

TITLE 3 TAXATION
CHAPTER 13 BUSINESS TAX CREDITS
PART 20 LAND CONSERVATION INCENTIVES TAX CREDIT

3.13.20.1 ISSUING AGENCY: Energy, Minerals and Natural Resources Department and the Taxation and Revenue Department.

[3.13.20.1 NMAC - Rp, 3.13.20.1 NMAC, 6-16-2008]

3.13.20.2 SCOPE: 3.13.20 NMAC applies to application and certification procedures for administration of the land conservation incentives tax credit.

[3.13.20.2 NMAC - Rp, 3.13.20.2 NMAC, 6-16-2008]

3.13.20.3 STATUTORY AUTHORITY: 3.13.20 NMAC is adopted pursuant to NMSA 1978, Sections 7-2-18.10; 7-2A-8.9; 9-1-5(E) and 9-11-6.2 and the Land Conservation Incentives Act, NMSA 1978, Sections 75-9-1 to 75-9-6.

[3.13.20.3 NMAC - Rp, 3.13.20.3 NMAC, 6-16-2008]

3.13.20.4 DURATION: Permanent.

[3.13.20.4 NMAC - Rp, 3.13.20.4 NMAC, 6-16-2008]

3.13.20.5 EFFECTIVE DATE: June 16, 2008, unless a later date is cited at the end of a section.

[3.13.20.5 NMAC - Rp, 3.13.20.5 NMAC, 6-16-2008]

3.13.20.6 OBJECTIVE: 3.13.20 NMAC's objective is to establish procedures for certifying whether donations of land or interests in land to public or private conservation agencies made on or after January 1, 2004, are eligible for the land conservation incentives tax credit and to administer the land conservation incentives tax credit.

[3.13.20.6 NMAC - Rp, 3.13.20.6 NMAC, 6-16-2008]

3.13.20.7 DEFINITIONS:

A. "Applicant" means a taxpayer who on or after January 1, 2004, donates or partially donates (or for purposes of 3.13.20.8 NMAC plans to donate or partially donate) through a bargain sale for a conservation or preservation purpose, a perpetual less-than-fee interest in land that appears to qualify as a charitable contribution under 26 U.S.C. section 170(h) and its implementing regulations or a fee interest in land, which is subject to a perpetual conservation easement, to a public or private conservation agency. If more than one taxpayer owns an interest in the land or interest in land that is the donated or partially donated, they shall be considered one applicant, but the application shall include the names and addresses of all taxpayers that own an interest in the donated land or interest in land.

B. "Appraisal bureau" means the taxation and revenue department, property tax division, appraisal bureau.

C. "Bargain sale" means a sale where the taxpayer is paid less than the fair market value of the land or interest in land.

D. "Building envelope" means a designated area within a conservation easement that is identified in the deed of conservation easement that contains existing structures and activities or will contain future structures and activities that are for the grantor's continued use of the property but that are prohibited elsewhere within the conservation easement.

E. "Committee" means the committee established pursuant to the Natural Lands Protection Act, NMSA 1978, Sections 75-5-1 *et seq.*

F. "Conservation or preservation purpose" means open space, natural area preservation, land conservation or preservation, natural resource or biodiversity conservation including habitat conservation, forest land preservation, agricultural preservation, watershed preservation or historic or cultural property preservation, or similar uses or purposes such as protection of land for outdoor recreation purposes. The resources or areas contained in the donation must be significant or important.

G. "Cultural property" means a structure, place, site or object having historic, archaeological, scientific, architectural or other cultural significance.

H. "Development approach" means a method of appraising undeveloped land having a highest and best use for subdivision into lots. This approach consists of estimating a final sale price for the total number of lots

into which the property could best be divided and then deducting all development costs, including the developer's anticipated profit. The remaining sum, the residual, represents the raw land's market value.

I. "Governmental body" means the state of New Mexico or any of its political subdivisions.

J. "Interest in land" means a right in real property, including access, improvement, water right, fee simple interest, easement, land use easement, mineral right, remainder interest or other interest in or right in real property that complies with the requirements of 26 U.S.C. section 170(h)(2) and its implementing regulations, or any pertinent successor of 26 U.S.C. section 170(h)(2).

K. "Land" means real property, including rights of way, easements, privileges, water rights and all other rights or interests connected with real property.

L. "Less-than-fee interest" means an interest in land that is less than the entire property or all of the rights in the property or a non-possessory interest in land that imposes a limitation or affirmative obligation such as a conservation, land use or preservation restriction or easement.

M. "National register of historic places" means the register that the United States secretary of the interior maintains of districts, sites, buildings, structures and objects significant in American history, architecture, archaeology, engineering or culture.

N. "Pass-through entity" means a business association other than a sole proprietorship; an estate or trust; a corporation, limited liability company, partnership or other entity not a sole proprietorship taxed as a corporation for federal income tax purposes for the taxable year; or a partnership that is organized as an investment partnership in which the partners' income is derived solely from interest, dividends and sales of securities.

O. "Public or private conservation agency" means a governmental body or a private non-profit charitable corporation or trust authorized to do business in New Mexico that is organized and operated for natural resources, land or historic conservation purposes and that has tax-exempt status as a public charity under 26 U.S.C. section 501(c)(3) and meets the requirements of 26 U.S.C. section 170(h)(3) and its implementing regulations, and has the power to acquire, hold or maintain land or interests in land.

P. "Qualified appraisal" means a qualified appraisal as defined in 26 C.F.R. section 1.170A-13(c)(3) or subsequent amendments and does not use the development approach as the sole means of determining fair market value. The appraisal for a conservation easement or restriction shall state whether the donation increases the value of other property the donor or a related person owns. In accordance with 26 C.F.R. section 1.170A-14(h)(3)(i), if the donation increases the value of other property the donor or a related person owns the appraisal shall reflect the value of enhancement, whether or not the other property is contiguous with the donated property. The conservation contribution shall be reduced by the amount of the increase in value to the other property.

Q. "Qualified appraiser" means a qualified appraiser as defined in 26 C.F.R. section 1.170A-13(c)(5) or subsequent amendments and who is a certified general real estate appraiser.

