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**COMPARING FULL TITLE AND
CONSERVATION AGREEMENT ACQUISITIONS**

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Executive Summary

Across Canada, agencies and particularly charitable organizations are acquiring interests in private lands in order to conserve them for the long-term. The two main methods of “securing” such properties are full title or fee simple acquisition or the negotiation of a conservation easement, covenant or servitude (here called a “conservation agreement”). This paper examines the trends regarding land title and conservation agreements, including recent data on the extent of each, their advantages and disadvantages, transaction costs, and related factors. Data has been assembled from a variety of recent provincial and national surveys and from the comments provided by knowledgeable contributors across the country. In general, acquisition of a full title interest is preferred but conservation agreements are becoming more common. Still, each method may be more appropriate in certain circumstances than in others, as discussed in the paper. Recommendations are provided to allow for clearer documentation and comparisons in the future.

Introduction

This paper focuses on research conducted to compare full title (“fee simple”) transfers for conservation purposes to the use of conservation easements, covenants and servitudes in Canada. Since legislative reforms in the 1990s, the latter “conservation agreements” are increasingly being used as a tool to conserve lands across the country. They typically include restrictions on the use or management of a property in order to conserve identified features, a right of access to monitor compliance, and associated arrangements and legal details between the parties. Because they are agreements, they can be tailored in creative ways to the needs of the parties, features and lands involved. The agreements are then registered on the land title in order to bind current and future owners of the property. There is a growing need to understand how conservation agreements fit with other conservation securement methods, primarily purchasing or receiving a donation of the title to a property. Here, “securement” means obtaining a legal interest in the land in order to conserve it in some fashion.

In this paper, a number of issues are examined, including advantages and disadvantages, costs, and other factors. Both purchase and donation forms of transactions are considered, although dedication through a government approvals process should also be kept in mind.

Extent of Title and Agreement Acquisition

It is difficult to obtain a national or consolidated picture of the extent of title and conservation agreement securement in Canada. Several databases have been canvassed and are reported here, but none of these is complete and there are gaps and overlap between national and provincial records.

The Land Trust Alliance of British Columbia maintains an important B.C. Lands in Trust Registry of protected properties. A recent Registry update reports that 179,310 ha are protected through fee simple and 1988 ha are protected through conservation covenants, with some covenants being held on protected title lands. These numbers do not include the large holdings of the Nature Trust. In Ontario, renewals of members of the Ontario Land Trust Alliance and related data record holdings of 14,434 ha in fee simple (a substantial proportion owned by one large organization) and 1546 ha under conservation agreement. From these numbers it is clear that acquiring a fee simple interest is the most common securement method in these provinces.

A recent survey of all certified recipients under the federal Ecological Gifts program (“Ecogifts”) had a response rate of 31 percent, which provides some picture of securement patterns but does not account for all recipients and their holdings across the country. Nonetheless, the survey found that there are 85,818 ha of title owned by respondent conservation organizations, while these organizations have 90,518 ha under conservation agreement. Since 1995 when the Ecogifts program came into place and provincial conservation agreement legislation became more common, there has been a relatively even split in the area owned in fee simple versus agreements secured. This data contrasts with that for B.C. and Ontario, noted above, although the provincial data covers securement that has aggregated since long before 1995. In the Ecogifts survey, more title was purchased (78%) than donated, while fewer easements were purchased (40%) than donated in this period. The majority of parcels under conservation agreements tended to be below 250 acres, while larger parcels tended to be conserved through title acquisition. The survey’s results show that the largest three securement organizations in the country acquired 59% of the fee simple interest in lands and 95% of the conservation agreements. In 2002 in Ontario, the proportion of Ecogift securement projects as conservation easements was higher than for full title for the first time, but elsewhere and over a longer time horizon, title remains the more common option.

Advantages and Disadvantages

The standards and practices of the Land Trust Alliance of British Columbia (LTABC), Ontario Land Trust Alliance (OLTA) and the Land Trust Alliance in the United States (USLTA) generally require that member land trusts consider options for a land transaction and choose the most appropriate option. While there are variations and other options, typically the options shake down to conservation agreements or full title acquisition. Thus it is useful to explore the advantages and disadvantages and other factors relating to conservation agreements and full title transactions.

The following table assembles some of these aspects. It highlights the factors during and after a transaction as well as aspects related to taxation.

