



Islands Trust Fund

POLICY MANUAL

Code: TFB 05001

Policy

Procedure

Guideline

Title: ASSESSING COVENANT AND LAND DONATION PROPOSALS CONNECTED WITH A DEVELOPMENT APPLICATION

Approved By: Trust Fund Board

Date: November 4, 2005

Resolution #: TFB 05/801

Chair Signature:

A. PURPOSE:

The purpose of this policy is to clarify the process that the Trust Fund Board will use to assess proposals for conservation covenants and land donations connected with a development application.

B. REFERENCES:

1. *Islands Trust Act*
2. *Land Title Act*
3. Islands Trust Fund Policy and Procedures Manual:
 - TFB X0002 - Procedures for Conservation Covenants and Land Donations Connected with a Development Application (in progress)
 - TFB 01006 and 01007 - Policies and Procedures for Communicating Information Regarding Covenant and Acquisition Projects (modify)
 - TFB 01005 - Policy on Conservation Covenants
4. The Islands Trust Fund Plan
5. Proposal Form for Conservation Projects Connected with a Development Application (2005 - in progress)
6. Staff Report Template (2005 - in progress)
7. The Islands Trust Fund's Regional Conservation Plan
8. Islands Trust Policy Manual:
 - a. 3.3.i Guidelines for Processing Request to Trust Fund Board for Acquisition of Property Interests for Conservation Purposes (modify)
 - b. 5.3.i Holding Covenants and Rights of Way
 - c. 5.3.ii Transfer of Density
 - d. 5.3.v Best Practices for Local Trust Committees in Holding Conservation Covenants

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C. BACKGROUND:

The *Islands Trust Act* establishes a Trust Fund to acquire, hold and manage land and receive donations for the purpose of carrying out the object of the Islands Trust. Typically the Islands Trust Fund uses statutory covenants and land donations to accomplish the “preserve and protect” mandate.

Statutory covenants are registered against the title of the property in the British Columbia Land Title Office under section 219 of the *Land Title Act*.

“Conservation” covenants are designed specifically for conservation purposes. Although the term “conservation covenant” is not used in the *Land Title Act*, it is a term that is identified by the public as having a specific meaning and intent. In particular, it is expected that a conservation covenant will:

- protect the particular values identified in the covenant (be they ecological, cultural or heritage);
- be enforceable; and,
- “run with the land,” binding future owners in perpetuity.

These understandings create long term expectations and obligations for both the property owner and the covenant holder, such as monitoring and removal of invasive species.

Case law regarding covenants reinforces the need for organizations that hold covenants to be aware that in undertaking a conservation covenant that they are taking on a long term obligation which if breached could have significant legal costs.

Land donations are another means by which the Island Trust Fund carries out the object of the Islands Trust. Land donations have ongoing costs including insurance, signage, fencing, and other measures recommended within customized management plans. In addition to these costs the Board is committed to placing conservation covenants on lands it acquires.

According to the *Islands Trust Act* section 43, “*property acquired by the trust fund board is the property of the government*”. Donors in the past have been concerned by this clause and find comfort in the Board’s commitment to place third party covenants on its own lands.

The Islands Trust Fund is a unique land trust because of its ties to the Islands Trust. As an outcome of development applications made to the Islands Trust, the Trust Fund Board has been acquiring land and conservation covenants.

This relationship in no way binds the Trust Fund Board to accepting any proposal related to a development application. Nor does it bind the applicant to choose the Trust Fund Board as the recipient of the donation of land or covenant.

The roles of the applicant, the Trust Fund Board, the Islands Trust (local trust committees, island municipalities), staff and the public must be clearly defined in order to ensure that all proposals are fairly and consistently assessed. Those roles are defined in Procedures TFB 01007 Procedures for Communicating Information Regarding Covenant and Acquisition Projects.

D. POLICY

1. The Trust Fund Board will only consider a proposal for a conservation covenant or land donation connected with a development application that is accompanied by a completed Conservation Proposal Form and Staff Report.
2. The Trust Fund Board will only consider proposals where there is a recent (within one year of submission of a proposal) ecological assessment by a qualified ecologist/biologist and an archeological review of both the covenant area and the proposed development. For covenants and acquisitions that are part of density transfers or amenities rezoning applications this assessment would need to be done for both the receiving and sending areas or for the area that is being down zoned and the area that is up zoned.
3. For proposals that are covenants and land donations to the Trust Fund Board, the Board will normally consider only lands that can meet the definition of "Trust Fund Board Nature Reserve"¹.
4. The Trust Fund Board will give priority to those proposals that meet one or more of the goals or objectives of the Regional Conservation Plan.
5. If the Trust Fund Board accepts a proposal that does not meet one of the goals or objectives of the Regional Conservation Plan, the Board will provide clear reasons in the meeting minutes as to why the Board has accepted the proposal.
6. The Trust Fund Board will not normally accept land that is for proposed for ecological protection that needs substantial management or that has significant liabilities such as buildings or structures.²
7. If the Trust Fund Board chooses not to accept a proposal, the Board will offer to assist the applicant to find an agency willing to consider it.
8. The applicant is responsible for all costs to complete and register the covenant or land donation including any property taxes for which the Trust Fund Board cannot receive a statutory exemption.
9. The Trust Fund Board will not undertake land transactions unless it has funding available for the professional services needed to complete the transaction properly and to protect the property for the foreseeable future. If funds are not secured at or

¹ A Trust Fund Board Nature Reserve is an area that has been set aside because it has regionally significant natural ecosystems (landscape units with little or no human development) and may contain nationally and provincially identified ecosystems and species that are considered endangered, threatened or of special concern.

The primary purpose of a Nature Reserve is the preservation and protection of the natural ecosystem. The size of a Nature Reserve should be sufficient to ensure that these ecosystems remain viable over the long term.

Activities permitted on a nature reserve will have minimal impact on the land and in general will only include hiking and only in areas that are considered not sensitive to this activity. The location and extent of hiking trails will be determined through the management plan process.

² Need to clarify or link to cultural policy (e.g. TFB 02010) as it develops.

before the completion of the transaction, a plan must be in place to secure these funds and a resolution made committing the funds to this purpose.

10. The Trust Fund Board may require an endowment to cover management of the property. Charitable tax receipts will not be issued for donations directly connected with a development application, but may be issued for discretionary endowments or additional gifts of land the applicant may freely offer.
11. The Trust Fund Board may impose a time-limited moratorium on accepting proposals if it concludes that it has inadequate resources to support further proposals.
12. All proposals that are part of a development application are considered public and will be considered at the Trust Fund Board's regular meetings.
13. Acceptance or rejection of a proposal will be indicated by resolution, a copy of which will be sent to the applicant.