R. "Qualified intermediary" means any person who has not been previously convicted of a felony, who has not had a professional license revoked, who is not engaged in the practice of public accountancy as defined in NMSA 1978, Section 61-28B-3 or who is not identified in the NMSA 1978, Section 61-29-2, which governs real estate brokers and salespersons, or who is not an entity owned wholly or in part by or employing a person who has been previously convicted of a felony, who has had a professional license revoked, who is engaged in the practice of public accountancy as defined in NMSA 1978, Section 61-28B-3 or who is identified in NMSA 1978, Section 61-29-2.

S. "Taxpayer" means a United States citizen or resident, a United States domestic partnership, a limited liability company, a United States domestic corporation, an estate, including a foreign estate, or a trust. A non-profit may be a taxpayer if organized as a United States domestic partnership, a limited liability company, a United States domestic corporation or a trust. A governmental body or other governmental entity is not a taxpayer.

T. "Tax filer" means a New Mexico taxpayer who files a New Mexico tax return claiming a tax credit pursuant to the Land Conservation Incentives Act together with valid numbered documentation from the taxation and revenue department or valid sub-numbered documentation from a qualified intermediary.

U. "Secretary" means the secretary of energy, minerals and natural resources department or his or her designee.

[3.13.20.7 NMAC - Rp, 3.13.20.7 NMAC, 6-16-2008; A, 12-30-2010; A, 2-12-2016]

3.13.20.8 GENERAL PROVISIONS:

A. Only an applicant may apply for a land conservation incentives tax credit.

B. A taxpayer shall be listed as an owner on the deed conveying the land or interest in land to be eligible for the land conservation incentives tax credit (see Subsection N of 3.13.20.8 NMAC for use of a land conservation tax credit issued to a pass-through entity).

C. A taxpayer is not eligible for a land conservation incentives tax credit if they are or have been a subsidiary, partner, manager, member, shareholder or beneficiary of a domestic partnership, limited liability company, domestic corporation or pass-through entity that owns or has owned the donated land or interest in land in the five years preceding the date that the applicant conveyed the land or interest in land.

D. Qualified donations include a conveyance, on or after January 1, 2004, in perpetuity for a conservation or preservation purpose of a less-than-fee interest in land that appears to qualify as a charitable contribution under 26 U.S.C. section 170(h) and its implementing regulations or a fee interest in land.

E. Dedications of land for open space for the purpose of fulfilling density requirements to obtain subdivision or building permits do not qualify for the land conservation incentives tax credit.

F. For a donation of a fee interest in land or less-than-fee interest in land that the applicant conveys, the total amount of the land conservation incentives tax credit for the donation for which an applicant applies shall not exceed 50 percent of the fair market value of the land or interest in land that the applicant donated in perpetuity, regardless of the value of the land or interest in land donated or the number of taxpayers that own an interest in the donated property. An applicant shall only apply for one land conservation incentives tax credit per taxpayer per taxable year.

G. For donations made prior to January 1, 2008, a taxpayer that owns an interest in the donated land or interest in land may receive a land conservation incentives tax credit worth the lesser of \$100,000 or the taxpayer's proportionate share, as determined by the taxpayer's ownership interest in the donated land or interest in land, of 50 percent of the donated land's or interest in land's fair market value. For donations made on or after January 1, 2008, a taxpayer that owns an interest in the donated land or interest in land may receive a land conservation incentives tax credit worth the lesser of \$250,000 or the taxpayer's proportionate share, as determined by the taxpayer's ownership interest in the donated land or interest in land, of 50 percent of the donated land or interest in land's fair market value. No matter the number of taxpayers that the donated land or interest in land has, the total land conservation incentives tax credit all taxpayers receive for the donated land or interest in land cannot exceed 50 percent of the donated land's or interest in land's fair market value. Therefore, if the applicant conveyed the donation on or after January 1, 2008, and there are 10 taxpayers that have an equal interest in donated land or interest in land that is worth \$2,000,000, each taxpayer's land conservation incentives tax credit would be limited to \$100,000.

H. For donations conveyed prior to January 1, 2008, a husband and wife who both own a recorded interest in the donated land or interest in land, as opposed to one spouse not being named on the deed but having a community property interest, may each receive a land conservation incentives tax credit worth the lesser of \$100,000 or his or her proportionate share, as determined by his or her ownership interest in the donated land or interest in land, of 50 percent of the donated land's or interest in land's fair market value. For donations made on or after January 1, 2008, a husband and wife who both own a recorded interest in a donated land or interest in land, as opposed to one spouse not being named on the deed but having a community property interest, may each receive a land conservation incentives tax credit worth the lesser of \$250,000 or his or her proportionate share, as determined by his or her ownership interest in the donated land or interest in land, of 50 percent of the donated land's or interest in land's fair market value.

I. The land conservation incentives tax credit originates in the year the applicant conveys the donation, which shall be determined by the date that the deed is recorded with the county clerk where the land or interest in land is located. Pursuant to NMSA 1978, Section 7-1-26, an applicant who files a tax return may amend his or her tax return and claim the land conservation incentives tax credit for three calendar years after the applicant has paid the tax. An applicant may apply for the land conservation incentives tax credit and then amend the applicant's tax return to the year the applicant conveyed the donation as long as the applicant receives approval of the land conservation incentives tax credit and files the amendment within the three year period provided in NMSA 1978, Section 7-1-26. The applicant may carry over portions of the land conservation incentives tax credit that are unused in prior taxable years for a maximum of 20 consecutive years following the taxable year in which the applicant donated the land or interest in land until fully expended.

J. If the applicant donated a portion of the land or interest in land's value, but received payment for the remaining fair market value of the land or interest in land, the applicant may claim only the land conservation incentives tax credit on that portion of the value that the applicant donated.

K. An applicant claiming a tax credit pursuant to the Land Conservation Incentives Act shall not claim a credit pursuant to a similar law for costs related to the same donation.

L. A tax filer may claim the land conservation incentives tax credit against the tax liability that the Income Tax Act or the Corporate Income and Franchise Tax Act impose.

