

Tax Credits for Land Conservation
A Users Guide
(Includes Text of Measure)

September 2000

Introduction

In 2000 the Legislature passed and the Governor signed legislation which allows private landowners to donate their land or water rights to state or local agencies or nonprofit organizations for land conservation purposes. Senator Jack O'Connell of Santa Barbara was the author of this legislation. Governor Davis strongly supported the legislation.

The purpose of this guide is to help landowners, public agencies, and nonprofit organizations make use of this landmark legislation to preserve land and water for future generations of Californians.

Organization of this Guide

This guide is in three parts. The first describes the land conservation tax credit program in a series of questions and answers. The second is a section by section description of the legislation. The third is a copy of the legislation itself.

The legislation was passed in two separate bills. The first was SB 1647. The second was AB 522. The second bill amended several sections of the first bill. The text in part three of this guide is a combination of the two bills, as they will eventually appear in the Public Resources and Revenue and Taxation Codes.

Questions and Answers

What is the program?

What is this new program?

The Natural Heritage Preservation Tax Credit Act allows the donation of property to state or local agencies or nonprofit organizations, and gives the donor a partial state tax credit.

What can be donated?

Land, rights to land (such as conservation easements), water rights, and land with accompanying water rights can all be donated. To simplify this guide, the term "land" is usually used, but it should be read to include land as well as water rights.

Tax Credits vs Deductions

What's the difference between a tax credit and a tax deduction?

A normal gift of land to a government agency or nonprofit organization allows the donor to take a tax deduction for the fair market value of the land. The donor reduces his or her taxable income by the amount of the gift. Then tax is calculated based on the remaining taxable income.

In the case of the tax credit, the tax on taxable income is calculated, and then the amount of the tax is reduced by 55% of the value of the contribution. Here are two examples. In each case, the donor's taxable income is \$4 million, and the donation of land is worth \$100,000.

Tax deduction		Tax Credit	
Taxable income	4,000,000	Taxable Income	4,000,000
Charitable gift of land	-100,000	State Tax Rate	X .09
Net taxable income	3,900,000	Initial Tax	360,000
State Tax rate	X .09	Tax credit for donation	- 55,000
Total tax	351,000	Total Tax	310,000

In both cases, a federal tax deduction would still be available. For higher income donors, the value of the tax deduction may be up to 30% of the value of the land. Added to the 55% tax credit, the donor can recover up to 85% of the value of the land. Since there is no capital gains that has to be paid (See Tax Implications section), the donor may find a donation is far more advantageous than selling the land, and in fact may be highly motivated to use the program, as opposed to selling.

How is this different from the usual charitable contribution of land?

The main difference is that the donor receives a tax credit, which is of great financial advantage compared to a tax deduction (see above). There are several restrictions on donations, but these are generally similar to those found with respect to a donation eligible for a tax deduction.

Who is the ideal donor that will want to use this program?

A donor must have enough income to take advantage of the tax credit, which can be carried forward for up to seven years. In addition, if the donor has owned the land for a long time and has a low basis in the land, by donating the land and receiving a tax credit and deduction and avoiding capital gains the donor may be financially advantaged compared with simply selling the asset.

Program Administration

Who will administer the program?

The Wildlife Conservation Board (WCB) will administer the program. The Board is made up of the Director of the California Department of Fish and Game, the President of the California Fish and Game Commission, and the Director of the California Department of Finance. The Board is the state agency which traditionally has acquired land for the Department of Fish and Game, for

wildlife, endangered species, and fishing and hunting access programs.

The WCB will seek assistance from other state departments in administering the program.

What agencies and organizations can accept land under this program?

Any department in the California Resources Agency can accept land, as can any nonprofit with experience in acquiring land. Eligible state departments include Parks and Recreation, Fish and Game, Water Resources, and the Santa Monica Mountains, Coastal, Tahoe, San Gabriel River, and Coachella Valley Mountains Conservancies, as well as the WCB itself. Local agencies such as park and open space districts, cities, counties, and other land preservation agencies are eligible. Nonprofits with land and water conservation experience are also eligible.

How will proposed land and water contributions be prioritized?

