

CONSERVATION COVENANTS A GUIDE FOR DEVELOPERS AND PLANNING DEPARTMENTS



Photo: Matson Conservation Area
Development with protected Garry Oak habitat and public trail along
waterfront in Victoria, BC

revised - 2009

Benefits of Protecting Natural Areas

Numerous reports have now documented the economic values of protecting riparian areas, trails, greenway corridors, and “green spaces.” These natural systems, called ecosystems, provide an enormous range of services and values in addition to storing and sequestering carbon, many of which form the foundation of human well-being.¹

“Destruction and degradation of natural capital occurs continually across Canada. Yet, we may not recognize the full value of these losses until it is too late...protecting the existing natural capital in the lower Fraser Valley may save society hundreds of millions, if not billions of dollars every year.”²

When natural areas are destroyed, society loses benefits such as:

- * good quality surface and groundwater
- * the ability to reduce water and waste treatment costs
- * aesthetic and recreational opportunities
- * protecting agricultural production on lands threatened by urbanization
- * ability to decrease net greenhouse gas emissions
- * the ability to mitigate floods
- * the ability to improve air quality by protecting forests and reducing urban sprawl
- * protecting and enhancing wildlife habitats and ecological services of all kinds

For new developments, incorporating green space into the design will most likely lead to quicker approval, increased values and faster sales of new homes. There is a higher rate of return on investment for developments that incorporate protected green space into their design:

- * Twenty studies published in peer-reviewed journals on “proximate principle” suggest that one can estimate “a positive impact of 20 % on property values abutting or fronting a passive park area...”³
- * A Canadian study reports 10-15% increase in value on properties adjacent to riparian greenways.⁴
- * Another more recent study reports 5-20% higher property tax revenue on land with trees in the landscape.⁵
- * Permanently protected natural areas have a positive impact on neighbouring homes, as these areas show an increase in property value. This added value can be captured by an increase in property tax revenue, which can be used to purchase additional protection (parks or covenants on private lands) in nearby areas.⁶

“It is definitely a big marketing thing. We have sold 86 percent of our units to people who want to live here because they will be looking over this parkland forever.” David Price, Mandalay Developments

¹ *Millennium Ecosystem Assessment 2005 Ecosystems and Human Well-being: Vol 5: Synthesis*. Island Press. Washington, DC

² “natural capital consists of natural resources, environmental and ecosystem resources, and land.” from Olewiler, N. 2004, *The Value of Natural Capital in Settled Areas of Canada*, Department of Economics and Public Policy Program, Simon Fraser University, B.C., published by Ducks Unlimited Canada and the Nature Conservancy of Canada.

³ *The Economic Benefits of Land Conservation*, The Trust for Public Land, p. 4 - 2007 available through www.tpl.org

⁴ M. Quayle and S. Hamilton, *Corridors of Green and Gold: Impact of Riparian Suburban Greenways in Property Values*, UBC., 1999

⁵ A. Saucer, *The Value of Conservation Easements: The Importance of Protecting Nature and Open Space.*, Atlanta: WestHill Foundation for Nature, Inc., 2002

⁶ from J. Geoghegan, “Capitalization of Open Spaces into Housing Values and the Residential Property Tax Revenue Impacts of Agricultural Easement Programs.” *Agricultural and Resources Economic Review*, Oct 2005.

What is a Conservation Covenant?

A Conservation Covenant (called a conservation easement in many other jurisdictions) is a voluntary legal agreement that allows landowners to permanently protect specified natural and/or cultural features of the land, while still retaining ownership and use. It can cover all or part of a parcel of property.

Conservation Covenants are different from common law, restrictive covenants in that they are often held by one or more land trust organizations, (often called or referred to as conservation organizations). Normally, a conservation covenant restricts uses, developments or practices which would damage specific natural or cultural features of the land. Compliance is monitored regularly by staff or by trained volunteers from the land trust that holds the covenant.



factory site of business owner of Denman Island Chocolates - a Conservation Covenant is registered to protect douglas fir forest ridge held by the Denman Island Conservancy

How do Conservation Covenants work?

A Conservation Covenant is a legal agreement between a current landowner and an organization approved to hold covenants by the Surveyor General, Land Title & Survey Authority of BC. These can include federal, provincial or local governments (including regional districts) or approved land trusts. The Conservation Covenant is registered against title to the property in the Land Title Office under Section 219 of the Land Title Act. It is registered with a summary of the physical description of the property and reference to a detailed Baseline Inventory. The covenant remains in effect after the land is sold or transferred, binding future owners of the land to the terms of the covenant.