M. The amount of the land conservation incentives tax credit a tax filer uses in a taxable year may not exceed the amount of the individual income or corporate income tax otherwise due.

N. A land conservation incentives tax credit that a pass-through tax entity claims may be used either by the pass-through tax entity if it is the tax filer on behalf of the pass-through tax entity or by the member, manager, partner, shareholder or beneficiary, as applicable, in proportion to the interest in the pass-through tax entity if the income, deductions and tax liability pass through to the member, manager, partner, shareholder or beneficiary. Either (1) the pass-through tax entity or (2) the member, manager, partner, shareholder or beneficiary, but not both (1) and (2) may claim the land conservation incentives tax credit for the same donation.
[3.13.20.8 NMAC - Rp, 3.13.20.8 NMAC, 6-16-2008]

3.13.20.9 ASSESSMENT APPLICATION:

A. An applicant who plans to apply for a land conservation incentives tax credit shall apply for an assessment by the energy, minerals and natural resources department of the donation the applicant made or proposes to make for a conservation or preservation purpose of a fee interest in land or a less-than-fee interest in land. An applicant may submit the assessment application to the energy, minerals and natural resources department either prior to conveying the fee interest in land or less-than-fee interest in land or after conveying the fee interest in land or less-than-fee interest in land. The applicant does not need to submit an appraisal with the assessment application package.

B. An applicant may obtain an assessment application form from the energy, minerals and natural resources department.

C. An applicant shall submit the assessment application package, which shall include one signed, completed paper original and either eight paper copies or eight electronic copies, to the energy, minerals and natural resources department. If submitting electronic copies, the applicant may submit the eight copies of the assessment application package on a compact or digital video disc or other electronic medium such as a USB flash drive. Any photographs submitted shall be in color.

D. The assessment application package shall consist of an assessment application form that contains the applicant's name, address, telephone number, e-mail address if available and signature, with the following required attachments:

- (1) a donation assessment report that includes:
 - (a) a detailed description of the donation or proposed donation including:
 - (i) whether the donation or proposed donation is a fee interest in land or a less-than-fee interest in land;
 - (ii) if the donation or proposed donation is a fee interest in land, in order to ensure that the conservation or preservation purpose is protected in perpetuity, a description of who holds or will hold a conservation easement that the applicant has placed or will place on the land and assurance that the conservation easement will contain a provision that the conservation restrictions run with the land in perpetuity and that any reserved use shall be consistent with the conservation or preservation purpose and that separate donees will hold the fee interest and conservation easement;
 - (iii) the donation or proposed donation's conservation or preservation purpose and how the donation or proposed donation protects that purpose in perpetuity;
 - (iv) significant natural or cultural resources present on the property; and
 - (v) a description of any water rights associated with the property and whether the conservation easement or deed requires or will require any water rights associated with the property to remain with the property;
 - (b) the current property characteristics and condition with clear maps of appropriate scale to illustrate relevant details, and showing the property's location and boundaries including a survey plat if available, directions to the property, topography, relation to other properties applicant owns that are within a 10 mile radius of the property, and relation to adjacent land uses and ownership (*i.e.* federal, tribal, state, private, etc.) and other properties whose conservation or preservation purposes are protected in perpetuity that are adjacent to the property or within a five mile radius of the property;
 - (c) the size of the property in acres;
 - (d) a description of all structures existing on the property;
 - (e) if a donation or proposed donation is a less-than-fee interest, a description of any building envelopes including their size and exact location and the size of the buildings allowed within each building envelope;

(f) if a donation or proposed donation is a less-than-fee interest, a description of the reserved rights and permitted activities that the applicant has or plans to retain or a copy of the completed or draft conservation easement;

(g) if a conservation or preservation purpose is for the preservation of a historically important land area, documentation that the donation meets the requirements of 26 C.F.R. section 1.170A-14(d)(5); historically important land areas include an independently significant land area that meets the national register criteria for evaluation in 36 C.F.R section 60.4, a land area (including related historic resources) within a registered historic district including a building on the land area that can reasonably be considered as contributing to the district's significance and a land area adjacent to a property listed individually in the national register of historic places where the land area's physical or environmental features contribute to the property's historic or cultural integrity;

(h) if a conservation or preservation purpose is for the preservation of a certified historic structure, which means buildings, structures or land areas, documentation that the structure is listed in the national register of historic places or is located in a registered historic district and is certified by the secretary of the interior to the secretary of treasury as being of historic significance to the district and that the donation meets the requirements of 26 C.F.R. section 1.170A-14(d)(5);

(i) if a conservation or preservation purpose is for the preservation of land areas for outdoor recreation by or for the education of the general public, a detailed description of how the conservation easement or deed will provide for the general public's substantial and regular use;

(j) if a conservation or preservation purpose is for the protection of a relatively natural area, a detailed description of the vegetative cover, wildlife use, how the property contributes to the functioning of the larger regional ecosystem and watershed and how the conservation easement will protect the soil, native plant cover and wildlife use of the property;

(k) if a conservation or preservation purpose is for the preservation of open space pursuant to a clearly delineated federal, state or local government policy, documentation of such policy and a detailed description identifying the significant public benefit;

(l) if a conservation or preservation purpose is for the preservation of open space that is not pursuant to a clearly delineated federal, state or local government policy, a detailed description of how the conservation easement or deed will provide for the general public's scenic enjoyment and identifying the significant public benefit;

(m) if a conservation or preservation purpose is for the protection of agricultural land, a detailed description of the property's crop or animal production potential, documentation that the portion of the property claimed as agricultural land is currently subject to the special method of valuation of land used primarily for agricultural purposes as described in NMSA 1978, Section 7-36-20 (*i.e.*, classified as either irrigated agricultural land, dryland agricultural land or grazing land under Paragraph (2) of Subsection F of 3.6.5.27 NMAC as shown on the statement of value issued by the county in which the land is located) and a description of how the conservation easement or deed will provide for agricultural use and the continued use of any water rights;

