seven trusts: the Forest Trust, the Santa Fe Conservation Trust, the Canyon Preservation Trust, the Arroyo Hondo Land Trust, and the Tesuque Land Trust. Spreading suburban and rural residential development is stimulating a wide variety of land-conservation efforts around the "City Different."

The Forest Trust was formed in 1984 and is the oldest such organization in the state. This group has a professional staff of eight, and four separate programs: forestry development in rural communities, national-forest planning and policy, land stewardship services, and land conservation (Wright 1994c). Their land-trust efforts have permanently protected more than 6,500 acres from development through conservation easements. Another 20,000 acres are under conservation agreements prohibiting forest clearcutting—a possible prelude to eventual conservation-easement restrictions. Some 50,000 additional acres of forests and rangelands are directly managed by staff members to ensure stewardship and forestall subdivision and development. Relations between Anglo conservationists from Santa Fe and rural Hispanos have improved by linking economic development with environmental stewardship.

The Santa Fe Conservation Trust seeks to conserve key natural open space, scenic vistas, and trail corridors. In the four years of its existence, this group has completed twenty-one conservation easements that protect more than 18,000 acres from subdivision. Easements have been completed in Santa Fe, Rio Arriba, and San Miguel counties, ranging in size from two to 5,100 acres. All of the landowners involved in these transactions, however, have been Anglos; the legacy of land-grant swindles and uncertain land tenure makes Hispanos reticent to restrict the use of their property. The trust also facilitated two land exchanges to provide greater recreational access to public lands around Santa Fe.

The Canyon Preservation Trust was established in 1991 to conserve and restore habitats in the Santa Fe River corridor. While just thirty-seven acres have been formally protected, the group is leading restoration efforts along a two-mile-long reach of the river. These efforts are seen as a possible lead-in to formal conservation easements on adjacent lands.

The Arroyo Hondo Land Trust was established in 1991 to secure open space on the southeastern fringe of Santa Fe. This "neighborhood trust" holds easements on 100 acres owned by wealthy Anglos. In recent years, the rise of the Santa Fe Conservation Trust has tended to overshadow the efforts of this small group.

The Tesuque Land Trust strives to maintain the ecological and cultural integrity of a small village north of Santa Fe. This group has focused its work on the creation of a master plan for local land use. No conservation easements or other land-protection projects have been completed.

The Taos Land Trust was established in 1988 and languished for several years. In the past three years, however, the group has hired two staff members and completed a dozen conservation easements totaling more than 1,100 acres. Ten additional transactions are slated to close during 1998, some of which involve Hispano landowners. Targeted lands include agricultural properties, scenic vistas, wildlife habitats, and historic sites in the Taos region. The trust also assisted Taos Pueblo in purchasing 14,000 acres in the Sangre de Cristo Mountains encircling Blue Lake—a sacred site.

Although the land trusts of New Mexico have conserved open space and show promise, the data indicate that they are currently fighting a losing battle

against the forces of development. New Mexico is a state with a complex mosaic of public and private lands. Of the state's total of 77,866,240 acres, thirty-four percent is in federal ownership, twelve percent is state land, ten percent is found on Indian reservations, and the remaining forty-four percent is in the hands of private owners (Williams 1986). The state's seven land trusts have conserved only 25,737 acres, far less than one percent of the state's privately owned acreage. While it certainly matters *which* land is protected, the land-trust totals are meager thus far.

The land purchases and conservation-easement projects of The Nature Conservancy (TNC) in New Mexico total more than one million acres, or some three percent of the state's private lands. These projects include the 320,000-acre Gray Ranch purchase in the bootheel region, the establishment of the Sevilleta and Bosque del Apache national wildlife refuges, and several conservation easements on large ranches (see Figure 1). However, much of TNC's work has been in remote, biologically significant areas where development pressure is far less intense than within the state's urbanizing landscapes. Also, given the biotic mission and national funding base of TNC, their work is not comparable to local land trusts that are contending with community open-space issues. Unless or until there is a significant increase in the rate of land conservation by trusts, the future development or conservation of New Mexico's private lands must be viewed in the context of local land-use regulation.

