



The Natural Heritage Preservation  
Tax Credit Act  
of 2000

Program Information  
and  
Application Package  
Revised  
January 2010

## ***Executive Summary***

As land and resource protection efforts become more difficult and complex, the challenge becomes one of how to successfully integrate natural resource protection and conservation with the growing population and economic needs of our great state.

Through the Natural Heritage Preservation Tax Credit Act of 2000, as amended effective January 1, 2010, (Public Resources Code Section 37000 *et seq.*), a tool is available to protect and conserve open space, agricultural lands, water, wildlife habitat, archaeological resources, and state and local parks. Through this program, state tax credits are available to private landowners who donate qualified land (fee title or conservation easement), water or water rights to state resource departments, local government entities and designated nonprofit organizations for conservation purposes. Consistent with the new program requirements, the Wildlife Conservation Board (Board) is authorized to approve qualified donations and tax credits until June 30, 2015.

Designed to complement other resource protection efforts, the Natural Heritage Preservation Tax Credit Program provides an opportunity to private landowners interested in reducing their state tax liability. Coupled with existing land protection and conservation measures, the State of California is rewarding landowner stewardship practices that preserve our natural resources.

The following information has been prepared to familiarize the potential donor and donee with the requirements of the Tax Credit Program, including new requirements that became effective on January 1, 2010. The reader is advised to disregard any previous material explaining the Tax Credit Program and replace it with this revised Program Information and Application Package. Interested donors are further encouraged to contact WCB to learn more about contributing qualified interests in real property under the Tax Credit Act. Potential donees should carefully review the following information and if interested, submit an application to the Wildlife Conservation Board at 1807 13<sup>th</sup> Street, Suite 103, Sacramento, California 95811, or contact the Tax Credit Program Manager by phone at (916) 445-8448.

***The information in these materials is current as of January 1, 2010. Every effort has been made to ensure the information presented is accurate and complete, however, it is not a substitute for qualified legal, financial and tax advice. Interested parties are encouraged to obtain independent professional advice of their choosing.***

**Natural Heritage Preservation  
Tax Credit Act of 2000  
(As Amended January 2010)**

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## **CHAPTER 1**

### **The Natural Heritage Preservation Tax Credit Act of 2000 (As amended, effective January 1, 2010)**

#### **Introduction**

This revised Program Information and Application Package reflects changes to the Natural Heritage Preservation Tax Credit Act (the "Tax Credit Act") as amended by Chapter 220, Statutes of 2009 (AB 94/Evans) effective on January 1, 2010.

The purpose of the Tax Credit Program is to protect wildlife habitat, parks and open space, archaeological resources, agricultural land and water by providing state tax credits for donations of qualified land (fee title or conservation easement) and water rights. The program objectives include fostering public/private partnerships to resolve land and water use disputes; encouraging quality habitat stewardship; and demonstrating the state's commitment to protect natural resources by rewarding landowners who perceive habitat as an asset rather than a liability.

Initially implemented in 2001, the Tax Credit Program is a successful effort that resulted in the approval of \$48.6 million in tax credits, and the donation (fee title and conservation easement) of more than 8,006 acres of critical parkland, open space, agricultural easements, wildlife corridors and archeological resources.

Effective January 1, 2010, the Board may again consider applications for the acceptance of qualified donations in exchange for State tax credits. A taxpayer who makes a qualified donation under the Tax Credit Program between January 1, 2010, and June 30, 2015, may receive a tax credit equal to 55 percent of the appraised fair market value of the donation.

A state department that accepts a contribution pursuant to the Tax Credit Program, either directly or through a qualified third party is still required to encumber eligible funds necessary to reimburse the General Fund for the lost revenue resulting from the tax credits prior to acquiring the donated property. Ultimately, the state department will still be required to transfer those funds to the Natural Heritage Preservation Tax Credit Reimbursement Account (the "Reimbursement Account").