Table 1: Title and Agreement Factors

FACTOR	FULL TITLE	AGREEMENT
Professionals' familiarity	Well-known and straightforward	Less known and some suspicion or reluctance due to loss of landowner's land value/options
Transaction services	registration, appraisal, legal (survey)	registration, appraisal, legal (survey)
Transaction time	Typically shorter	Longer negotiations of agreement details
Transaction costs	Moderate	Higher due to longer negotiations, more complex appraisal
Purchase costs	Full	Partial (typically 50-75%)
Tax benefits and recognition	Clear, well recognized	Some aspects uncertain, e.g. non-ecogifts, property taxation impacts
Property taxes	Owner	Owner, but not the holder
Post-transaction management	Ongoing management and property supervision by owner	Occasional management (monitoring, enforcement) by holder, primary management by owner

Transaction Costs

As referenced in the table above, there are a number of steps and transaction costs for each type of securement method. These obviously will vary with the complexity and type of transaction. Further, land values may play an important role in some of these costs. The discussion in this section consolidates findings from a number of studies across Canada, including those for the Ecological Gifts program, members of the British Columbia Land Trust Alliance, a survey of Ontario land trusts, and interviews of principals in the larger land trusts in New Brunswick and Prince Edward Island.

One of the main differences between a conservation agreement and full title purchases is that buying an agreement will cost less than purchasing the fee simple title, perhaps 50 to 75 percent of the full title price (although this is very much dependent on the agreement's terms and other factors). A reduced purchase costs to ensure conservation is a distinct advantage, although most agreements are donated rather than purchased. There are transaction-specific and ongoing costs for each type of securement method, regardless of whether the interest in land is purchased or donated. Many of these expenses involved in a transaction are similar between title and agreements. However, some may be more expensive for a conservation agreement. These include appraisal costs which may cost half again or over three times as much for a conservation agreement as for full title due to the need to conduct more research to find comparable values for the encumbered lands. An agreement's survey costs to delineate various zones and

features with different restrictions within an agreement may also be more expensive than. The following Table 2 outlines the range of typical conservation agreement expenses reported in these studies and interviews.

Table 2: Typical Conservation Agreement Expenses in Several Provinces

EXPENSE	B.C.	ONTARIO	P.E.I.	N.B.
Appraisal	\$1400 (\$500 - \$3000)	\$1000 - \$6000	\$3000	\$1500 - 3500
Survey	\$1500 (\$750 - \$10,000)	\$1000 - \$1200		
Holder's Legal	\$400 - \$1200	\$500 - \$2000	\$250 + expenses	\$500-\$1000 expenses
Owner's Legal Review	\$500		\$300	
Title search	\$9	\$7		
Registration	\$215	\$60 - \$120	\$50	
Baseline study	\$400 - \$600			\$1000
Tax advice	\$500			
Staff time	20-50 or more	10-50 hours, sometimes longer	100-300 hours	
Volunteer time	20-50 or more	10 - 100s hours, often unknown		
Total Expenses, excluding time	\$7000 - \$9000, with complex ones \$15,000- \$53,000	\$2500 - \$10,000		

Further estimates are provided through the national Ecogifts survey in Table 3, which identifies detailed cost estimates for both land and conservation agreements. Unfortunately, the separation of title and agreement data was not available.

Table 3: Costs Associated with Ecogifts of Land and Conservation Easements/Covenants/Servitudes

Task	Costs		Responsibility		
	Range	Groupings of Range of Costs	Recipient	Donor	Either or Both
Baseline Documentation	0- \$10,000	39% \$500-\$1000 18% \$1,000-\$2,500	81%	3%	16%
Staff Costs	0 - \$12,000	25% \$500-\$1,000 29% \$1,000 - \$2,000	100%	-	-
Environmental Site Assessments (Phase 1)	0 - \$10,000	46% <\$1,000 46% \$1,000-\$2,000	86%	5%	9%
Land Survey	0 - \$12,000	35% \$1,000 - \$2,500 30% \$2,500 - \$5,000	58%	15%	27%
Appraisal	\$300 - \$10,000	23% < \$1,000 27% \$1,000 - \$2,500 43% \$2,500 - \$5,000	75%	9%	16%
Legal and Land Transfer Costs	0 - \$33,000	64% \$1,000 - \$2,500 20% \$2,500- \$5,000	68% Legal 63% Legal Transfer	13% Legal 3% Transf er	19% Legal 34% Transf er
Tax Advise	0 - \$4,000	75% <\$1,000	3%	84%	13%
Ongoing Monitoring	0 - \$5,000	52% <\$500 20% \$500 - \$1,000 20% \$1,000 - \$2,000	91%	-	9%
Liability Insurance	0 - \$5,000	29% \$100 - \$500 29% \$500 - \$1,000	81%	4%	15%

Courtesy of Environment Canada.