Land-Use Regulations in New Mexico

There are four general facets of New Mexico's land-use regulatory setting that must be considered: subdivision regulations, zoning, comprehensive planning, and the role of state government. State law requires that counties and cities enact subdivision regulations to control the type and manner of land splitting (NMRS 1978, 46-6-1, 47-6-29). This is the most widespread form of land-use regulation in the state. In order to determine the status of subdivision regulations, the New Mexico Department of Finance and Administration (DFA) conducted a survey of cities and counties (Hughes *et al.* 1997). The DFA report showed that twenty-six of the twenty-seven counties surveyed had subdivision regulations, but only sixty-six percent of cities did. Furthermore, it was found that even in jurisdictions

with regulations in place, the utility of subdivision measures in controlling growth was severely limited. Only plats where single-family detached housing would be built were eligible to be reviewed by planners. Subdivision laws in New Mexico also exclude an analysis of the location or the timing of development. Only design guidelines are provided.

Zoning was also found to be largely ineffective for contending with land conservation. While the State of New Mexico's survey found that fifty-four out of seventy-four cities had zoning ordinances, open-space matters were not much addressed (Hughes *et al.* 1996). County governments were even less likely to adopt zoning because of widespread opposition from conservative rural landowners. Only thirteen of the twenty-seven counties surveyed reported having a zoning ordinance. Furthermore, only eleven of the twenty-seven counties were using extraterritorial zoning to contend with land-use change along urban borders. These statistics reveal that more than one-half of the state's unincorporated, privately held land—half of the state's local open-space lands—are not subject to any significant degree of land-use control.

In New Mexico, comprehensive plans have been completed by fifty-seven of the seventy-four cities and twenty-two of the twenty-seven counties. A "Comp Plan" is not a regulation; rather, it is a series of policy statements concerning how a city or county should develop in the future. However, the state survey disclosed that an essential element of comprehensive planning, the mapping and analysis of land-use patterns, was not present in all plans. Some ninety-one percent of county plans contained a "land use" element, with seventy-two percent of city plans mentioning this critical matter.

Even when plans were in place, the land-use categories of most importance to conservation (such as open space, agriculture, and wildlife management) were not being widely addressed. Open space was discussed in sixty-eight percent of county plans, but in only thirty-five percent of city plans. Agriculture (a major portion of the state's open land) was evaluated by seventy-three percent of county plans, yet only sixteen percent of city plans mentioned this vital activity. Wildlife management received little attention from both counties (14 percent) and cities (7 percent).

The state's role in land-use regulation is the final factor in the planning process. This takes the form of state statutes and state-agency involvement in contending with land-use change. State law conveys broad authority to counties and cities to regulate land use. The statewide survey showed that most local jurisdictions have used this power to some degree. There is little coordination of efforts, however, and no state-initiated regional land-use plans have been enacted.

The regulatory approach to limiting the development of open space has severe limitations. New Mexico's subdivision law only deals with residential lot splitting, with most of this review focused on septic-tank permits, road access, and the availability of services. Illegal subdivisions and lesser evasions of the act have also greatly reduced its effectiveness (Wright 1995). Zoning is ill suited to open-space issues since the degree of control necessary to maintain land in a fundamentally undeveloped state is consistently viewed by the courts as a "taking" under the United States Constitution. Comprehensive plans largely fail to address open space in a systematic way, and they rarely call for land purchases or conservation easements to implement findings. State law also makes it clear that comprehensive plans are only advisory (NMRS 1978, 3-21-5). This explicit flexibility allows local governments to make decisions that are contradictory to expressed policies. A state court recently ruled that the City of Las Cruces could deviate or disregard their own plan even when an adjacent jurisdiction disagreed with the change in land use *(Town of Mesilla* 1997). State involvement, which could possibly mediate such regional-planning conflicts, is largely absent because of mistrust and political power struggles.

Discussion

In northern New Mexico, the weaknesses of the regulatory approach to controlling development are counterbalanced to some degree by the existence of local land trusts. In the future, as these groups complete more projects and cooperation with city and county governments increases, open-space conservation has the potential to become a significant force in the shaping of future landscapes. The increasing success of the Forest Trust, the Santa Fe Conservation Trust, and the Taos Land Trust seems to be following the national trend for this method of

protecting open space. A new organization, 1000 Friends of New Mexico, has recently formed to advocate growth management. Thus far, this group has focused its efforts on the Albuquerque-Santa Fe region. The recent strengthening of state land-use planning laws suggests the possibility of growth control and open-space measures being more broadly considered in the future (Hughes *et al.* 1997). In time, more land trusts may form to play a role in resolving these issues.