#### **Major Program Changes**

The Tax Credit Program now allows local governments to apply directly to the Board for approval of qualified donations, thus eliminating the need to identify a state entity willing to reimburse the General Fund for the lost revenue resulting from the tax credits. In addition, sources of revenue that qualify to reimburse the General Fund have expanded increasing opportunities for local entities to secure donations resulting in the protection of priority conservation initiatives.

Local governmental entities that apply directly to the Board for tax credits will initially receive a conditional approval for qualified donations. Final approval of the donation and tax credit will be provided only after the governmental entity or a third party acting on its behalf, transfers sufficient funds to the Board necessary for the Board to reimburse the General Fund for the revenue loss associated with the approved tax credits. Finally, the source of funds eligible to reimburse the General Fund has expanded to include court settlements, public or private donations, special state funds, local governmental funds of any type and federal funds.

The authority for the Tax Credit Program is scheduled to expire on June 30, 2015. As such, all of the following must be completed before June 30, 2015:

- The application must have been submitted to the Board
- The Department of General Services must have approved the appraised fair market value of the donation
- The public hearing must have been completed
- Board action must have been completed
- For local government, all funds necessary to reimburse the General Fund must have been transferred to the Board
- The contribution must be complete and the transaction closed

The above tasks may take several months to complete. Please allow sufficient time to process applications and accomplish the steps that need to occur before June 30, 2015.

### **Purpose of Program**

The purpose of the Tax Credit Act is to enhance and accommodate economic development and resolve land and water use disputes in a manner beneficial to all people in California and to the benefit of California environmental quality. The Tax Credit Program is intended to foster partnerships between the public and private sectors to resolve disputes and promote economic growth and environmental quality. It provides an additional tool for protecting wildlife habitat, open space, and agricultural lands by providing tax credits for qualified donations.

Subject to Board approval, a private landowner may donate qualified lands, conservation easements or water rights to California Natural Resources Agency departments, the Natural Resources Agency itself, local government entities or designated nonprofit organizations for conservation purposes. A donor that contributes qualified property to an eligible donee pursuant to the Tax Credit Program will receive a state tax credit equal to 55 percent of the appraised fair market value of the donated property, in accordance with Revenue and Taxation Code Sections 17053.30 and 23630. If the donor is a partnership, "S" corporation, or limited liability company treated as a partnership, the fair market value of

the contribution is passed through to the partners or shareholders of the donor in accordance with their interest in the entity as of the date of the contribution.

## Availability of Tax Credit

If the approved tax credit exceeds the “tax,” the excess credit may be carried over to reduce the “tax” for the following eight years if necessary, until all of the tax credit is exhausted. The tax credit is in lieu of any other state tax credit or deduction that the taxpayer may otherwise claim with respect to the donated property.

## Definitions (Public Resources Code Section 37002)

The terms below are defined in the Tax Credit Act and govern the Tax Credit Program.

- **“Approval”** or **“Approval for Acceptance”** means the Board’s approval of the granting of a tax credit for a donation of qualified property under the Tax Credit Program.
- **“Board”** means the Wildlife Conservation Board.
- **“Conservation Easement”** means a conservation easement, as defined by Civil Code Section 815.1, which is contributed in perpetuity.
- **“Department”** means the California Natural Resources Agency or any state entity created by statute within the Resources Agency and authorized to hold title to land.
- **“Designated Nonprofit Organization”** means a nonprofit organization qualified under Internal Revenue Code section 501 (c)(3) that has as a principal purpose the conservation of land and water resources and has been designated by a department or local government to accept property in lieu of the department or local government. The nonprofit organization must have experience in land conservation.
- **“Donee”** means any of the following:
  - (a) A department to which a donor has applied to donate qualified interest in property
  - (b) A local government that has filed a joint application with a donor requesting approval of a donation to that local government.
  - (c) A local government that has submitted an application directly to the Board.
  - (d) A designated nonprofit organization
- **“Donor”** means a property owner that donates, or submits an application to donate, property pursuant to the Tax Credit Program.



