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AN ACT

RELATING TO PROPERTY TAXATION; PROVIDING TAX CREDITS FOR THE
DONATION OF LAND OR INTEREST IN LAND; ENACTING THE LAND
CONSERVATION INCENTIVES ACT; PROVIDING FOR ADMINISTRATION.

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BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF NEW MEXICO:

Section 1. SHORT TITLE.--Sections 1 through 6 of this act may be cited as
the "Land Conservation Incentives Act".

Section 2. PURPOSE.--The purpose of the Land Conservation Incentives Act
is to encourage private landowners to be stewards of lands that are important habitat
areas or contain significant natural, open space and historic resources by providing
private landowners with incentives that encourage the protection of private lands for
open space, natural resources, biodiversity conservation, outdoor recreation, farmland
and forest land preservation, historic preservation and land conservation purposes.

Section 3. DEFINITIONS.--As used in the Land Conservation Incentives Act:

A. "interest in real property" means a right in real property, including
access, improvements, water rights, fee simple interest, easement and land use
easement. The interest shall comply with the requirements of the Section 170(h) of
the Internal Revenue Code of 1986, partial interest, mineral right, remainder or future
interest or other interest or right in real property;

B. "land" means real property, including rights of way, easements,
privileges and all other rights or interests of a land or description relating to or
connected with real property; and

C. "public or private conservation agency" means a governmental
body or a private not-for-profit charitable corporation or trust authorized to do
business in New Mexico that is organized and operated for natural resources, land
conservation or historic preservation purposes and that has tax-exempt status as a
public charity under the federal Internal Revenue Code of 1986, and the power to
acquire, hold or maintain land or interests in land.

1 Section 4. ADMINISTRATION.--

2 A. The Land Conservation Incentives Act shall be administered by the
3 secretary of energy, minerals and natural resources in consultation with the committee
4 established pursuant to the Natural Lands Protection Act.

5 B. The secretary of energy, minerals and natural resources may
6 promulgate rules as may be deemed necessary to certify eligible projects for treatment
7 in fulfillment of the purposes of this act. The secretary of taxation and revenue, in
8 consultation with the secretary of energy, minerals and natural resources, shall
9 promulgate rules as may be deemed necessary to administer the tax incentives
10 provided for in the Land Conservation Incentives Act and shall coordinate the
11 preparation of the report to the legislature showing the fiscal impact on the treasury of
12 the credits claimed pursuant to that act.

13 Section 5. APPLICABILITY AND LIMITATIONS.--

14 A. The tax credits provided by the Land Conservation Incentives Act
15 apply to transfers of land or interests therein in taxable years beginning on or after
16 January 1, 2004 and all taxable years thereafter.

17 B. A taxpayer claiming a tax credit pursuant to the Land Conservation
18 Incentives Act may not claim a credit pursuant to a similar law for costs related to the
19 same project.

20 C. A tax credit that is claimed pursuant to the Land Conservation
21 Incentives Act from the donation of land or an interest in land made by a pass-through
22 tax entity, such as a trust, estate, partnership, limited liability corporation or
23 partnership, limited partnership, S corporation or other fiduciary, shall be used either
24 by an entity in the event it is the taxpayer on behalf of the entity or by the member,
25 manager, partner, shareholder or beneficiary, as the case may be, in proportion to his
interest in the entity in the event that income, deductions and tax liability pass through
the entity to the member, manager, partner, shareholder or beneficiary. Tax credits
may not be claimed by both the entity and the member, manager, partner, shareholder

1 or beneficiary for the same donation.

2 Section 6. INTERPRETATION.--No part or segment of the Land Conservation
3 Incentives Act shall be interpreted to alter or amend permit requirements, reporting
4 requirements, allocation procedures or other requirements as set forth in any other
5 provision of state law.

6 Section 7. A new section of the Income Tax act, Section 7-2-18.10 NMSA
7 1978, is enacted to read:

8 "7-2-18.10. TAX CREDIT AVAILABLE.--

9 A. There shall be allowed as a credit against the tax liability imposed
10 by the Income Tax Act, an amount equal to fifty percent of the fair market value of land
11 or interest in land that is conveyed for the purpose of open space, natural resource or
12 biodiversity conservation, agricultural preservation or watershed or historic
13 preservation as an unconditional donation in perpetuity by the landowner or taxpayer
14 to a public or private conservation agency eligible to hold the land and interests
15 therein for conservation or preservation purposes. The fair market value of qualified
16 donations made pursuant to this section shall be substantiated by a "qualified
17 appraisal" prepared by a "qualified appraiser", as those terms are defined under
18 applicable federal laws and regulations governing charitable contributions.