The Wildlife Conservation Board will set priorities. They will receive applications from state Resources Agency Departments, local governments, and nonprofits, and will allocate the tax credits to the applicants they find most worthy. The legislation does not set any priorities between the various purposes of the program.

What is the role of nonprofits?

Donors may seek to make donations directly to nonprofit organizations with land conservation or water experience. The nonprofits will probably want to associate themselves with a government agency, which will ultimately receive the land or water. The nonprofit may sell or transfer the land to a public agency. The agency will undoubtedly take into account that the nonprofit paid nothing for the land or water in deciding how to compensate the nonprofit, although the legislation does not appear to prevent the agency from paying fair market value for the property.

If an agency or nonprofit has a land or water rights holder interested in donating, what should they do?

First, they should contact the WCB to learn about the status of the program. The WCB may adopt regulations and guidelines, and these will help the agency or nonprofit understand how to proceed. The agency or nonprofit should assure that the proposed donation meets all the criteria of the act, including the requirement of a free will donation with no other valuable consideration received; assessment of environmental hazards on the property; and a good understanding of how the property will be owned and managed.

At that point the agency or nonprofit (perhaps in combination with an agency) can apply directly to the WCB, although the WCB may establish periods of application, in addition to other guidelines.

Program Details

How much money in tax credits is authorized by the program?

\$100 million.

How long will the program last?

Five years. It ends in July of 2005.

Does the program go out of existence after five years?

No, but no further land can be donated without an extension of the law by the Legislature.

Does the Legislature have to approve land donations?

No, but they have to be provided a list of the lands donated. The tax credits are allocated by the WCB, and are not part of the state budget process.

What kind of lands and easements can be donated?

The program authorizes five types of land and water which can be donated. They include land which is habitat to rare, endangered, or other unique species; open space, parkland, oak woodlands, forests, wildlife corridors, easements over agricultural land, archaeological resources, and water or land with water rights to protect and restore fish species. Virtually any type of land or water rights with environmental values can be donated.

Can only a partial interest be donated?

Yes. Partial interests in land, including conservation easements, can be donated. With respect to agricultural land, conservation easements are preferred over fee title.

Tax Considerations

Does the IRS have to approve the donation before it is made?

No, but the donation must meet the requirements of Section 170 of Title 26 of the IRS Code.

This means that the donation must be without any strings attached, that the donation is not required by the government in any way, and that no valuable consideration is paid to the donor, other than the tax credit and federal tax deduction.

The donor will want to be sure that she or he receives a federal tax deduction in addition to the tax credit, so it is in his or her own best interest to meet the Section 170 requirement.

What is the role of the IRS?

The IRS will have to approve of the donation in order for the donor to receive the federal tax deduction. In developing this legislation, a prestigious tax firm was asked to consult with the IRS about whether the deduction would be allowed if a tax credit is awarded, and the IRS orally indicated that the deduction would be allowed.

What are the capital gains implications of the program?

Since the land or water is being freely donated, the donor does not need to pay capital gains tax. As described above, the combination of the tax credit, federal tax deduction, and avoidance of the capital gains tax may make donation of the land or water much more attractive than selling the asset, especially if the donor has a low basis in the land or water.

If the donor can't use the entire tax credit in one year, does it carry forward?

Yes, for up to seven years.

Legislative history and future; effect of program

Who created this program, and who supported it?

The program was developed by the Planning and Conservation League. It was supported by a

very wide variety of business, environmental, and governmental organizations including Nature Conservancy, Trust for Public Land, Audubon, Chevron, Chamber of Commerce, Farm Bureau, landowners, and more than 100 similar groups. In its final form, the bill had no registered opposition.

Will there be more amendments to the program next year?

The Association of California Water Agencies has asked that all water districts be eligible to receive water and land donations. Right now, only larger water districts are eligible.

How much land and water will be donated under this program?

Since the tax credit covers only about half of the donated value, about \$200 million of land and water will be donated. This may be larger if property owners make additional donations outside of the tax credit in order to gain priority with the WCB.

CEQA and related considerations

What is the role of CEQA in this type of donation?