- **“Local Government”** means any city, county, city and county, or any district, as defined in Section 5902 in Division 26 (commencing with Section 35100) of the Public Resources Code, or any joint powers authority made up of one or more of those entities or those entities and departments. If bond funds are used to acquire property under the Tax Credit Program, “local government” also includes any other local government entity eligible to receive bond funds pursuant to the relevant provision of the applicable bond act.
- **“Program”** means the Natural Heritage Preservation Tax Credit Program authorized by Public Resources Code Section 37000 *et seq.*, as amended.
- **“Property”** means any real property, any perpetual interest in real property, including land, conservation easements and land containing water rights, as well as water rights.
- **“Secretary”** means the Secretary of the California Natural Resources Agency.

## **REIMBURSING THE GENERAL FUND**

Public Resources Code Section 37022 allows tax credits to be awarded only if the transfer of non General Fund monies reimburses the amount of the tax credit. To assure reimbursement of the General Fund, Public Resources Code Sections 37034 and 37035 set out the process by which a department or local government may seek Board approval of a qualified donation and (if the Board approves the tax credit), encumber and ultimately transfer funds to the Reimbursement Account.

### **Use of Bond Funds to Reimburse the General Fund**

If bond funds are proposed as the source of monies to reimburse the General Fund for tax credits, the application must identify the source of the bond funds. Further, the responsible state department must certify the availability of these funds. Following Board approval, the Board will notify the department to encumber the bond funds. The Board will also notify the state department when the encumbered bond funds are to be transferred to the Reimbursement Account. The department will then have 60 days to transfer the bond funds to the Reimbursement Account. Notification to the department to transfer the bond funds to the Reimbursement Account will occur after the donor has submitted a tax return claiming the credit, and the Franchise Tax Board has notified the Board.

### **Eligible Bond Funds**

Public Resources Code Section 37032(c) and Section 75073 identify provisions which a department or local government may expend bond funds to acquire interests in real property under the provisions of the Tax Credit Act. Accordingly, the following bond funds

are eligible to reimburse the General Fund for approved tax credits:

- Proposition 40: California Clean Water, Clean Air, Safe Neighborhood Parks, and Coastal Protection Act of 2002;
- Proposition 50: Water Security, Clean Drinking Water, Coastal and Beach Protection Act of 2002; and
- Proposition 84: Safe Drinking Water, Water Quality and Supply, Flood Control, River and Coastal Protection Bond Act of 2006.

To the extent, funds are available; the specific bond provisions from which a department or local government may expend monies to reimburse the General Fund pursuant to the Tax Credit Act are as follows:

Proposition 40 (California Clean Water, Clean Air, Safe Neighborhood Parks, and Coastal Protection Act of 2002):

- Public Resources Code Section 5096.615 – State Department of Parks and Recreation
- Public Resources Code Section 5096.650 (specified portions) – Wildlife Conservation Board, State Coastal Conservancy, California Tahoe Conservancy, Santa Monica Mountains Conservancy, Coachella Valley Mountains Conservancy, San Joaquin River Conservancy, San Gabriel and Lower Los Angeles Rivers and Mountains Conservancy, Baldwin Hills Conservancy, San Francisco Bay Area Conservancy Program, and Secretary of Resources Agency

Proposition 50 (Water Security, Clean Drinking Water, Coastal and Beach Protection Act of 2002):

- Water Code Section 79541 – Secretary of Resources Agency (River Parkways)
- Water Code Section 79542 – California Tahoe Conservancy (Lake Tahoe Water Quality)
- Water Code Section 79544 – Secretary of Resources Agency (Sierra Nevada – Cascade Mountain Region Water Quality)
- Water Code Section 79550 (e) or (f) – CALFED Bay-Delta Program (Ecosystem Restoration and Watershed Programs)
- Water Code Section 79565 – Wildlife Conservation Board (Regional Water Quality; Fish and Wildlife Habitat)
- Water Code Section 79568 – Wildlife Conservation Board (Colorado River)
- Water Code Section 79570 – State Coastal Conservancy, Santa Monica Mountains Conservancy, San Gabriel and Lower Los Angeles Rivers and Mountains Conservancy (Coastal Watershed Protection)



