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MEMORANDUM

to: David Gann

from: Nancy Fishbein

cc: _____

date: September 7, 2006

re: New Tax Legislation

On August 17, 2006, the President signed into law the Pension Protection Act of 2006. The 900+ page legislation includes some important modifications to the Federal tax treatment of conservation easement donations. The changes are effective immediately and are currently set to expire at the end of 2007. The changes apply to donations made after December 31, 2005 and before January 1, 2008. In addition, changes to the Colorado State Tax Credit Program will go into effect on January 1, 2007. This combination of tax changes may provide significant incentive for landowners to donate conservation easements in the coming year.

For your convenience, I have summarized those changes below. If you have any questions, please feel free to contact me or Melissa Garvey.

Federal Income Tax Changes

- Income tax deductions for qualified conservation contributions raised from 30% of taxpayer's adjusted gross income (AGI) to 50% of AGI
- Carry forward period raised from 5 years to 15 years
- Qualified farmers or ranchers may deduct the conservation easement value up to 100% of their AGI, with a 15 year carry forward.
 - A qualified farmer or rancher is a taxpayer who earns more than 50% of his or her gross income from the business of farming in the taxable year in which the conservation contribution is made. Farming is defined as including, among other things, cultivating the soil or raising or harvesting any agricultural or horticultural commodity – including animals- on a farm or ranch; and the planting, cultivating, caring for, or cutting of trees, or the preparation (other than milling) of trees for market.
 - The easement must cover property that is used, or is available for use, for agricultural or livestock production

- The easement must contain a restriction that the property will remain available for agricultural or livestock production
- Income tax deductions for qualified conservation contributions for corporations earning more than 50% of income from the business of farming increased from 10% of taxable income to 100% of taxable income with a 15 year carry forward.

Appraisal Issues

- New appraisal standards include tightening the definition of a “qualified appraiser” under the Internal Revenue Code. The new law requires that the appraiser have an appraisal designation from a recognized appraiser organization (e.g. state certified or MAI, ARA) or must meet minimum educational and experience requirements to be established by the Secretary of Treasury. In addition, the appraiser must regularly perform appraisals and be compensated for them.
- The definition of substantial valuation misstatement and gross valuation misstatement are reduced from 200% and 400% or more of the correct valuation to 150% and 200% of the correct valuation respectively. In other words, if the appraisal of a conservation easement is found to overstate the value by more 150%, the taxpayer will be subject to penalties equal to 20% of the tax underpayment and 40% of the tax underpayment if the appraisal overstates the value by more than 200%. There are additional penalties for the appraisers who are responsible for the overstatements of value.

Colorado State Tax Benefits

- Colorado state tax benefits will change in 2007 from a tiered donation formula to a straight 50% value of the conservation easement donation up to \$750,000 in easement value. Currently, the tax credit is calculated based on a dollar for dollar credit for the first \$100,000 of easement donation, and 40% of the next \$400,000, for a total allowable credit per donation of \$260,000. As of January 1, 2007, the credit will be based on 50% of the easement value, for a total allowable credit per donation of \$375,000.
- Colorado state tax credit proceeds are typically considered taxable. Under the new federal law, landowners can offset 50% (versus 30%) of the credit income, or 100% of this credit income if they meet the qualified farmer or rancher definition, which will help landowners keep more of the credit income. **NOTE: Gross income from the sale of tax credits OR from proceeds derived from the bargain sale of easements will likely be considered as income not derived from farming or ranching, potentially disqualifying the landowners as a farmer or rancher under the law.**

More detailed information can be found at the following web sites:

www.lta.org

www.cclt.org

www.ir-law.com