(n) the results of and a description of the physical inspection of the property the donee or proposed donee conducted for any indications of potentially hazardous materials or activities that have or may result in environmental contamination such as landfills, leaking petroleum storage tanks, hazardous material containers or spills, polychlorinated biphenyl containing equipment, asbestos insulation and abandoned mineral mining or milling facilities or other past activities using hazardous materials and the results of and a description of the interview the donee or proposed donee conducted with the landowner concerning the landowner's knowledge of such potentially hazardous materials or activities;

(2) if the donee or proposed donee or landowner identified the potential for potentially hazardous materials or activities in the donation assessment report, a phase I environmental site assessment of the property and a phase II environmental site assessment if recommended by the phase I environmental assessment;

(3) a copy of any formal donor or donee plan for management or stewardship of the property's conservation or preservation values;

(4) signed authorization from the applicant that allows personnel from the energy, minerals and natural resources department or members of the committee to enter upon the land or interest in land to view the conservation or preservation values conveyed or to be conveyed by the applicant for the purposes of reviewing the assessment application, upon the personnel or committee members providing the applicant with 48 hours prior notice; and

(5) a report from the public or private land conservation agency that has accepted or plans to accept the donation that provides the following:

(a) the number of fee lands held for conservation or preservation purposes or conservation easements that the agency holds in New Mexico;

(b) the number of acres of each fee land held for conservation or preservation purposes or conservation easement that the agency holds in New Mexico;

(c) the names of board members if the agency is a private nonprofit organization or the names of elected or appointed officials if the organization is a public entity; and

(d) a signed statement from the public or private conservation agency describing its commitment to protect the donation's conservation or preservation purposes, its resources to provide stewardship of and management for fee lands or to enforce conservation easement restrictions and, if a conservation easement, its resources and policies to annually monitor the conservation easement.

E. The secretary reviews the assessment applications in consultation with the committee. The secretary initiates consultation by sending the assessment application package to the committee members for review and comment or by calling a meeting of the committee. The secretary shall accept assessment application packages on a rolling basis or not fewer than three times per year spaced throughout the year, the deadlines for which shall be published in advance on the energy, minerals and natural resources department's website. The committee shall meet not fewer than three times per year (within approximately 45 days after a set deadline for assessment application package submittals or otherwise spaced throughout the year) to consider timely and complete assessment applications unless no assessment applications are currently pending or the limited volume of the assessment application enables the secretary to consult with the committee without the need for a formal meeting. The secretary, in consultation with the committee, shall assess the donation or proposed donation, using the factors in 3.13.20.13 NMAC, to determine if the donation or proposed donation is for a conservation or preservation purpose and will protect the conservation or preservation purpose in perpetuity and that the resources or areas contained in the donation or proposed donation are significant or important.

F. If the secretary finds that the donation as conveyed or proposed is for a conservation or preservation purpose and will protect the conservation or preservation purpose in perpetuity and that the resources or areas contained in the donation or proposed donation are significant or important, the secretary shall notify the applicant by letter that the applicant may file an application for certification of eligibility as provided in 3.13.20.10 NMAC. Approval of the application for certification of eligibility is contingent upon the applicant meeting the requirements in 3.13.20.10 NMAC, the completed conservation easement or deed accurately reflecting the donation or proposed donation described in the donation assessment report and the appraisal bureau issuing a favorable recommendation of the appraisal. In order to apply for certification of eligibility, the applicant may not change a proposed donation, donation assessment report or, if a proposed donation, the public or private conservation agency to which the applicant is making the donation after the applicant submits the assessment application. If the applicant makes such changes, the applicant shall submit a new assessment application and must receive a favorable finding from the secretary before applying for certification of eligibility.

G. The secretary shall reject an assessment application that is not complete or correct. If the secretary rejects the assessment application because the assessment application is incomplete or incorrect or finds that the donation or proposed donation is not for a conservation or preservation purpose, the donation or proposed donation may not or will not protect the conservation or preservation purpose in perpetuity or that the resources or areas contained in the donation or proposed donation are not significant or important, the applicant may not submit an application for certification of eligibility for the land conservation incentives tax credit. The secretary's letter shall state the specific reasons why the secretary found the assessment application incomplete or incorrect, that the donation or proposed donation is not for a conservation or preservation purpose, that the donation or proposed donation may not or will not protect the conservation or preservation purpose in perpetuity or that the resources or areas contained in the donation or proposed donation are not significant or important.

H. If the secretary rejects the assessment application because the assessment application is incomplete or incorrect; or although the assessment application is complete and correct and the donation or proposed donation is for a conservation or preservation purpose the resources or areas contained in the donation or proposed donation are not significant or important; or the donation or proposed donation may not or will not protect the conservation or preservation purpose in perpetuity, the applicant may resubmit the application package with the complete or correct information or additional information that addresses the requirement that the resources or areas contained in the donation or proposed donation be significant or important or that the donation or proposed donation protect the conservation or preservation purpose in perpetuity. The secretary shall place the resubmitted assessment application in the review schedule as if it were a new assessment application.

[3.13.20.9 NMAC - N, 6-16-2008; A, 12-30-2010]

3.13.20.10 APPLICATION FOR CERTIFICATION OF ELIGIBILITY:

A. An applicant who submitted an assessment application to the energy, minerals and natural resources department and received a finding from the secretary that the donation or proposed donation is for a conservation or preservation purpose and will protect that conservation or preservation purpose in perpetuity and that the resources or areas contained in the donation or proposed donation are significant or important may apply for certification of eligibility for a land conservation incentives tax credit. An applicant may not apply for certification of eligibility for a land conservation incentives tax credit without first submitting an assessment application pursuant to 3.13.20.9 NMAC and receiving a favorable finding from the secretary. The applicant shall certify in writing that the applicant has not changed the donation or proposed donation, donation assessment report or the public or private conservation agency to which the applicant conveyed or planned to convey the donation since the applicant submitted the assessment application. If the applicant has made such changes the applicant shall submit a new assessment application pursuant to 3.13.20.9 NMAC and receive a favorable finding from the secretary before applying for certification of eligibility.

B. The applicant may obtain a land conservation incentives tax credit certification of eligibility application form from the energy, minerals and natural resources department.