- Water Code Section 79572 – Wildlife Conservation Board (Coastal Wetlands, Upland Areas Adjacent to Coastal Wetlands and Coastal Watershed Lands)

Proposition 84 (Safe Drinking Water, Water Quality and Supply, Flood Control, River and Coastal Protection Bond Act of 2006):

- Public Resources Code Section 75050 – Department of Fish and Game, Department of Water Resources, Department of Conservation, San Joaquin River Conservancy, San Gabriel and Lower Los Angeles Rivers and Mountains Conservancy, Santa Monica Mountains Conservancy, Coachella Valley Mountains Conservancy, State Coastal Conservancy, Sierra Nevada Conservancy, California Tahoe Conservancy, and State Water Resources control Board
- Public Resources Code Section 75055 – Wildlife Conservation Board and Department of Conservation
- Public Resources Code Section 75060 – State Water Resources Control Board, State Coastal Conservancy, San Francisco Bay Area Conservancy, Santa Monica Mountains Conservancy, Baldwin Hills Conservancy, Rivers and Mountains Conservancy
- Public Resources Code Section 75063 – Department of Parks and Recreation

Other bond funds may be used, if the bond act specifies the funds may be used for the purposes of the Tax Credit Act.

**Use of Other Funds to Reimburse the General Fund**

Public Resources Code Section 37022, as amended, identifies other fund sources that may be used to reimburse the General Fund. Specifically, eligible fund sources include:

- Court settlements
- Private or public donations
- Local governmental funds of any type
- Federal funds
- Special state funds (with the exception of monies from the Habitat Conservation Fund, the Environmental Enhancement and Mitigation Program Fund, the State Parks and Recreation Fund and the Wildlife Restoration Fund)

Applications received from local government entities, special districts or designated non-profit organizations that are approved by the Board will receive a conditional approval for a qualified donation and related tax credit. For these projects, the application must identify the source of the reimbursement funds and the party responsible for reimbursing the

General Fund. Following notification of the conditional approval, the Board will request the donee to transfer all of the funds necessary to reimburse the General Fund to the Board. This transfer must occur within 60 days following the Board's conditional approval of the project. Once the Board receives the funds necessary to reimburse the General Fund, the donee and the donor will receive a final approval of the project and tax credit.

Conditional approvals will not be finalized until the Board receives all of the funds necessary to reimburse the General Fund. Further, the Franchise Tax Board (FTB) will not be notified of the approved tax credits. Until the Board notifies the FTB, tax credits are not available for use by a taxpayer.

## CHAPTER 2

### Program Requirements

#### CRITERIA FOR ACCEPTANCE

##### Eligible Donations

To qualify for consideration under the Tax Credit Program, a proposed donation of property or interest in property must meet one or more of the following criteria (Public Resources Code Section 37015):

- (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.
- (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 (“CESA”) or the federal Endangered Species Act (“ESA”), 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 criterion shall be accepted pursuant to the California Farmland Conservancy Program Act established by Section 10200 *et seq.* of the Public Resources Code, pursuant to the agricultural conservation program of the State Coastal Conservancy, or pursuant to the Bay Area Conservancy Program established pursuant to Section 31160 *et seq.* of the Public Resources Code.
- (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 CESA or ESA, 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 Section 1700 *et seq.* or Section 1725 *et seq.* 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.