No environmental documentation need be prepared if the land or water donation is categorically exempt because the purpose is to protect or improve the environment. If there is any question that the donation might cause some kind of environmental harm, there may be a need for an initial study or EIR. This is unlikely.

If there is a CEQA or other mitigation requirement, can a tax credit still be received?

No. If there is any requirement due to CEQA or any other type of mitigation requirement that the property be contributed as a development or mitigation condition, the donation is not eligible for the tax credit program.

Agricultural and Toxic Consideration

How are rights of rural counties and neighboring farmers protected?

If a local government objects to a WCB decision to accept land, they may appeal to the Department of Finance. Any buffers for the land must be within the land received, and any planned access must consider neighboring agricultural practices.

What protections are in place to prevent the donation of land with toxic materials?

The Department of Toxic Substances Control or the Regional Water Quality Control Board (as appropriate) must certify that no environmental hazards will result if the land is accepted into public ownership.

Section by Section Guide to Land Conservation Tax Credit Legislation

Public Resources Code Sections

37000 Name of the Act: Natural Heritage Preservation Tax Credit Act of 2000.

37001 Legislative Intent.

37002 Definitions

37005 Wildlife Conservation Board implements program. Other departments may assist.

37006a. Donors receive tax credits according to the Revenue and Taxation Code.

b. WCB may adopt guidelines or regulations, not subject to Office of Administrative Law procedures.

37010 Donors submit applications to agency or nonprofit which will receive land.

37011 Information about the donation which must be submitted. Donations are only eligible for a tax credit if there was no obligation to make the donation, and no other valuable consideration was received.

37012a. Departments may use their own plans and priority lists in accepting lands.

b. Information may be requested of donors.

c. Anyone may donate funds to cover transfer and processing costs.

d. Public hearing required in local community where donation occurs.

e. Appraisal required, approved by General Services.

37013 WCB provides list of donated properties to Franchise Tax Board and Legislature.

37014 Donations are not part of Habitat Conservation Fund, and special funds cannot be used to fund the tax credit.

37015 Property is eligible to be donated if it is for:

a. Fulfilling habitat conservation plans, oak woodlands, forests, habitat corridors, etc.

b. Corridors or reserves for native species, to assist recovery or listing

c. Conservation easement on agricultural land

d. Water right or land with water right which will aid aquatic species

e. Park, open space, or archaeological property preservation and access.

37016 Donated property must meet IRS code provisions; be donated freely without any other government requirement of donation; and must be free of hazardous toxics.

37020 No increase in authority of eminent domain by any agency; no loss of land or water rights by easement holders.

37021 Circumstances under which land or money must be returned if land is not used for the purpose for which it was donated. Monitoring of use of land required.

37022 \$100 million cap on tax credits, which must be used before July 2005.

37023 Access to donated land required, with protections for adjacent landowners. Public access over easements not required.

37024 If local governments object to donation, Department of Finance shall review.

37025 Setbacks or buffers must be within donated property.

Revenue and Taxation Code provisions

17039.1 Credit reduces tax.

17053.30 Credit is for 55% of donated fair market value. Defines qualified contribution. Allows carryover of tax for seven years. Credit in lieu of any other credit or deduction.

23036.1 and 23630. Same provisions in business tax code.

Tax Credits for Land Conservation

Text

This is the California law passed by Senator Jack O'Connell that established tax credits for land conservation. The following text merges the language from SB 1647 (Chapter 113, Statutes of 2000) with AB 522 (not yet chaptered), a bill which amended and cleaned up SB 1647.

This merged language was prepared by the Planning and Conservation League. If you have any questions about the language, or use of the tax credit, please contact Jerry Meral at PCL: jmeral@pcl.org, or call 916-313-4514. The text is found in the Public Resources Code and in the Revenue and Taxation Code.

PUBLIC RESOURCES CODE .DIVISION 28. NATURAL HERITAGE PRESERVATION TAX CREDIT ACT of 2000

CHAPTER 1. INTENT

37000. This division shall be known and may be cited as the "Natural Heritage Preservation Tax Credit Act of 2000."

37001. The Legislature finds and declares all of the following:

(a) The continued economic development of California will be fostered and improved if conflicts over the use of natural resources can be resolved without litigation or disputes.

