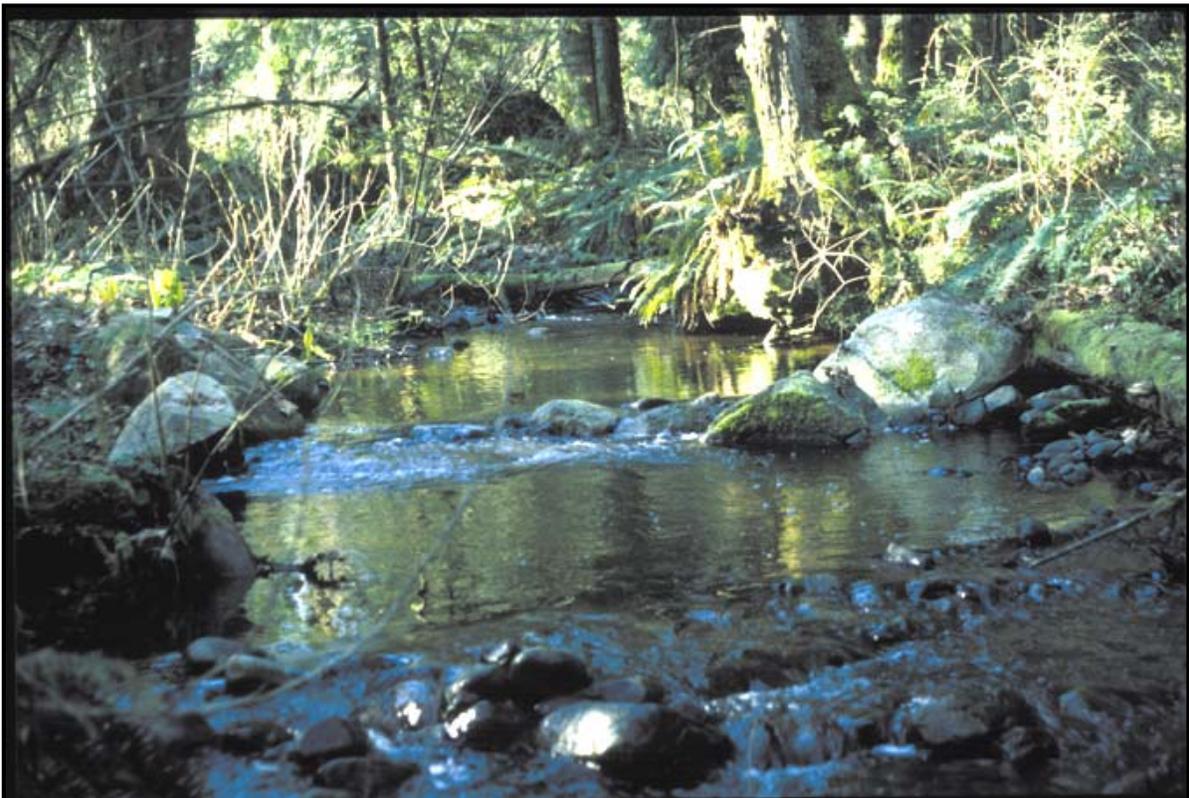


# **An Introduction to Conservation Covenants**

## **A Guide For Developers and Planning Departments**



**The Land Trust Alliance of BC**

*Revised April 2007*

**Photo: Millard Piercy Watershed – Courtenay, BC – several conservation covenants are registered to protect this important watershed, stream and salmon bearing habitat  
– photo Brent Reid**

## Benefits of Protecting Natural Areas

**Numerous reports have now documented the economic values of protecting riparian areas, trails, greenway corridors, and “green spaces.”**

“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.”<sup>1</sup>

**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 habitats and ecological services of all kinds

**For new developments, incorporating green space into the design will most likely lead to quicker approval and 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.**

A Canadian study reports 10-15% increase in value on properties adjacent to riparian greenways.<sup>2</sup>

Another more recent study reports 5-20% higher property tax revenue on land with trees in the landscape.<sup>3</sup>

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.<sup>4</sup>

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<sup>1</sup> “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.

<sup>2</sup> M. Quayle and S. Hamilton, *Corridors of Green and Gold: Impact of Riparian Suburban Greenways in Property Values*, UBC., 1999

<sup>3</sup> A. Saucer, *The Value of Conservation Easements: The Importance of Protecting Nature and Open Space.*, Atlanta: WestHill Foundation for Nature, Inc., 2002

<sup>4</sup> 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.

A Conservation Covenant is different from common law, restrictive covenants in that it is often held by one or more land trust organizations, (often called or referred to as conservation organizations). It can be positive or negative in nature and compliance is monitored regularly by staff or by trained volunteers from the land trust that holds the covenant.