In addition to meeting one or more of the above criteria, the proposed donation must satisfy the requirements for a “qualified contribution” pursuant to section 170 of the Internal Revenue 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 for a “qualified contribution,” 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 Internal Revenue Code section 170 (h). The Board may segregate eligible and ineligible interests in property proposed to be contributed under the Tax Credit Program. The donor must not receive any other valuable consideration for the donation of property subject to the tax credit.

### **Ineligible Donations**

If a property does not meet at least one of the criteria in Public Resources Code Section 37015, or does not satisfy the requirements for a “qualified contribution” under section 170 of the Internal Revenue Code, the proposed donation does not qualify and will not be considered for approval. In addition, a donation is ineligible for approval if it 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, such as 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 (Public Resources Code Section 37016).

Property on which there has been a release or threatened release of a hazardous material can be considered only if all of the requirements of Public Resources Code Section 37016 (a)(2) are met. The application must disclose any known or suspected hazardous material release, threatened release or other environmental condition associated with the property.

### **Eligible Donees**

Qualified property may be donated to any state department, board or conservancy created by statute that is within the California Natural Resources Agency and authorized to hold title to land, or to the California Natural Resources Agency itself.

Eligible recipients also include local government entities such as park and open space or other special districts, cities, counties, cities and counties, and joint powers authorities made up of one or more of those entities or those entities and departments. If bond funds are to be used to reimburse the General Fund, the local government entity must certify that it is eligible to receive bond funds pursuant to the relevant provision of the applicable bond act and that the donation meets the bond act requirements.

A nonprofit organization is considered an eligible donee if it meets the following qualifications: (1) the nonprofit is a tax-exempt organization qualified under Internal Revenue Code section 501 (c)(3), (2) it has as a principal purpose the conservation of land and water resources, (3) the organization is designated by a department or local government to accept property under the Tax Credit Act in lieu of the department or local government, and (4) it has experience in land conservation. The nonprofit organization must also have experience in land conservation. Again, if bond funds are to be used to reimburse the General Fund, the nonprofit organization must be eligible to receive bond funds pursuant to the relevant provision of the applicable bond act and the donation must comply with the requirements specified in the bond act provisions for a nonprofit organization.

## **RESPONSIBILITIES OF DONOR AND DONEE**

### **The Application**

The Application Package (**Appendix A**) contains five parts that must be completed by the donor and the donee. Applications that are not complete will not be reviewed. In addition, the Board may request further information necessary to evaluate the proposed donation. A complete application must include all of the following:

#### **Part I**

Project and Donor Information  
General Fund Reimbursement Information  
Donor Disclosure Authorization

#### **Part II**

Criteria for Acceptance of Property

#### **Part III**

Donor and Donee Certifications

#### **Part IV**

Bond Fund Certifications  
Non-Bond Fund Certifications  
Certification of Availability of Funds

#### **Part V**

Required Attachments



## Public Hearing

A public hearing must be held in the local community before property is acquired under the Tax Credit Act, Public Resources Code Section 37012 (d). When the Board has received both a complete application package for a proposed donation that appears to qualify for acceptance under the Tax Credit Program and a Department of General Services (DGS) approved appraised fair market value for the donation, Board staff will notify the project applicant to schedule and hold a public hearing. For public hearings that the Board is required to conduct (i.e., where the donee is a designated nonprofit organization) the Board will seek staff services from the department that submitted the application, as provided in Public Resources Code Section 37005. The public hearing must take place before the proposed donation will be presented to the Board for consideration of approval of a tax credit.

To avoid conducting a public hearing on a proposed donation that may not qualify for acceptance under the Tax Credit Program or for which funding may be unavailable, Board staff will notify the project applicant when it is appropriate to proceed with a public hearing. The public hearing should be held only *after* the application has been submitted to the Board and the project applicant has received notice to proceed with the public hearing from Board staff. Regardless of the fund source used to reimburse the General Fund for approved tax credits, it is critical the project applicant coordinate both with the Board and with the public entity responsible for reimbursing the General Fund regarding the public hearing.