(b) The economic development of California can be facilitated if endangered species and other forms of plants, fish, and wildlife can be protected quickly and efficiently, so that development

and agricultural use can proceed on other lands.

(c) Water allocation decisions could be eased if water could be provided for fish, wildlife, and aquatic and riparian habitat without objection by other water users.

(d) The intent of this division is to accommodate economic development and resolve land use and water disputes in a manner beneficial to all people in California, and to the benefit of California environmental quality.

(e) The further intent of this division is to foster partnerships between the public and private sectors to resolve disputes and promote economic growth and environmental quality.

(f) Conservation easements protect land, keep land in private ownership and on the tax rolls, and, where appropriate, are the preferred method to protect agricultural and habitat values.

(g) The value of wildlife habitat to the state is very high, especially in the case of implementing habitat conservation plans and multispecies conservation plans.

(h) Habitat stewardship shall be assisted and rewarded, and it is in the state's interest to encourage landowners to perceive habitat as an asset rather than a liability.

(i) It is the intent of the Legislature, in enacting this division, to provide an additional tool for the protection of wildlife habitat, open space, and agricultural lands. However, there continues to be a recognized need for additional funding sources for park, wildlife, and recreation facilities, as well as for the preservation of open space and agricultural lands.

(j) It is the intent of the Legislature in enacting this division to protect wildlife habitat, open space, and agricultural lands by providing up to one hundred million dollars (\$100,000,000) in tax credits for donations of qualified land.

CHAPTER 2. DEFINITIONS

37002. As used in this division, the following terms have the following meanings:

(a) "Approval" or "approval for acceptance" means the board's approval of the granting of a tax credit for a donation of property pursuant to the program.

(b) "Board" means the Wildlife Conservation Board created pursuant to Article 2 (commencing with Section 1320) of Chapter 4 of Division 20 of the Fish and Game Code.

(c) "Conservation easement" means a conservation easement, as defined by Section 815.1 of the Civil Code, that is contributed in perpetuity.

(d) "Department" means any entity created by statute within the Resources Agency and authorized to hold title to land.

(e) "Designated nonprofit organization" means a nonprofit organization qualified under Section 501(c)(3) of Title 26 of the United States Code that has as a principal purpose the conservation of land and water resources and that is designated by a local government or a department to accept property pursuant to this division in lieu of the local government or a department. In order to be eligible to receive a donation of property pursuant to this division, a nonprofit organization shall have experience in land conservation.

(f) "Donee" means any of the following:

(1) A department to which a donor has applied to donate property.

(2) A local government that has filed a joint application with a donor requesting approval of a donation of property to that local government.

(3) A designated nonprofit organization.

(g) "Donor" means a property owner that donates, or submits an application to donate, property pursuant to the program.

(h) "Local government" means any city, county, city and county, or any district, as defined in Section 5902 or in Division 26 (commencing with Section 35100), or any joint powers authority made up of one or more of those entities or those entities and departments.

(i) "Program" means the Natural Heritage Preservation Tax Credit Program authorized by this division.

(j) "Property" means any real property, and any perpetual interest therein, including land, conservation easements, and land containing water rights, as well as water rights.

(k) "Secretary" means the Secretary of the Resources Agency.

CHAPTER 3. NATURAL HERITAGE PRESERVATION TAX CREDIT PROGRAM

37005. The Wildlife Conservation Board shall implement the program. The board may request staff services from any department that submits an application and a proposal for a donation of property to the board.

37006. (a) Under the program, upon approval by the board, a donor may contribute qualified property to a donee and receive a tax credit for a portion of the value of the property, as provided in Sections 17053.30 and 23630 of the Revenue and Taxation Code.

(b) The board shall adopt guidelines or regulations to implement the program, including procedures for applications submitted pursuant to Chapter 4 (commencing with Section 37010) and for the evaluation of properties proposed to be contributed pursuant to the program. Chapter 3.5 (commencing with Section 11340) of Part 1 of Division 3 of Title 2 of the Government Code does not apply to the guidelines or regulations adopted pursuant to this section.

