

Assembly Bill No. 522

CHAPTER 900

An act to amend Sections 37002, 37005, 37006, 37011, 37012, 37013, 37015, 37016, 37020, and 37021 of, and to add Sections 37023, 37024, and 37025 to, the Public Resources Code, relating to conservation.

[Approved by Governor September 28, 2000. Filed
with Secretary of State September 29, 2000.]

LEGISLATIVE COUNSEL'S DIGEST

AB 522, Wayne. Natural Heritage Preservation Tax Credit Act of 2000.

Chapter 113 of the Statutes of 2000 enacted the Natural Heritage Preservation Tax Credit Act of 2000 which authorizes the donation of property, meeting specified criteria, to the state, any local government, or any designated nonprofit organization in return for a tax credit on a portion of the value of the property.

This bill would make various technical changes to that act. The bill would also incorporate provisions into that act relating to public access to the donated property, and would authorize the city, county, or city and county in which the property is located to request the Director of Finance to disapprove the acceptance of the property and would require the director to provide a written explanation of his or her decision.

The people of the State of California do enact as follows:

SECTION 1. Section 37002 of the Public Resources Code, as added by Chapter 113 of the Statutes of 2000, is amended to read:

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.

SEC. 2. Section 37005 of the Public Resources Code, as added by Chapter 113 of the Statutes of 2000, is amended to read:

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.

SEC. 3. Section 37006 of the Public Resources Code, as added by Chapter 113 of the Statutes of 2000, is amended to read:

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.

SEC. 4. Section 37011 of the Public Resources Code, as added by Chapter 113 of the Statutes of 2000, is amended to read:



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.

SEC. 5. Section 37012 of the Public Resources Code, as added by Chapter 113 of the Statutes of 2000, is amended to read:

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.

SEC. 6. Section 37013 of the Public Resources Code, as added by Chapter 113 of the Statutes of 2000, is amended to read:

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.

SEC. 7. Section 37015 of the Public Resources Code, as added by Chapter 113 of the Statutes of 2000, is amended to read:

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.

SEC. 8. Section 37016 of the Public Resources Code, as added by Chapter 113 of the Statutes of 2000, is amended to read:

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.



SEC. 9. Section 37020 of the Public Resources Code, as added by Chapter 113 of the Statutes of 2000, is amended to read:

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.

SEC. 10. Section 37021 of the Public Resources Code, as added by Chapter 113 of the Statutes of 2000, is amended to read:

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.

SEC. 11. Section 37023 is added to the Public Resources Code, to read:

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.

SEC. 12. Section 37024 is added to the Public Resources Code, to read:

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.

SEC. 13. Section 37025 is added to the Public Resources Code, to read:

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.