## Hearing Notice

Notice of the public hearing must be provided to the following entities: County Board of Supervisors of the affected county; landowners adjacent to the property proposed for donation; affected water districts; local municipalities; and others whom the donee or the Board determines to be interested in or affected by the donation. Hearing notices must also be provided to the Board. The hearing should be held at an appropriate public meeting facility such as a county court house or the chambers of the county board of supervisors.

The hearing notice shall be given and also made available on the internet at least 10 days in advance of the public hearing, and shall contain at least the following information:

- (1) Date, time, place, and location of hearing.
- (2) A specific agenda for the hearing, containing a brief description of the items to be discussed.
- (3) The name, address, and telephone number of a contact person who can provide further information prior to the hearing.
- (4) The address of the internet site where the notice is available.
- (5) Information regarding how, to whom, and by when a request for any disability-related modification or accommodation, including auxiliary aids or services, may be made by a person who requires these aids or services in

order to participate in the public hearing.

Upon request of a person with a disability, the meeting notice shall be made available in appropriate alternative formats, as required by Section 202 of the Americans with Disabilities Act of 1990 (42 U.S.C. Section 12132) (ADA), and the federal rules and regulations adopted in implementation of the ADA.

### **Conduct of Public Hearing**

To assure the public hearing is meaningful, each hearing shall provide at least all of the following information:

- Identification of the donor, donee and any department or local government proposing to expend funds to reimburse the General Fund pursuant to the Tax Credit Act
- Description of the proposed donation, including how the donation meets the criteria and qualifies for acceptance under the Tax Credit Program
- Location of the proposed donation, including maps that show the property boundaries and adjacent properties
- If the proposed donation is a water right, or land with an associated water right, explain how the water right will be used, how it meets the criteria and qualifies for acceptance under the Tax Credit Program, any change in the point of diversion, place of use, or purpose of use, and any impact upon any legal user of the water
- The DGS approved, appraised fair market value of the property proposed for acceptance and amount of tax credit requested
- Identification of any impacts the donation may have on adjacent landowners
- Actions taken or proposed to minimize any impact on adjacent landowners, including identification of any setbacks or buffers and how the size of each setback or buffer was established
- Whether or not the donee will allow public access to the property, and if so, how public access will be managed
- Any known or suspected environmental conditions associated with the property, including any release or threatened release of any hazardous materials on the property
- An opportunity for members of the public to comment on the proposed donation

The donee shall record the hearing, prepare minutes and provide this information to the Board at least five weeks prior to the Board meeting at which the proposed donation is scheduled for consideration.

## **Public Access**

The Tax Credit Act requires the donee to allow public access to any donated property to the extent that public access is consistent with the purposes for which the property was accepted. However, before providing public access, the donee must develop a plan. The plan shall include measures that will minimize 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. In addition, the plan shall establish any necessary setback(s) or buffer area(s). A conservation easement over privately owned lands may provide for public access, however, the Tax Credit Act does not require access to privately owned lands over which a conservation easement is contributed pursuant to the Tax Credit Program.

## **Setbacks and Buffers**

A donee accepting property under the Tax Credit Program is required to own and maintain any setback or buffer area that may be necessary for the use of the donated property, in order to avoid infringement on the customary husbandry practices on adjacent or nearby agricultural or timber operations.

## **Disclosure Authorization**

The Application Package (**Appendix A**), includes a “Disclosure Authorization” required by Public Resources Code Section 37034 (a)(3). The Disclosure Authorization **MUST BE SIGNED BY EACH DONOR**. No application can be accepted without the required Disclosure Authorization(s).

## **Donor and Donee Certifications**

The Application Package contains certifications that are required from the donor and the donee. The certifications pertain to several requirements of the Tax Credit Act. Applications will not be accepted that do not contain the required certifications, signed by the donor and donee.