C. An applicant shall submit the certification of eligibility application package, which shall include one signed, completed paper original and two paper copies of the application package, to the energy, minerals and natural resources department. Any photographs shall be provided in color. The applicant shall certify that the information and documents included in the application for certification of eligibility are true and correct.

D. The completed application for certification of eligibility shall contain the applicant's name, address, telephone number, e-mail address if available, signature, federal employer identification number or social security number, and, if available, the New Mexico combined reporting system (CRS) identification number as well as the certifications, information and attachments required by Subsections E through I of 3.13.20.10 NMAC, as applicable. If more than one taxpayer owns the donated land or interest in land, the application shall include each taxpayer's federal employer identification number or social security number and, if available, New Mexico CRS identification number. The applicant shall indicate on the application whether the applicant is a United States citizen or resident, a United States domestic partnership, a limited liability company, a United States domestic corporation, an estate or a trust. If more than one taxpayer owns the donated land or interest in land, the application shall include each taxpayer's status.

E. The application shall state whether the applicant made the donation as part of a bargain sale. If the applicant made the donation as part of a bargain sale, the application shall include the amount the applicant received from the sale of the land or interest in land.

F. The applicant shall certify on the certification of eligibility application that none of the taxpayers listed on the certification of eligibility application is or was a subsidiary, partner, manager, member, shareholder or beneficiary of a domestic partnership, limited liability company, domestic corporation or pass-through entity that owns or has owned the land or interest in land in the five years preceding the date that the applicant conveyed the land or interest in land. If an individual and a domestic partnership, limited liability company, domestic corporation or pass-through entity are listed as owners on the deed conveying the land or interest in land, the applicant shall certify on the certification of eligibility application that the individual is not a partner, manager, member, shareholder or beneficiary of the domestic partnership, limited liability company, domestic corporation or pass-through entity. If more than one domestic partnership, limited liability company, domestic corporation or pass-through entity are listed as an owner on the deed conveying the land or interest in land, the applicant shall certify on the certification of eligibility application that none of the named entities is a subsidiary, partner, manager, member, shareholder or beneficiary of any of the other entities listed on the deed.

G. The certification of eligibility application package shall consist of a land conservation incentives tax credit application form, with the following required attachments as well as any attachments required in Subsection H of 3.13.20.10 NMAC for fee donations or Subsection I of 3.13.20.10 NMAC for less-than-fee donations:

(1) a copy of the letter from the secretary stating that after reviewing the applicant's assessment application that the donation or proposed donation is for a conservation or preservation purpose and will protect the conservation or preservation purpose in perpetuity and that the resources or areas contained in the donation or proposed donation are significant or important;

(2) written certification signed by the applicant that the applicant has not changed the donation or proposed donation, donation assessment report or the public or private conservation agency to which the applicant conveyed or planned to convey the donation since the applicant submitted the assessment application;

(3) a copy of the conservation easement or deed recorded with the county clerk of the county or counties where the land is located, which reflects the ownership interest of each individual or entity conveying the land or interest in land;

(4) a qualified appraisal of the land or interest in land donated that a qualified appraiser prepared showing the fair market value of the land or interest in land with a statement from the appraiser that prepared the appraisal certifying that the appraisal is a qualified appraisal and that the appraiser is a qualified appraiser; the appraisal shall not be made more than 60 days prior to the date of the donation; the appraisal shall be a fully documented appraisal report commensurate with the complexity of the assignment;

(5) if the donation is to a private conservation agency, a copy of that agency's 501(c)(3) certification from the United States internal revenue service;

(6) a signed statement from the applicant certifying that the applicant did not donate the land or interest in land for open space for the purpose of fulfilling density requirements to obtain subdivision or building permits;

(7) if the applicant owns other properties within a 10 mile radius of the donated land or interest in land, a legal description of those properties;

(8) signed authorization from the applicant that authorizes personnel from the appraisal bureau to contact the appraiser that prepared the appraisal for the donation;

(9) a title opinion certifying that the applicant owned the donated land or interest in land as of the date of the donation or a title insurance policy for the land or interest in land showing that the applicant owned the donated land or interest in land as of the date of the donation;

(10) if the applicant owns the mineral interest under the land or the interest in land, a title opinion certifying such ownership, other documentation establishing such ownership, or a report from a professional geologist that the probability of surface mining occurring on such property is so remote as to be negligible, and a provision in the conservation easement or deed that prohibits any extraction or removal of minerals by any surface mining method; methods of mining that have limited, localized negative effects on the land and that are not irretrievably destructive of significant conservation interests may be allowed if the secretary finds that the methods will have limited, localized negative effects and are not irretrievably destructive of significant conservation interests; and

(11) if the ownership of the surface estate and mineral interest has been separate and remains separate, a report, satisfactory to the secretary, from a professional geologist that the probability of surface mining occurring on such property is so remote as to be negligible; the secretary may have a geologist that the state employs review the report; if the secretary finds the report unsatisfactory the secretary's letter denying certification of eligibility shall state the reasons that the report is unsatisfactory.

H. If the applicant donated the land in fee, the applicant shall also include the following attachments with the application package:

(1) a statement from the public or private conservation agency to which the applicant donated the land, that the applicant donated the land for conservation or preservation purposes and the public or private conservation agency will hold the land for such purposes;

(2) a copy of United States internal revenue service form 8283 for the donation signed by the public or private conservation agency and the appraiser who prepared the appraisal for the donation; and

(3) to ensure the land will be used in perpetuity for the purposes of the donation, documentation in the form of a conservation easement that complies with 26 U.S.C. section 170(h) and its implementing regulations placed on the land that contains a provision in the conservation easement that the conservation restrictions run with the land in perpetuity and that any reserved use shall be consistent with the conservation or preservation purpose (separate donees must hold the fee and conservation easement).