CHAPTER 4. PROCEDURES

37010. Applications shall be submitted to the donee to which the donor proposes to contribute the property.

37011. At a minimum, each application shall contain all of the following:

(a) The identification of the donor and donee.

(b) A description of the property, including documentation of how the property meets the criteria and qualifies for acceptance under the program.

(c) A property appraisal meeting the requirements of Section 170 of Title 26 of the United States Code, setting forth the fair market value of the property.

(d) (1) A certification by the donor that the donor received no other valuable consideration for the donation of property.

(2) A certification by the donor that the contribution was not, and is not, required to satisfy a condition imposed upon the donor by any lease, permit, license, certificate, or other entitlement for use issued by one or more public agencies, including, but not limited to, the mitigation of significant effects on the environment of a project pursuant to an approved environmental impact report or mitigated negative declaration required pursuant to the California Environmental

Quality Act (Division 13 (commencing with Section 21000)).

(e) A certification by the donor that the application discloses any known or suspected environmental conditions associated with the property.

37012. (a) Each donee shall evaluate applications submitted to it and prepare a plan for the board that sets forth the donee's priorities for acquisition of property that qualifies under the program. Consistent with the criteria established for the program, each donee may use its own priority lists and procedures in determining which properties or types of properties shall be given priority.

(b) Each donee or the board may request that the applicant supply further information reasonably necessary to allow the donee or the board to evaluate the proposed donation.

(c) The department may accept contributions of money from any taxpayer to pay or reimburse the costs of appraisal, escrow, title, and other transaction costs associated with the contribution of any particular property or set of properties, including any environmental assessments required by the department, and the costs of preparing any necessary management plan for the property or set of properties.

(d) Prior to acquiring an easement or other interest in land pursuant to this division, a public hearing shall be held by the donee, if the donee is a public agency, or by the board if the donee is a designated nonprofit organization, in the local community. Notice shall be given by the donee or the board to the county board of supervisors of the affected county, adjacent landowners, affected water districts, local municipalities, and other interested parties, as determined by the donee or the board.

(e) When submitting a donation of qualified property to the board for final approval, the donee shall provide the board with the fair market value of the property proposed for acceptance, based on appraisals that have been reviewed and approved by the Department of General Services.

37013. The board shall provide a list to the Joint Legislative Budget Committee and the Franchise Tax Board, in the form and manner determined by the Franchise Tax Board, of the names, taxpayer identification numbers, including taxpayer identification numbers of each partner or shareholder, as applicable, a legal description of the donated property, and the total amount of the tax credit approved for each donation.

37014. Assets received by a donee pursuant to this division shall not be deemed transfers pursuant to Chapter 9 (commencing with Section 2780) of Division 3 of the Fish and Game Code. Funds from the Habitat Conservation Fund, the Environmental Enhancement and Mitigation Program Fund created pursuant to Section 164.56 of the Streets and Highways Code, the State Parks and Recreation Fund, and the Wildlife Restoration Fund, may not be used to fund the tax credit authorized pursuant to this division.

CHAPTER 5. CRITERIA FOR ACCEPTANCE OF PROPERTY

37015. The board shall approve only contributions of properties that meet one or more of the following criteria:

(a) The property will help meet the goals of a habitat conservation plan, multispecies conservation plan, natural community conservation plan, or any other similar plan subsequently authorized by statute that is designed to benefit native species of plants, including, but not limited to, protecting forests, old growth trees, or oak woodlands, and animals and development.

In proposing and approving the acceptance of contributed property pursuant to this subdivision, the recovery benefits for listed species, the habitat value of the property, the value of the property as a wildlife corridor, and similar habitat-related considerations shall be the criteria on which the acceptance is based.

(b) The property will provide corridors or reserves for native plants and wildlife that will help improve the recovery possibilities of listed species and increase the chances that the species will recover sufficiently to be eligible to be removed from the list, or will help avoid the listing of species pursuant to the California Endangered Species Act (Chapter 1.5 (commencing with Section 2050) of Division 3 of the Fish and Game Code) or the federal Endangered Species Act (16 U.S.C. Sec. 1531 et seq.), or protect wetlands, waterfowl habitat, or river or stream corridors, or promote the biological viability of important California species.