A Conservation Covenant helps protect specific features, areas, or uses in perpetuity. The landowner and their successors still hold title to the land and can continue to use it within the terms of the agreed restrictions within the covenant. In order to ensure protection of the land's conservation values for the long term, often two land trusts jointly hold the covenant.

In addition to the Conservation Covenant, there are usually two additional charges associated with registering a covenant. These include a Statutory Right of Way, registered under Section 218, which permits the covenant holders to inspect the land annually to monitor and record the land's condition. In addition, a "rent charge" is included as a standard clause within the covenant enabling remedy if there is a breach of the terms of the covenant.

Considerations of Personal & Community Values

When you place a conservation covenant on land, you are creating a legacy that will last far into the future. You will be helping your community and future generations by preserving natural or cultural features that will increase the value of the property, through added health and recreational benefits. In addition, you will be adding to a network of conserved areas that will help maintain habitats and that support wildlife, provide adaptation and mitigation to climate change, provide ecosystem services and provide for improved human well-being. Because of your initiative, you will help preserve the land that you own. Local land trusts and the Land Trust Alliance of B.C. (LTABC) can help you should you want to use a conservation covenant to protect specific values on land you now own.

When should a Conservation Covenant be considered?



Protected trail along the Puntledge River, including forested area in the middle of Courtenay, donated by Ruth Masters to the Regional District of Comox Strathcona with a covenant held by the Comox Valley Land Trust and The Land Conservancy of BC.



Conservation Covenants are most useful when:

- ✧ An area has significant ecological, heritage / cultural or community values.
- ✧ Public access is restricted to shared and clearly designated areas or is not anticipated at all.
- ✧ If public access is anticipated, a fee simple donation to local government for use as a park is probably a better conservation option. It is possible to place a Conservation Covenant on municipal or regional parks restricting its future use in the interest of specific conservation objectives.
- ✧ If the land is meant to be protected exclusively as a wildlife or ecological reserve, a fee simple donation to a conservation organization might be a better option.

Why might a Land Trust or Conservancy accept or refuse a Conservation Covenant?

Neither Conservation organizations nor landowners are obliged to enter into a Conservation Covenant. Some of the factors a land trust will take into account before signing a Conservation Covenant include:

- ✧ Is the proposed Conservation Covenant consistent with their conservation plans for their geographic region and with their conservation goals?
- ✧ Does the area include significant ecological or heritage features?
- ✧ Will nearby development and other human activities, now or in the future, threaten the integrity of the protected area?
- ✧ Is the size of the area to be protected sufficient to adequately protect the targeted ecological values given surrounding land use?
- ✧ Can the terms of the covenant be readily monitored? In case of an infraction, will the Conservation Covenant be easy to enforce?
- ✧ Is the landowner motivated by conservation or are there other considerations such as zoning changes or development approvals?

Conservation Covenants and the Development Approval Process

The Conservation Covenant is only one of several conservation tools available to regional districts, municipal governments, developers, and landowners. In many cases a Conservation Covenant may not be the appropriate choice. However, when used correctly, a Conservation Covenant can at a reasonable cost provide protection for natural or heritage features, ecological sensitive areas and parks, as well as community assets such as trails or buffers around creeks.

What are the Costs of a Conservation Covenant?

When a land trust accepts a Conservation Covenant, it incurs costs for surveys, appraisals, baseline reports and legal fees. It is also taking on a perpetual obligation to monitor and enforce the covenant. For this reason, land trusts normally request a contribution to an endowment or stewardship fund. The amount required depends on the size of the property and the work required to annually monitor and provide stewardship, if needed, on the site. (The Nature Conservancy of Canada, for example, fundraises a 15% endowment amount.)

In addition to the endowment for monitoring, Conservation Covenants can involve significant costs to both the landowner and the covenant holder. These include time involved in negotiating the covenant, surveys, baseline documentation, legal advice, tax and accounting advice, appraisals and registration fees.

The following table outlines one land trust’s estimated costs of working on and registering a conservation covenant for both lands being developed/subdivided with conservation areas “clustered” around residential use and lands being developed/subdivided with conservation areas surrounding each residence.

Note: Costs are subject to subdivision design and timelines (ex. phased subdivision). The tables provide guidelines for rates and are intended to demonstrate real costs associated with a covenant as well as the commitment and energy a land trust puts into this conservation tool.