## **Funding Certifications**

Certifications are required on the part of the department or local government that proposes to reimburse the General Fund for the amount of lost revenue resulting from the award of the tax credits. Applications will not be accepted that do not contain certifications that (1) identify the source and confirm the availability of the funds necessary to reimburse the General Fund and (2) commit to encumber and ultimately transfer such funds as are and when necessary to reimburse the General Fund. The required funding certifications are contained in the Application Package.

## **Appraisal Report**

The application must contain an appraisal of the fair market value of the property proposed for donation meeting the requirements of Internal Revenue Code section 170. Before a donation is considered by the Board for final approval, appraisal(s) must be reviewed and approved by the Department of General Services (DGS).

To facilitate the development and ultimate approval of the appraisal and determination of the fair market value, all appraisals must be prepared in conformance with the Uniform Standards of Professional Appraisal Practice (USPAP). In addition, the application must contain the appraiser's certification described in the list of Required Attachments in the Application Package.

If the application is complete and appears to qualify for acceptance under the program, Board staff will notify state department applicants to submit the appraisal to the DGS for review and approval. Once the DGS review is complete, the department must send Board staff a copy of the DGS Appraisal Review Memorandum. For applications submitted by local governments or nonprofit organizations, the Board will submit the appraisal to the DGS for review and approval.

For all project applicants, following receipt of the DGS approved fair market value of the donation and completion of the public hearing, the project will be scheduled for full Board review and consideration.

## **Contributions for Transaction Costs**

A 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 site assessments the department requires, and the costs of preparing any necessary management plan for the property or set of properties.

## **Transfer of State Tax Credits**

Unlike tax credit programs in other states, the Tax Credit Act does not allow the transfer or sale of approved tax credits to another California taxpayer. If the donor is unable to utilize all of the approved tax credits over a total of nine years, the unused credits are no longer available for use by the taxpayer.

## **CHAPTER 3**

### **Long-Term Obligations**

#### **Use of Donated Property**

Property approved for acceptance under the Tax Credit Program must be used for the conservation purposes for which it was contributed. If any unauthorized use is made of property after it is donated to a nonprofit organization or local government, the donee must seek to terminate the unauthorized use and restore the conservation benefits for which the property was donated. If the Board determines that an unauthorized use has not been terminated and the conservation benefits fully restored within a reasonable time, the fee title owner must pay to the state the greater of the following amounts:

1. The fair market value of the property based on appraisals when accepted by the Board.
2. The fair market value of the property based on appraisals at the time of and based on the unauthorized use of the property.

A state entity 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.

#### **Monitoring Requirements**

To assure the long-term conservation purposes of the donation are maintained, once every three years or more often as agreed to by all parties, the Board will conduct a site visit of all property accepted by nonprofit organizations and local governments pursuant to the Tax Credit Program. The purpose of the site visit will be to ensure the use of the property conforms to the conservation purposes for which it was accepted into the Tax Credit Program.

#### **Property Transfers**

If any property approved for acceptance under the Tax Credit Program is later transferred by the donee, its use must be restricted by deed to the conservation purposes for which the property was contributed. Consistent with this requirement, any local government or nonprofit organization seeking to sell or transfer donated property must first obtain Board approval.

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, the donee must use proceeds from the sale of the property to acquire property in California of equal or greater value and comparable resource values, as determined by the Board. Any replacement property must meet the criteria for acceptance under the Tax Credit Act.

To assure transfers are properly made, the conveyance instrument (i.e., deed, conservation easement) by which the donated property is acquired shall include substantially the following language:

***The property is being granted pursuant to the Natural Heritage Preservation Tax Credit Act of 2000, as amended (California Public Resources Code Section 37000 et seq.). Any transfer of the property described herein (or any interest in such property) is subject to the prior written approval of the Wildlife Conservation Board. Requests for such approval should be mailed to the Executive Director, Wildlife Conservation Board, 1807 13<sup>th</sup> Street, Suite 103, Sacramento, California 95811.***

At the time it acquires the donated property, the donee must record a Notice and Declaration with the local county recorder to notify third parties of the requirements surrounding the donation. When the property has been acquired and the Notice and Declaration is recorded and returned to the Board, an Acknowledgment of Donation will be sent to the donor and the donee confirming the approval of the donation pursuant to the program and the award of the tax credit.