19 B. The amount of the credit that may be claimed by a taxpayer shall
20 not exceed one hundred thousand dollars (\$100,000). In addition, in a taxable year
21 the credit used may not exceed the amount of individual income tax otherwise due. A
22 portion of the credit that is unused in a taxable year may be carried over for a
23 maximum of twenty consecutive taxable years following the taxable year in which the
24 credit originated until fully expended. A taxpayer may claim only one tax credit per
25 taxable year.

26 C. Qualified donations shall include the conveyance in perpetuity of a
27 fee interest in real property or a less-than-fee interest in real property, such as a
28 conservation restriction, preservation restriction, agricultural preservation restriction or
29 watershed preservation restriction, pursuant to the Land Use Easement Act and

1 provided that the less-than-fee interest qualifies as a charitable contribution deduction
2 under Section 170(h) of the Internal Revenue Code. Dedications of land for open
3 space for the purpose of fulfilling density requirements to obtain subdivision or building
4 permits shall not be considered as qualified donations pursuant to the Land
5 Conservation Incentives Act.

6 D. Qualified donations shall be eligible for the tax credit if the
7 donations are made to the state of New Mexico, a political subdivision thereof or a
8 charitable organization described in Section 501(c)(3) of the Internal Revenue Code
9 and that meets the requirements of Section 170(h)(3) of that code.

10 E. To be eligible for treatment as qualified donations under this
11 section, land or interests in lands must be certified by the secretary of energy,
12 minerals and natural resources as fulfilling the purposes as set forth in Section 2 of
13 the Land Conservation Incentives Act. The use and protection of the lands, or
14 interests therein, for open space, natural area protection, biodiversity habitat
15 conservation, land preservation, agricultural preservation, historic preservation or
16 similar use or purpose of the property shall be assured in perpetuity."

17 Section 8. A new section of the Corporate Income and Franchise Tax Act,
18 Section 7-2A-8.9 NMSA 1978, is enacted to read:

19 "7-2A-8.9. TAX CREDIT AVAILABLE.--

20 A. There shall be allowed as a credit against the tax liability imposed
21 by the Corporate Income and Franchise Tax Act an amount equal to fifty percent of
22 the fair market value of land or interest in land that is conveyed for the purpose of
23 open space, natural resource or biodiversity conservation, agricultural preservation or
24 watershed or historic preservation as an unconditional donation in perpetuity by the
25 landowner or taxpayer to a public or private conservation agency eligible to hold the
land and interests therein for conservation or preservation purposes. The fair market
value of qualified donations made pursuant to this section shall be substantiated by a
"qualified appraisal" prepared by a "qualified appraiser", as those terms are defined
under applicable federal laws and regulations governing charitable contributions.

1 B. The amount of the credit that may be claimed by a taxpayer shall
2 not exceed one hundred thousand dollars (\$100,000). In addition, in a taxable year
3 the credit used may not exceed the amount of corporate income tax otherwise due. A
4 portion of the credit that is unused in a taxable year may be carried over for a
5 maximum of twenty consecutive taxable years following the taxable year in which the
6 credit originated until fully expended. A taxpayer may claim only one tax credit per
7 taxable year.

8 C. Qualified donations shall include the conveyance in perpetuity of a
9 fee interest in real property or a less-than-fee interest in real property, such as a
10 conservation restriction, preservation restriction, agricultural preservation restriction or
11 watershed preservation restriction, pursuant to the Land Use Easement Act; provided
12 that the less-than-fee interest qualifies as a charitable contribution deduction under
13 Section 170(h) of the Internal Revenue Code. Dedications of land for open space for
14 the purpose of fulfilling density requirements to obtain subdivision or building permits
15 shall not be considered as qualified donations pursuant to the Land Conservation
16 Incentives Act.

17 D. Qualified donations shall be eligible for the tax credit if the
18 donations are made to the state of New Mexico, a political subdivision thereof or a
19 charitable organization described in Section 501(c)(3) of the Internal Revenue Code
20 and that meets the requirements of Section 170(h)(3) of that code.

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22 section, land or interests in lands must be certified by the secretary of energy,
23 minerals and natural resources as fulfilling the purposes as set forth in Section 2 of
24 the Land Conservation Incentives Act. The use and protection of the lands, or
25 interests therein, for open space, natural area protection, biodiversity habitat
conservation, land preservation, agricultural preservation, historic preservation or
similar use or purpose of the property shall be assured in perpetuity."

Section 9. EFFECTIVE DATE.--The effective date of the provisions of this act
is January 1, 2004.