(c) The property interest is a perpetual conservation easement over agricultural land, or is a permanent contribution of agricultural land, that is threatened by development and is located in an unincorporated area certified by the secretary to be zoned for agricultural use by the county. Property accepted pursuant to this subdivision shall be accepted pursuant to the California Farmland Conservancy Program Act established by Division 10.2 (commencing with Section 10200), pursuant to the agricultural conservation program of the Coastal Conservancy, or pursuant to the Bay Area Conservancy Program established pursuant to Chapter 4.5 (commencing with Section 31160) of Division 21.

(d) (1) The property interest is a water right, or land with an associated water right, and the contribution of the property will help improve the chances of recovery of a listed species, will reduce the likelihood that any species of fish or other aquatic organism will be listed pursuant to the California Endangered Species Act (Chapter 1.5 (commencing with Section 2050) of Division 3 of the Fish and Game Code)) or the federal Endangered Species Act (16 U.S.C. Sec. 1531 et seq.), will improve the protection of listed species, or will improve the viability and health of fish species of economic importance to the state. The donee receiving the water right, or land with an associated water right, shall ensure that it shall retain title to the water right, and that the water shall be used to fulfill the purposes for which the water right or land associated with a water right is being accepted.

(2) Any contribution of a water right that includes a change in the point of diversion, place of use, or purpose of use may be made only if the proposed change will not injure any legal user of the water involved and is made in accordance with either Chapter 10 (commencing with Section 1700), or Chapter 10.5 (commencing with Section 1725), of Part 2 of Division 2 of the Water Code.

(e) The property will be used as a park or open space or will augment public access to or enjoyment of existing regional or local park, beach, or open-space facilities, or will preserve archaeological resources.

37016. (a) The board shall grant approval of a proposed contribution of property under the program only upon a determination that:

(1) (A) The donation of property satisfies the requirements for a qualified contribution pursuant to Section 170 of Title 26 of the United States Code. If only a portion (either an undivided fractional interest in the entire property or one or more discrete parcels) of a proposed conveyance of property satisfies the requirements of Section 170 of Title 26 of the United States Code, or if the property is sold for less than fair market value, only that portion, or the amount representing the difference between the amount paid by the donee and the fair market value, shall

be eligible for the tax credit, to the extent permitted by Section 170(h) of Title 26 of the United States Code. The board may segregate eligible and ineligible interests in property proposed to be contributed pursuant to this division. The donor shall receive no other valuable consideration for the donation of property subject to the tax credit.

(B) For purposes of this division, if the property is proposed to be donated to satisfy a condition imposed upon the donor by any lease, permit, license, certificate, or other entitlement for use issued by one or more public agencies, including, but not limited to, the mitigation of significant effects on the environment of a project pursuant to an approved environmental impact report or mitigated negative declaration required pursuant to the California Environmental Quality Act (Division 13 (commencing with Section 21000)), that property shall not qualify for the credit provided in Section 17053.30 or 23630 of the Revenue and Taxation Code.

(2) There has been no release or threatened release of a hazardous material on the property, unless all of the following occur:

(i) A final remedy in response to the release has been approved by the Department of Toxic Substances Control pursuant to Chapter 6.5 (commencing with Section 25100) of, Chapter 6.8 (commencing with Section 25300) of, or Chapter 6.85 (commencing with Section 25396) of, Division 20 of the Health and Safety Code, or the appropriate California regional water quality control board pursuant to Chapter 6.7 (commencing with Section 25280) of Division 20 of the Health and Safety Code.

(ii) The donor or donee have agreed to implement the final remedy approved pursuant to clause (i).

(iii) The donor or donee have agreed to fund and have made adequate funding available to pay for the response action, as defined by Section 25323.3 of the Health and Safety Code.