Samples of a Grant Deed containing the language required above, a Notice and Declaration and an Acknowledgment of Donation are provided in **Appendix B**.

## **Chapter 4**

### **Administrative Process**

#### **Developing Partnerships**

While the Tax Credit Act is designed to encourage private landowners to donate qualified interests in real property for conservation purposes, the Tax Credit Program is not designed to accept applications directly from private landowners. As such, interested landowners must coordinate the preparation of the Application Package with an eligible donee. In most cases, the donee takes responsibility for preparing the application with input and final approval of the donor/landowner.

Interested parties are encouraged to submit an Application Package to the Wildlife Conservation Board for consideration if the following applies:

- (1) A proposed donation compliments the mission of the donee and meets the criteria for a qualified donation.
- (2) The donee is interested in accepting, or designating a qualified entity to accept, the donation.
- (3) The donee is able to reimburse the General Fund for all loss revenue resulting from the award of approved tax credits, as required by Public Resources Code Section 37022.

#### **Submitting Applications**

Applications are accepted on a year-round basis. Applications that comply with the program requirements and eligibility criteria for qualified donations can be scheduled for Board consideration only after approval of the appraisal by DGS as required by the Tax Credit Act and completion of the required local public hearing. The Board generally meets four times per year, in February, May, August and November. Board staff will notify project applicants of the date a proposal is scheduled for consideration by the Board.

Donees should mail completed applications to the Executive Director, Wildlife Conservation Board, 1807 13<sup>th</sup> Street, Suite 103, Sacramento, California 95811. Donees are encouraged to call the Tax Credit Program Manager at (916) 445-8448, with any questions prior to completing the application package.

Additional information regarding the Tax Credit Program is available on the Board's website at [www.wcb.ca.gov](http://www.wcb.ca.gov).



Unless future legislation is enacted extending the sunset date, the authority for the Tax Credit Program is scheduled to expire on June 30, 2015. As such, all of the following information must be completed before the sunset date of June 30, 2015:

- The public hearing must be completed
- Board action must be completed
- All funds used to reimburse the General Fund by a local government must be transferred to the Board
- The contribution must have been made and the transaction closed.

### **Board Review and Notification Process**

After the Board considers the requested donation, Board staff will notify the donee and donor of the Board's decision.

For projects approved by the Board, the notification will include a Funding Certification to be completed and signed by the entity that will be reimbursing the General Fund for the tax credit. Upon receipt of the signed Funding Certification, the Board will then notify the Joint Legislative Budget Committee, State Controller, the State Treasurer, the State Franchise Tax Board (FTB) and the State Department of Finance of the approved donation and the award of related tax credits.

Following receipt of a tax return claiming a tax credit, the FTB will notify the Board, which in turn will notify the entity responsible to reimburse the General Fund. This notification will request the department to transfer the encumbered funds to the Reimbursement Account. The department will then have 60 days from receipt of the notification to complete the transfer of funds to the Reimbursement Account. For local governments that have transferred funds directly to the Board, the Board will be responsible for transferring sufficient funds to the Reimbursement Account and the General Fund.

Taxpayers may claim tax credits until the entire amount of the approved tax credit has been claimed, or for a total of nine years, whichever comes first. Upon receiving notification from the FTB that a taxpayer has claimed a tax credit, the Board will provide this information regarding the claim to the State Controller, the State Treasurer and the Department of Finance. However, it is the responsibility of the donor and donee to comply with all federal and state laws and regulations including those applicable to the donor's tax credit.

[Appendix A, Application Package, Revised January 2010](#)

[Appendix B, Sample Notifications and Declarations, Revised January 2010](#)