I. If the applicant donated a less-than-fee interest in land, the applicant shall also include the following attachments with the application package:

(1) a copy of United States internal revenue service form 8283 for that donation signed by the public or private conservation agency and the appraiser who prepared the appraisal for the donation;

(2) a provision in the conservation easement that identifies the donation's conservation or preservation purpose or purposes;

(3) a provision in the conservation easement that provides that the conveyance of the less-than-fee interest does not and will not adversely affect contiguous landowners' existing property rights;

(4) if a conservation or preservation purpose is for the conservation or preservation of land areas for outdoor recreation by or for the education of the general public, a provision in the conservation easement that provides for the general public's substantial and regular use;

- (5) if a conservation or preservation purpose is for the protection of a relatively natural habitat, a provision in the conservation easement that describes the habitat;
 - (6) if a conservation or preservation purpose is for the preservation of open space pursuant to a clearly delineated federal, state or local government policy, a provision in the conservation easement identifying such policy and identifying the significant public benefit;
 - (7) if a conservation or preservation purpose is for the preservation of open space that is not pursuant to a clearly delineated federal, state or local government policy, a provision in the conservation easement stating how the easement or restriction provides for the general public's scenic enjoyment and identifies the significant public benefit;
 - (8) if a conservation or preservation purpose is for the property's continued use for irrigated agriculture, a provision that provides that sufficient water rights will remain with the property;
 - (9) a provision in the conservation easement that the conservation restrictions run with the land in perpetuity;
 - (10) a provision in the conservation easement that any reserved use shall be consistent with the conservation or preservation purpose;
 - (11) a provision in the conservation easement that prohibits the donee from subsequently transferring the interest in land unless the transfer is to another public or private conservation agency and the donee, as a condition of the transfer, requires that the conservation or preservation purposes for which the donation was originally intended continue to be carried out;
 - (12) a provision in the conservation easement that provides that the donation of the less-than-fee interest is a property right, immediately vested in the donee, and provides that the less-than-fee interest has a fair market value that is at least equal to the proportionate value that the conservation restriction at the time of the donation bears to the property as a whole at that time; the provision shall further provide that if subsequent unexpected changes in the conditions surrounding the property make impossible or impractical the property's continued use for conservation or preservation purposes and judicial proceedings extinguish the easement or restrictions then the donee is entitled to a portion of the proceeds from the property's subsequent sale, exchange or involuntary conversion at least equal to the perpetual conservation restriction's proportionate value;
 - (13) if the applicant reserves rights that if exercised may impair the conservation interests associated with the property, documentation sufficient to establish the property's condition at the time of the donation and a provision in the conservation easement whereby the applicant agrees to notify the public or private conservation agency receiving the donation before exercising any reserved right that may adversely impact the conservation or preservation purposes; and
 - (14) if the interest in land is subject to a mortgage, a subordination agreement, recorded with the county clerk of the county or counties where the land that is located, from the mortgage holder that the mortgage holder subordinates the mortgage holder's rights in the interest in land to the right of the public or private conservation agency to enforce the conservation or preservation purposes of the donation in perpetuity.
- [3.13.20.10 NMAC - Rp, 3.13.20.9 NMAC, 6-16-2008; A, 12-30-2010; A, 2-12-2016]

3.13.20.11 CERTIFICATION OF ELIGIBILITY APPLICATION REVIEW PROCESS AND CERTIFICATION OF ELIGIBLE DONATION:

- A.** Authority to review. The secretary reviews certification of eligibility applications.
- B.** Appraisal review. Upon receiving the certification of eligibility application, the secretary requests that the taxation and revenue department review the appraisal and forwards the appraisal to the appraisal bureau for review. The appraisal bureau shall review the appraisal and advise the secretary whether the appraisal meets the requirements of 3.13.20 NMAC including whether the appraisal complies with the uniform standards of professional appraisal practice and whether the appraiser used proper methodology and reached a reasonable conclusion concerning value.
 - (1) If the appraisal bureau determines that the appraisal meets the requirements of 3.13.20 NMAC including whether the appraisal complies with the uniform standards of professional appraisal practice and that the appraiser used proper methodology and reached a reasonable conclusion concerning value the appraisal bureau shall issue a final review of the appraisal to the energy, minerals and natural resources department.
 - (2) If the appraisal bureau determines that that the appraisal does not meet the requirements of 3.13.20 NMAC, the uniform standards of professional appraisal practice or that the appraiser did not use proper methodology or reach a reasonable conclusion concerning value the appraisal bureau shall send a preliminary review of the appraisal to the energy, minerals and natural resources department identifying the reasons for the appraisal bureau's determination.

(3) The appraisal bureau's review does not preclude further audit by the taxation and revenue department or the United States internal revenue service.

C. Rejection of certification of eligibility applications. The secretary shall reject a certification of eligibility application if:

- (1) the certification of eligibility application is incomplete or incorrect;
- (2) the applicant changed the donation or proposed donation, donation assessment report or the public or private conservation agency to which the applicant conveyed or planned to convey the donation since the applicant submitted the assessment application;
- (3) the donation does not meet the requirements of 3.13.20.8 NMAC or 3.13.20.10 NMAC;
- (4) the completed conservation easement or deed does not accurately reflect the donation the applicant described in the applicant's assessment application; or
- (5) the appraisal bureau provides a final unfavorable recommendation of the appraisal.

D. Notice of cause to reject. If the secretary determines that there is cause to reject the certification of eligibility application, the secretary shall issue notice to the applicant pursuant to 3.13.20.12 NMAC.

E. Resubmittal of rejected certification of eligibility applications.

(1) If the secretary rejects the certification of eligibility application because the certification of eligibility application was incomplete or incorrect; does not meet the requirements of 3.13.20.8 NMAC or 3.13.20.10 NMAC; the filed conservation easement or deed does not accurately reflect the donation the applicant described in the applicant's assessment application; or the appraisal bureau provides a final unfavorable recommendation of the appraisal, the applicant may resubmit the application package for the rejected certification of eligibility application with the complete or correct information or additional information that addresses the requirements the donation does not meet. The secretary shall place the resubmitted certification of eligibility application in the review schedule as if it were a new certification of eligibility application.

(2) If the secretary rejects the certification of eligibility application because the applicant changed the donation or proposed donation, donation assessment report or the public or private conservation agency to which the applicant conveyed or planned to convey the donation since the applicant submitted the assessment application, the applicant shall submit a new assessment application pursuant to 3.13.20.8 NMAC.