(b) Notwithstanding paragraph (2) of subdivision (a), a donation of property containing hazardous materials may be accepted under the program without satisfying the requirements of paragraph (2) of subdivision (a) if the donee determines, based on written findings from the Department of Toxic Substances Control and the California regional water quality control board with jurisdiction over the property, that the hazardous materials present will pose no substantial risk to human health or the environment and no substantial risk of liability on the donee under the conditions under which the property will be used. The Department of Toxic Substances Control and the California regional water quality control board with jurisdiction over the property shall carry out their normal due diligence when developing the written findings that will be the basis for the written determination regarding the presence and risk of toxic materials on the property by the Department of Toxic Substances Control or the regional board, whichever is applicable. As used in this subdivision, "hazardous materials" has the same meaning as contained in subdivision (d) of Section 25260 of the Health and Safety Code.

CHAPTER 6. MISCELLANEOUS

37020. (a) Nothing in this division authorizes or increases the authority of any state or local public agency to use eminent domain to acquire private property.

(b) Nothing in this division diminishes existing land or water rights held by easement holders in any property proposed for donation.

37021. (a) If any property approved for acceptance pursuant to this division is later transferred by the donee, the use of the property shall be restricted by deed to the conservation purposes for

which the property was contributed pursuant to the program. If the board determines that the conservation purposes for which the property was contributed can no longer be achieved due to significantly changed circumstances beyond the control of the donee that accepted the property, the proceeds of the sale shall be used by the donee that accepted the property to acquire land in California of equal or greater value and comparable public resources values, as determined by the board. The land acquired shall meet the criteria of Section 37015. Nothing in this division prohibits the transfer of donated property to a nonprofit organization that is qualified to manage the property for the purposes intended by this division, if the terms of this section are met. Any local government or nonprofit organization seeking to sell land pursuant to this subdivision shall first obtain the approval of the board.

(b) Other than as provided by subdivision (a), property approved for acceptance pursuant to this division shall be used only for purposes consistent with Section 37015.

(c) (1) If any unauthorized use is made of the property after the property is donated to a local government or nonprofit organization pursuant to this program, the local government or nonprofit organization shall seek to terminate the unauthorized use and restore the conservation benefits for which the property was contributed. If the board determines that the unauthorized use has not been terminated and the conservation benefits fully restored within a reasonable period of time, the fee title owner of the property shall pay to the state the greater of the following:

(A) The fair market value of the property based on appraisals when accepted by the board.

(B) The fair market value of the property based on appraisals at the time of and based on the unauthorized use of the property.

(2) The department that is the donee or the board may seek injunctive relief to prevent the unauthorized use of the property, or may assume ownership or management of the property to assure that it is used in the manner originally authorized.

(d) The board shall develop a process to monitor the uses of any land that a local government or nonprofit organization receives pursuant to this division in order to ensure those uses are in conformance with the purposes for which the property is accepted.

37022. (a) No more than a total of one hundred million dollars (\$100,000,000) in tax credits may be awarded pursuant to this division.

(b) Tax credits may be awarded pursuant to this division in the fiscal years 2000-01, 2001-02, 2002-03, 2003-04, and 2004-05. No tax credits may be awarded subsequent to fiscal year 2004-05 without further statutory authorization.

37023. The donee shall allow public access to the property to the extent that public access is consistent with the purposes for which the property is accepted. Before providing public access to the property, the donee shall develop a plan that minimizes the impact of public access on adjacent landowners in order to avoid infringement on the customary husbandry practices on adjacent or nearby agricultural or timber operations and that establishes a setback or buffer area, as necessary. This section does not require access to privately owned lands for which a conservation easement is contributed pursuant to this division unless the conservation easement provides for public access.

37024. If the city, county, or city and county in which the property is located objects to acceptance of the property, the city, county, or city and county, as appropriate, may request the

Director of Finance to disapprove the acceptance of the property. These objections may relate to the city's, county's, or city and county's conservation and development policies and their general plans, the efficient use and delivery of infrastructure, and the potential loss of property tax revenue. The Director of Finance may disapprove acceptance after reviewing the objections of the city, county, or city and county. The Director of Finance shall provide a written explanation for his or her decision to the affected city, county, or city and county.