The fundamental weakness of the land-trust model, however, is that it is voluntary. People must choose to form trusts, and landowners must choose to conserve their property. Across much of New Mexico, there are no trusts, and only the actions of The Nature Conservancy—often at great distance from Las Cruces and other developing areas—show the potential of voluntary, compensating methods of conserving open land. In most areas, regulatory systems are all that exists to contend with the development of agricultural land and other open space. Dona Ana County (Las Cruces) is typical. Recent studies suggest that the absence of either an effective land trust or a rigorous set of land-use controls may be having long-term consequences for agriculture and open space.

Dona Ana County is the most urbanized county in southern New Mexico. In 1990, the county population was 135,510, with half these residents found in the city of Las Cruces. The southern end of the county is an agricultural region known for the growing of pecans, chilis, and cotton. These farmlands, however, are now being rapidly urbanized due to population spillover from El Paso, Texas, *colonia* (shantytown) development, and in-migration. The population of this farming landscape is expected to increase from 18,585 in 1990 to 61,152 by 2015 (Dona Ana County 1994). Much of this growth is expected to occur in the verdant Rio Grande Valley. The *Dona Ana County South Valley Transportation Master Plan* states: "Given the current ordinances regulating land use, development will probably radiate from existing communities transforming the land from agricultural and/or open space to residential subdivisions and commercial operations" (Armer 1992: 27).

The Dona Ana County comprehensive plan also indicates that as many as 5,000 acres of agricultural land could be converted to residential uses over the next twenty years. This figure represents five percent of the total irrigated acreage in the valley (Czerniak 1994). Most of this conversion is expected to take place in

close proximity to El Paso. Farmland will likely be transformed into a mosaic of hobby farms, rural residences, and urban neighborhoods.

This rapid rate of land conversion highlights the need for effective means of conserving agricultural land and other forms of open space. In the absence of land trusts, zoning has been the only tool available to planners. However, it has been highly ineffective. The county comprehensive plan states:

> The number of farms in Dona Ana County is growing while the size of individual/family farms is decreasing. The clear trend in the county is toward smaller but more numerous farms. Small acreage operations may prove more susceptible to urbanization and rural residential development than large established enterprises. (Dona Ana County 1994: 38)

The county comprehensive plan, although stronger than previous efforts, does not address the conservation of agricultural land. Nowhere in the plan is open-space protection a stated goal. In fact, two goals related to agriculture are in conflict: (1) to encourage rural and low-density residential areas in the valley south of Las Cruces; and (2) to develop programs that enable agricultural uses to remain economically viable (Dona Ana County 1994: 51, 39). The first goal promotes land conversion and injures the second by making agriculture less feasible as an industry. Given this striking conflict, it is inevitable that the amount and pace of land development will increase.

This conversion will have two impacts. First, the physical appearance of the county's rural landscape will be degraded by a loss of green space. Second, the most important industry in the county will be seriously weakened, or even lost. It is clear that without some form of action, agricultural lands and open space along the lower Rio Grande Valley cannot survive.

Given that Dona Ana County has the most stringent regulations in southern New Mexico, it is likely that other counties will also continue to lose key open lands to development. Despite the appearance of greater regulatory control, the same fundamental ineffectiveness also plagues northern New Mexico (Wright 1994c). Land trusts do exist in the north, however, and they may, in time, mitigate this shortcoming. Given the absence of trusts, southern New Mexico remains the most challenging portion of the state for open-space advocates.

Conclusion

This analysis of land trusts and land-use regulations in New Mexico illustrates three important points for grounding further investigations of open-space issues. First, land trusts have a stellar national record that may not be easily replicated in all settings. Second, the regulatory approach to protecting open lands is defined by severe legal and attitudinal limits. And third, if open landscapes are to become conserved, geographers and planners must face this conundrum with an eye toward creating durable, long-term solutions to the critical problem of disappearing "places." At present, neither land trusts nor land-use regulations are proving truly effective at conserving open space.

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