Other “hard” costs for conducting a conservation agreement can add up. Building an endowment fund for monitoring, landowner transition, and potential enforcement needs can be a substantial additional cost, sometimes \$5000 to \$20,000 or more. Some organizations use a flat fee per agreement, while others use a formula based upon the property’s size, nearby uses and other factors. The Evergreen Foundation’s urban land trust has promoted the approach used by some U.S. land trusts of requiring a payment of 1-5% of the price of a subsequent transfer of the title in order to develop such a stewardship fund for a conservation agreement on that property.

Owning a property also has a number of associated transaction and ongoing costs. A property may require the preparation of a management plan, whereas a conservation agreement will likely involve a baseline report and possibly approval of a management plan by the owners. Fencing, signage, and property taxes can be involved for a land owner. Both title and agreement transactions involve insurance and, if a donation, donor recognition costs.

In any transaction the costs to the conservation organization includes the time spent to carry out the transaction. This will be reflected in the costs of professional services, as noted above. Some organizations are fortunate to have professional Board members or volunteers who can contribute their expertise for free, or for substantial discounted fees and expenses. An organization’s staff and/or

volunteer time can also be a cost to the organization. Staff or volunteers can spend time in negotiations with the landowner and her or his advisors, site visits, organizing support services, carrying out or reviewing baseline reports, processing documents, and the like.

Some conservation agreements may take longer to negotiate than a title transfer, particularly to nurture a relationship and to convince family members and their advisors that a conservation agreement is appropriate for their plans. Usually, agreement grantors and their advisors are less familiar with conservation agreements and the associated process than they are with title transfers. In Ontario, around 90 percent of conservation agreements are donated as Ecogifts and thus must follow the documentation process for this program, usually around 50 hours of staff and/or volunteer time. In British Columbia and increasingly in P.E.I., a minority of such agreements go through the Ecogifts program and thus may require somewhat fewer hours to process.

Who pays for some of these initial transaction costs? The Ecogifts survey found that the vast majority of the costs for both title and agreement transactions were borne by the recipients, except for the legal and tax advice retained by the donor. This was particularly true for the quasi-governmental conservation authorities in Ontario and the Saskatchewan Department of Environment and Resource Management, the latter being a significant conservation agreement holder in that province.

Choosing the Appropriate Option

Beyond comparative advantages and cost considerations, there are other considerations that will help charities and agencies determine how to choose between full title and conservation agreement acquisition. Obviously, it very much depends upon the particulars of the situation and especially the preferences of the current owner.

A number of these factors include the following. A conservation agreement might be preferred in these circumstances:

- protection of important features only requires restrictions on part of a property and a severance to subdivide the land is not practical or permitted
- the landowner wants to retain ownership or wishes to pass the lands on to specific future owners
- the property has problems with trespassing or other access and thus ongoing ownership and regular supervision by a local landowner is important
- there is the desire to have shared ownership and protection between two parties, or to build a relationship
- the landowner wishes to reduce taxes on the land through restrictions but retained ownership
- there are concerns that conservation ownership will remove substantial lands from local property tax rolls
- an agency wishes to transfer a property but there are public concerns about future uses
- there are ownership limits or concerns in a certain jurisdiction, e.g. Prince Edward Island's limits of ownership at 3000 acres.

The parties to a transaction may choose to acquire full title in the following circumstances:

- there is an uncertain future and thus the organization and/or owner wants to assert more control, e.g. in an urban setting with strong conversion pressures, or uncertain future plans
- there are future plans to develop portions of the parcel of conservation interest and transfer it to a number of new owners, which may make future enforcement of a conservation agreement

difficult and expensive

- there is public access to the property or a need to consolidate management responsibilities
- the value of any conservation agreement would be a large proportion of the value of the property
- there is uncertainty in the ability to raise long-term stewardship and enforcement costs for a conservation agreement
- consider a purchase rather than a donation if it is a complicated transaction with high costs, e.g. a donation with lots of time, players and expenses.

Recommendations

A number of larger policy recommendations can be made that flow from this research. These include:

- foster better tracking of data on various types of transactions, especially their number, area, location, values, holders, and key elements of ecological and economic value (i.e. building on the data in the BC Lands in Trust Registry, Ontario Land Trust Alliance, and Ecogifts databases)
- foster more collaboration among agencies, with ongoing or regular voluntary reporting offered as an option under tax programs such as the Ecological Gifts program
- separate out future study data more in order to track costs and activity between title and conservation agreement acquisitions
- in those jurisdictions which do not already have such materials, develop a flowchart and decision-making tree to help landowners and organizations sift through the various factors and choose the best securement option.

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