37025. Any donee accepting property pursuant to the program shall own and maintain any setback or buffer area that may be necessary for the use of that property in accordance with this division, in order to avoid infringement on the customary husbandry practices on adjacent or nearby agricultural or timber operations.

The following sections were added to the Revenue and Taxation Code

17039.1. Notwithstanding Section 17039 or any other provision in this part to the contrary, the credit allowed by Section 17053.30 (relating to natural heritage) may reduce the tax imposed under Section 17041 or 17048 plus the tax imposed under Section 17504 (relating to the separate tax lump-sum distributions) below the tentative minimum tax, as defined by Section 17062, but only after allowance of the credit allowed by Section 17063

17053.30. (a) There shall be allowed as a credit against the "net tax," as defined in Section 17039, an amount equal to 55 percent of the fair market value of any qualified contribution made on or after January 1, 2000, and prior to December 31, 2005, by the taxpayer during the taxable year to the state, any local government, or any designated nonprofit organization, pursuant to Division 28 (commencing with Section 37000) of the Public Resources Code.

(b) For purposes of this section, "qualified contribution" means a contribution of property, as defined in Section 37002 of the Public Resources Code, that has been approved for acceptance by the Wildlife Conservation Board pursuant to Division 28 (commencing with Section 37000) of the Public Resources Code.

(c) In the case of any passthrough entity, the fair market value of any qualified contribution approved for acceptance under Division 28 (commencing with Section 37000) of the Public Resources Code shall be passed through to the partners or shareholders of the passthrough entity in accordance with their interest in the passthrough entity as of the date of the qualified contribution. For purposes of this subdivision, the term "passthrough entity" means any partnership, S corporation, or limited liability company treated as a partnership.

(d) If the credit allowed by this section exceeds the "net tax," the excess may be carried over to reduce the "net tax" in the following year, and the succeeding seven years if necessary, until the credit is exhausted.

(e) This credit shall be in lieu of any other credit or deduction which the taxpayer may otherwise claim pursuant to this part with respect to the property or any interest therein that is contributed.

SEC. 4. Section

23036.1. Notwithstanding Section 23036 or any other provision in this part to the contrary, the credit allowed by Section 23630 (relating to natural heritage) may reduce the "tax" below the tentative minimum tax, as defined by paragraph (1) of subdivision (a) of Section 23455, but only after allowance of the credit allowed by Section 23453.

23630. (a) There shall be allowed as a credit against the "tax," as defined in Section 23036, an amount equal to 55 percent of the fair market value of any qualified contribution made on or after January 1, 2000, and prior to December 31, 2005, by the taxpayer during the income year to the state, any local government, or any designated nonprofit organization, pursuant to Division 28 (commencing with Section 37000) of the Public Resources Code.

(b) For purposes of this section, "qualified contribution" means a contribution of property, as defined in Section 37002 of the Public Resources Code, that has been approved for acceptance by the Wildlife Conservation Board pursuant to Division 28 (commencing with Section 37000) of the Public Resources Code.

(c) In the case of any passthrough entity, the fair market value of any qualified contribution approved for acceptance under Division 28 (commencing with Section 37000) of the Public Resources Code shall be passed through to the partners or shareholders of the passthrough entity in accordance with their interest in the passthrough entity as of the date of the qualified contribution. For purposes of this subdivision, the term "passthrough entity" means any partnership or S corporation.

(d) If the credit allowed by this section exceeds the "tax," the excess may be carried over to reduce the "tax" in the following year, and the succeeding seven years if necessary, until the credit is exhausted.

(e) This credit shall be in lieu of any other credit or deduction that the taxpayer may otherwise claim pursuant to this part with respect to the property or any interest therein that is contributed.

This is an uncodified urgency provision which made SB 1647 go into effect immediately. However, since SB 522 did not go into effect immediately (it was a majority vote bill), the full program will not actually go into effect until January 1, 2001.

SEC. 6. This act is an urgency statute necessary for the immediate preservation of the public peace, health, or safety within the meaning of Article IV of the Constitution and shall go into immediate effect. The facts constituting the necessity are: In order to remedy critical shortages in open space and to safeguard the state's natural habitats from further degradation, it is necessary that this act take effect immediately.