F. Approval of certification of eligibility applications.

- (1) The secretary approves the certification of eligibility application if the secretary finds:
- (a) the donation of land or interest in land meets the requirements of 3.13.20.8 NMAC or 3.13.20.10 NMAC;
 - (b) the secretary issued a favorable finding on the applicant's assessment application and the applicant has not changed the donation or proposed donation, donation assessment report or the public or private conservation agency to which the applicant conveyed or planned to convey the donation since the applicant submitted the assessment application;
 - (c) the completed conservation easement or deed accurately reflects the donation the applicant described in the applicant's assessment application; the donation does not adversely affect contiguous landowners' property rights; and
 - (d) the appraisal meets the requirements of 3.13.20 NMAC including compliance with the uniform standards of professional appraisal practice and that the appraiser used proper methodology and reached a reasonable conclusion concerning value.

(2) The secretary's approval is given by the issuance of a letter to the applicant. This letter shall certify that the donation of land or interest in land includes the conveyance in perpetuity, on or after January 1, 2004, for a conservation or preservation purpose of a fee interest in land or a less-than-fee interest in land that meets the requirements of the Land Conservation Incentives Act; NMSA 1978, Sections 7-2-18.10 or 7-2A-8.9; and 3.13.20 NMAC, and include a calculation of the maximum amount of the land conservation incentives tax credit for which each taxpayer is eligible.

[3.13.20.11 NMAC - Rp, 3.13.20.10 NMAC, 6-16-2008; A, 12-30-2010]

3.13.20.12 NOTICE TO APPLICANT OF PROPOSED REJECTION OF CERTIFICATION OF ELIGIBILITY APPLICATION; APPLICANT RESPONSE; FINAL ACTION:

A. If after review of a certification of eligibility application, the secretary determines that there is cause to reject the certification of eligibility application, the secretary shall issue a letter advising the applicant that the secretary is proposing to reject the certification of eligibility application and stating the specific reasons for the proposed rejection. If the proposed rejection involves an unfavorable preliminary review of the appraisal from the

appraisal bureau, the energy, minerals and natural resources department shall include a copy of the unfavorable preliminary review of the appraisal with the secretary's letter.

B. The applicant shall have 45 days after the issuance of the letter to respond in writing to the reasons for the proposed rejection and submit a revised appraisal, information or other documentation that demonstrates the application meets the requirements.

C. If the secretary's proposed rejection involves an unfavorable preliminary review of the appraisal from the appraisal bureau and the applicant responds to the preliminary review of the appraisal within 45 days of the issuance of the letter, the energy, minerals and natural resources department shall forward the applicant's response to the appraisal bureau for review of the response and issuance of the appraisal bureau's final review of the appraisal. If the applicant does not respond to the preliminary review of the appraisal within 45 days of the issuance of the letter, the energy, minerals and natural resources department shall notify the appraisal bureau that the energy, minerals and natural resources department did not receive a response to the preliminary review of the appraisal from the applicant. After reviewing the applicant's response, if any, the appraisal bureau shall issue a final review of the appraisal and advise the secretary whether the appraisal meets the requirements of 3.13.20 NMAC including whether the appraisal complies with the uniform standards of professional appraisal practice and whether the appraiser used proper methodology and reached a reasonable conclusion concerning value.

D. After reviewing the applicant's response, if any, and the appraisal bureau's final review of the appraisal the secretary shall determine whether the information or documents the applicant has supplied satisfactorily address and resolve the specific reasons for the proposed rejection and issue a letter either rejecting the certification of eligibility application or approving the certification of eligibility application. If the secretary determines that the applicant's response does not satisfactorily resolve the reasons for the rejection or if the appraisal bureau has issued a final unfavorable recommendation of the appraisal, the secretary shall issue a letter denying the certification of eligibility application. The secretary's letter shall state the specific reasons why the secretary rejected the certification of eligibility application.

[3.13.20.12 NMAC - N, 6-16-2008; A, 12-30-2010; A, 2-12-2016]

3.13.20.13 FACTORS IN DETERMINING SUITABILITY FOR CERTIFICATION OF ELIGIBILITY:

A. The donation shall meet the following three criteria for the secretary to consider the donation for certification eligibility:

(1) the land or interest in land fits one or more of the descriptions of purposes in Subsection D of 3.13.20.7 NMAC;

(2) the recipient is a public or private conservation agency with the ability and commitment to monitor and ensure the grantor's compliance with the conservation easement or provide stewardship of the fee land, as applicable; and

(3) the donation provides for the protection in perpetuity of the conservation or preservation purposes for which the applicant donated the land or interest in land through a conservation easement.

B. In determining an application's suitability for certification of eligibility, the secretary considers several factors including the following:

(1) property size;

(2) property condition or potential;

(3) presence of significant natural or cultural resources;

(4) property's location relative to other lands protected for conservation or preservation

purposes;

(5) current and future management and use;

(6) contribution to local, regional or state conservation or preservation objectives;

(7) terms of the conservation easement or deed;

(8) qualifications and stewardship capacity of the public or private conservation agency that holds the fee or conservation easement; and

(9) other factors affecting the property's long-term protection and viability.

C. The secretary also considers the criteria listed in the following table in determining whether the resources or areas contained in the donation are significant or important: These criteria relate to the property's overall condition and viability as well as the compatibility of future management and uses and surrounding land uses for maintenance of conservation values.