Hard costs for a simple single covenant on a development parcel¹:

Title searches	\$10 per parcel	
Baseline	\$2500 per covenant area	
Survey	\$1000-\$2000	
Appraisals	\$1500-\$5000	
Covenant (legal fees)	\$1,500	
Covenant (land trust fees/time)	\$50 per hour	
Registration Fees	\$300	
Travel	\$0.42/km	
Endowment Fund	\$10,000-\$25,000 per parcel	(depends on size of property)

Additional Charges

Then add x times for number of covenant areas	1.75	
Then add change fees	\$250	plus \$50/hr staff time
Rush fees	\$250	



¹ Provided by TLC The Land Conservancy of BC

Sample Steps for Completing a Conservation Covenant:



Photo: Thomson's Wildlife Sanctuary, part of land sold for public arena, with a donated conservation covenant on restored wetland area held by the Central Okanagan Land Trust

1. **All parties:**
 - a. Review what a Conservation Covenant is and the purpose of the covenant.
 - b. Discuss potential restrictions, obligations and rights covering the conservation area.
 - c. Review potential monitoring procedure.
2. **It is recommended that all parties sign an agreement in principle** regarding goals, timing, policies and registration process.

3. **Review standard covenant template** with suggested additions, revisions etc. for land trust's lawyer along with suggested timeline for draft covenant comments. If the covenant is to be donated as an Ecological Gift, a final draft of the covenant must be submitted to the regional Ecological Gift Program Coordinator for review and certification as ecologically sensitive.
4. **Landowner/developer should consult a lawyer to seek legal guidance regarding tax and financial effects.** Professional advisers can assist landowners/developers with exploring options and formulating a comprehensive plan. (The LTABC has a list of consultants if needed.)
5. **Set up a timeline for completion of Baseline Inventory.** A baseline inventory for each lot's protected area must be completed using standard conservation baseline inventory methods. A summary and reference to this baseline must be included with the covenant at the time of registration. (A Guide to Baseline Inventories is on the LTABC website)
6. **The landowner/developer must present the changes of the draft covenant to the land trust and suggested timeline for draft covenant comments.**
7. **Registering the covenant once all parties are satisfied.** Registration of the covenant must be done by the landowner at the Land Titles Office. Sufficient time must allow for the covenant to be signed at lawyers' offices.
8. **Annual Monitoring of Covenanted Area.** In order to ensure that the terms of the covenant are kept, the protected areas must be monitored on at least an annual basis.

Potential Tax Consequences

The tax consequences of Conservation Covenants are specific to the area being covenanted, local market conditions and land status, the nature of the covenant, and the landowner's unique situation.

If a Conservation Covenant is voluntarily donated, the landowner may be eligible for income tax benefits. Covenants may be donated as either capital gifts or, if they are deemed to protect ecologically sensitive lands, as Ecological Gifts. *The Income Tax Act* provides favourable income tax treatment for gifts of ecologically sensitive land and interests in ecologically sensitive land (i.e. covenants). This favourable treatment includes the provision of a tax credit or deduction to donors and elimination of the taxable capital gain realized on the disposition of the property. Corporate donors may deduct the amount of their gift directly from their taxable income, while the value of an individual's gift is converted to a non-refundable tax credit.¹ Any unused portion of the credit or deduction may be carried forward for up to five years, and as of 2006, 0% of the capital gain is taxed instead of the usual 50%.

If the Covenant has been donated under Canada's Ecological Gift Program, there are additional tax benefits available to donors. In addition, changes to, or dispositions of, covenants donated as Ecological Gifts require Environment Canada's written approval. If approval is not received, the covenant holders could be subjected to a special tax levied by the Canada Revenue Agency

Individual donors (of non eco-gifts) can reduce their capital gain by designating the amount of the gift to be a lower amount, between its fair market value and its adjusted cost base (usually the original purchase price). This designated amount is also used to calculate the tax benefit.

When a covenant is registered, property values may be affected.² A full appraisal is necessary to determine land and covenant values. Further information is available in the LTABC InfoKit: *Property Assessments on Conservation Lands, A Guide for Landowners and Land trusts*.³

All land owners and developers are advised to seek their own legal and tax advice.

For more information:

Contact your local Land Trust or Conservancy. A list of Land Trusts, a Registry of Protected Areas, and a great deal of information about stewardship and conservation of natural and cultural areas is available from The Land Trust Alliance of British Columbia at www.landtrustalliance.bc.ca 250-538-0112. Including *Property Assessments on Conserved Lands, A guide for land trusts and landowners*, 2006; *Mitigating and Adapting to Climate Change through the Conservation of Nature*, 2008; *Credible Conservation Offsets of Natural Areas in British Columbia*, 2009

Other related resources:

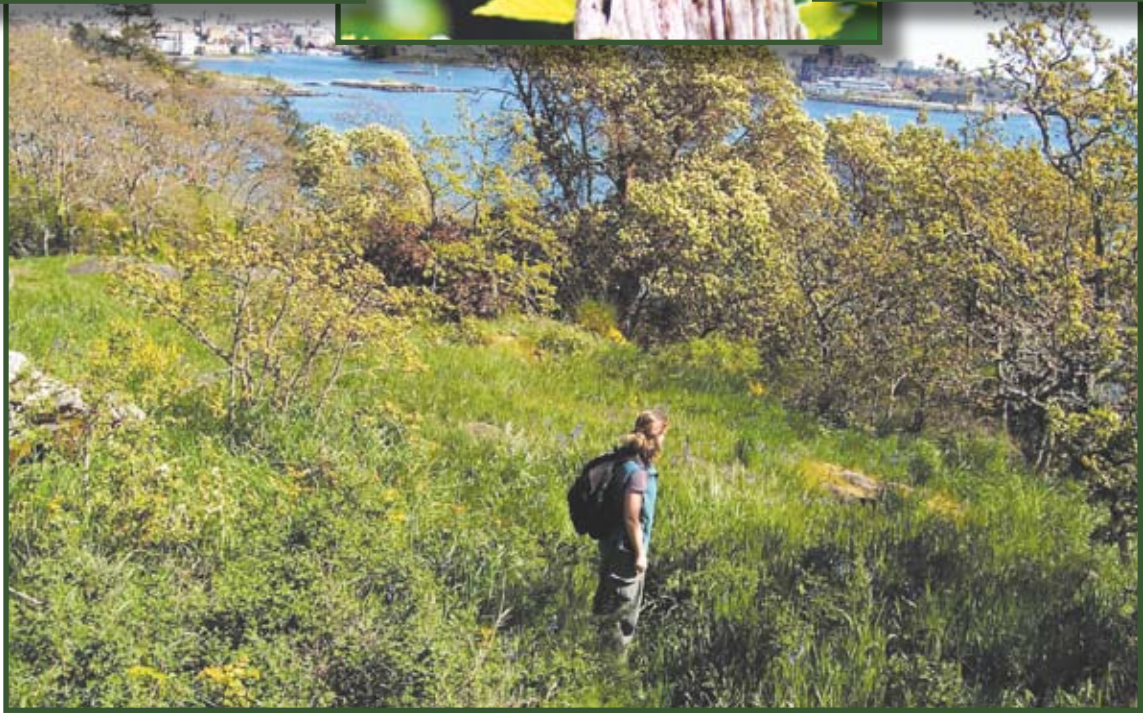
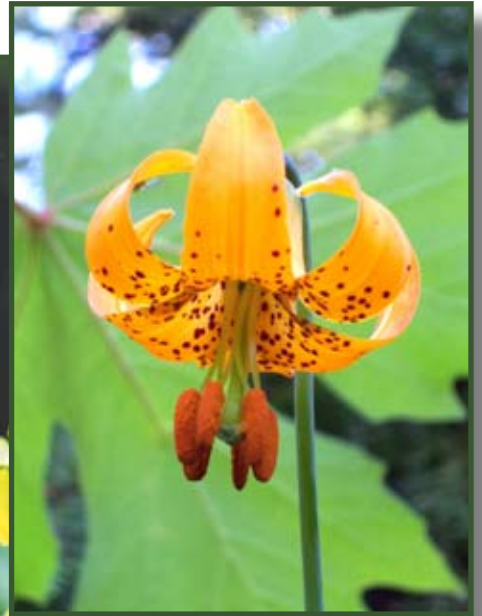
Greening your Title, A Guide to Best Practices and Conservation Covenants, and *Giving it Away, Tax Implications of Gifts to Protect Private Lands* by Ann Hillyer and Judy Atkins, are available from West Coast Environmental Law at www.wcel.org.

Ecological Gifts Program website http://www.cws-scf.ec.gc.ca/ecogifts/intro_e.cfm

1 Tax credits for individuals are currently calculated as 16% of the first \$200 and 29% on the remainder, plus provincial tax credits, for a total tax credit of approximately 44%.

2 Section 19 of the Assessment Act requires BC Assessment, when determining the assessed value of a property, to take into account any terms or conditions contained in a covenant registered under section 219 of the Land Title Act.

3 See www.landtrustalliance.bc.ca/resources



Photos: front and back cover - Matson Conservation Area, development with covenant protected by Habitat Acquisition Trust, The Nature Conservancy of Canada and the Township of Esquimalt, back cover photos by Todd Carnahan, front cover and inside photos by Sheila Harrington

The Land Trust Alliance of British Columbia,
204-338 Lower Ganges Road, Salt Spring Island, BC
V8K 2V3 Phone: 250-538-0112 Fax: 250-538-0172 info@landtrustalliance.bc.ca

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