Ranking	Site Condition	Development	Uses	Surroundings	Stewardship or Monitoring
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Favorable	Site is of uniformly good condition and sufficient size to maintain the conservation or preservation purposes, assuming other favorable factors such as good potential for restoration if needed	Additional development of the property is specifically prohibited or additional development that is allowed is consistent with the conservation or preservation purposes	Allowed uses of the property are consistent with the conservation or preservation purposes	Surrounding land uses are entirely compatible with site conservation or preservation purposes, or site serves as a connection between other conservation lands or provides significant or important open space	If a fee donation, the recipient has sufficient resources as well as a formal plan to provide stewardship for the conservation or preservation purposes. If a less-than-fee donation the recipient has sufficient resources to monitor and ensure the grantor's compliance with the conservation's easement's terms.
Marginal	Site is of minimum size and condition to maintain the conservation or preservation purposes, assuming other favorable factors	Additional development allowed that may impair the conservation or preservation purposes	Allowed uses of the property may be incompatible for long-term maintenance of the conservation or preservation purposes	Surrounding lands uses are not consistent with site conservation or preservation purposes, and site does not serve as a connection between other conservation lands or provide significant or important open space, but surrounding land uses do not seriously compromise site integrity	If a fee donation, the recipient has no formal plan and marginal capacity to provide stewardship of the conservation or preservation purposes. If a less-than-fee donation, the recipient has marginal resources to monitor and ensure the grantor's compliance with the conservation's easement's terms.
Unfavorable	Maintenance of conservation or preservation values is severely compromised by the site's size, configuration, location or condition	Additional development allowed that is inconsistent with the conservation or preservation purposes	Allowed uses are clearly incompatible with the long-term maintenance of the conservation or preservation purposes	Surrounding land uses are clearly incompatible with site conservation or preservation and threaten site integrity and the site does not serve as a connection between other conservation lands or provide	If a fee donation, the recipient has no plan or resources to provide stewardship of the conservation or preservation purposes. If a less-than-fee donation, the recipient has no or limited resources to monitor and ensure the grantor's compliance with the conservation's easement's terms.

				significant or important open space	
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D. The secretary evaluates each application in the context of the property's unique geographic setting and characteristics, but the secretary will not apply rigid standards relating to tract size or other factors. Instead, the secretary evaluates the donation's overall contribution to the indicated conservation or preservation purpose as well as the probability the purposes will be supported in perpetuity.
[3.13.20.13 NMAC - N, 6-16-2008]

3.13.20.14 FILING REQUIREMENTS:

A. After obtaining a certificate of eligibility from the energy, minerals and natural resources department, the applicant shall apply for the land conservation incentives tax credit with the taxation and revenue department on a form the taxation and revenue department develops. The applicant shall attach the certificate of eligibility received from the secretary.

B. If the applicant complies with all the requirements in NMSA 1978, Section 7-2-18.10 or Section 7-2-8.9 and has received the certificate of eligibility from the secretary, the taxation and revenue department shall issue a document granting the land conservation incentives tax credit, which is numbered for identification and includes its date of issuance and the amount of the land conservation incentives tax credit allowed.

C. A tax filer shall use a claim form the taxation and revenue department develops to apply the land conservation incentives tax credit to the tax filer's income taxes. A tax filer shall submit the claim form with its income tax return.

D. A tax filer who has both a carryover credit and a new credit derived from a qualified donation in the taxable year for which the tax filer is filing the return shall first apply the amount of carryover credit against the income tax liability. A tax filer may apply one or more tax credits against the liability in a given year; provided however, that the tax credits applied shall not exceed the liability for that year. If the amount of liability exceeds the carryover credit, then the tax filer may apply the current year credit against the liability.

E. If an applicant claims a charitable deduction on the applicant's federal income tax for a contribution for which the applicant also claims a tax credit pursuant to the Land Conservation Incentives Act, the applicant's itemized deduction for New Mexico income tax shall be reduced by the deduction amount for the contribution to determine the applicant's New Mexico taxable income.

[3.13.20.14 NMAC - Rp, 3.13.20.11 NMAC, 6-16-2008; A, 12-30-2010]

3.13.20.15 TRANSFER OF THE LAND CONSERVATION INCENTIVES TAX CREDIT:

A. An applicant may sell, exchange or otherwise transfer an approved land conservation incentives tax credit, represented by the document that the taxation and revenue department issues, for a conveyance made on or after January 1, 2008. A land conservation incentives tax credit or increment of a land conservation incentives tax credit may only be transferred once. An applicant may transfer the applicant's land conservation incentives tax credit to any tax filer.

B. A tax filer to whom an applicant has transferred a land conservation incentives tax credit may use the land conservation incentives tax credit in the year that the transfer occurred and carry forward unused amounts to succeeding taxable years, but may not use the land conservation incentives tax credit for more than 20 years after the taxation and revenue department originally issued the land conservation incentives tax credit. In order to use the land conservation incentives tax credit for that taxable year, the transfer of the land conservation incentives tax credit must occur on or before December 31 of that taxable year, if the individual or entity who will use the land conservation incentives tax credit has a taxable year of January 1 to December 31, or on or before the end of the taxable year if the individual or entity has a taxable year that is not January 1 to December 31.

C. An applicant may only transfer a land conservation incentives tax credit in increments of \$10,000 or more.

D. An applicant shall use a qualified intermediary to transfer a land conservation incentives tax credit. The qualified intermediary shall notify the taxation and revenue department of the transfer and the date of the transfer on a taxation and revenue department-developed form within 10 days following the transfer. The qualified intermediary shall keep an account of the land conservation incentives tax credit transferred.

E. A qualified intermediary may issue sub-numbers registered with and obtained from the taxation and revenue department.

F. If an individual who owns an interest in the donated property dies prior to selling, exchanging or otherwise transferring the land conservation incentives tax credit, the donor's estate may sell, exchange or otherwise transfer the land conservation incentives tax credit.

[3.13.20.15 NMAC - N, 6-16-2008; A, 12-30-2010]

3.13.20.16 TRANSITION PROVISIONS: 3.13.20 NMAC, effective on June 16, 2008, shall apply to those applications for a land conservation incentives tax credit, an applicant submits on or after June 16, 2008 even if the applicant conveyed the donation prior to that date.

[3.13.20.16 NMAC - N, 6-16-2008]

HISTORY OF 3.13.20 NMAC:

Pre-NMAC History: None.

History of Repealed Material: 3.13.20 NMAC, Land Conservation Incentives Tax Credit (filed 12-11-2003) repealed 6-16-2008.

NMAC History: 3.13.20 NMAC, Land Conservation Incentives Tax Credit (filed 12-11-2003) was replaced by 3.13.20 NMAC, Land Conservation Incentives Tax Credit, effective 6-16-2008.