## **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 BC 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 of a breach of the terms of the covenant.

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.

## **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 require a contribution to an endowment fund. Income from the fund is then used to cover the costs of ongoing monitoring. The amount of the endowment will be site-specific, but a \$10,000 one-time donation is considered a minimum amount for a straightforward covenant on a simple and easily accessible property. The amount

of the endowment fund is usually based on the size of the covenanted areas and the extent of work required. It is designed to cover the ongoing costs of monitoring such as film, tools and supplies, staff and volunteer travel expenses, baseline & monitoring reporting, and updating records and maps on Geographic Information Systems (GIS) and the BC Lands in Trust Registry. In addition, a one time charge of \$100 may be added for the Land Trust Alliance of BC's Covenant Defense Fund, set up to help cover costs of mediation or legal challenges in future.

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

The following tables outline the 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.**

**Table 1: Covenant Cost Guidelines for Lands being Developed/ Subdivided with Conservation Areas "clustered" around residential use**

<b>Residential Use Zone changes</b>	<b>Unit price (to be covered by client)</b>
<b>Amendment costs</b>	
Land trust staff time	\$50/hr
Land trust lawyer rate	\$150/hr min.
Travel-mileage	\$.42/km
Survey (if required)	\$3-10,000
Covenant re-registration fee	\$180 min.
RUSH charge	\$1000
<b>TOTAL</b>	<b>\$1,500 up</b>

**Table 2: Covenant Cost Guidelines for Conservation Areas - amendments requested**

<b>Item</b>	<b>Cost</b>
Land trust staff time	\$50/hr
Land trust lawyer rate	\$150/hr min.
Travel-mileage	\$.42 km
Baseline/ecological inventory (approx.)	\$5,000 min.
Surveys (if required)	\$3-10,000
Covenant registration fee	\$180 min.
Endowment for annual monitoring & violation	\$10,000-30,000*
Rush charge	\$1000 min.
<b>TOTAL</b>	<b>\$20,000 up*</b>
* depends on Conservation Area size	

**Table 3: Covenant Cost Guidelines for Conservation Areas where Covenants are violated**

<b>Violation costs</b>	<b>Unit price (to be covered by client)</b>
Land trust staff time	\$50/hr
Land trust lawyer rate	\$150/hour
Remediation of violation	To be covered by client
Legal fees	To be covered by client
TOTAL	\$1000 min.*
*costs depend on extent of violation and remediation fees.	

**These tables are courtesy of TLC, The Land Conservancy of British Columbia**

### 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. When a covenant is registered, property values may be affected<sup>5</sup>. A full appraisal, paid for by the owner, is necessary to determine land and covenant values.

If a Conservation Covenant is voluntarily donated, the landowner may be eligible for 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.<sup>6</sup> Any unused portion of the credit or deduction may be carried forward for up to five years, and as of 2006, 0 per cent of the capital gain is taxed instead of the usual 50 per cent.<sup>7</sup>

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.

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

<sup>5</sup> 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.

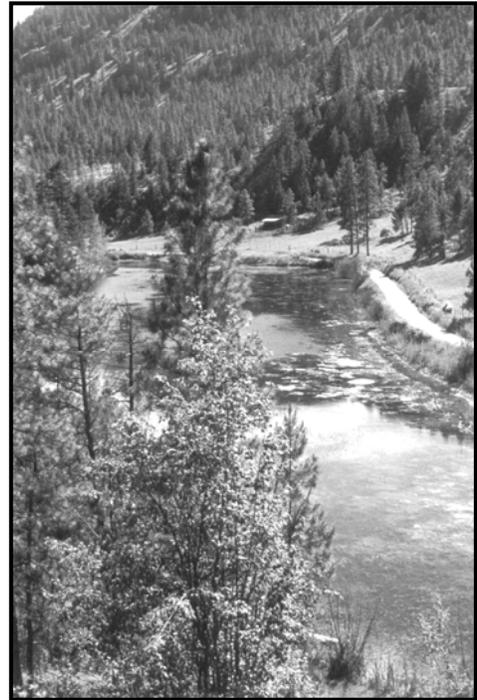
<sup>6</sup> [Tax credits for individuals are currently calculated as 16% of the first \\$200 and 29% on the remainder, plus provincial tax credits, for a total tax credit of approximately 44%.](#)

<sup>7</sup> See last page for reference to a more detailed tax information manual.

## When should a Conservation Covenant be considered?

### *Conservation Covenants are most useful when:*

- An area has significant ecological, heritage 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 parkland, restricting its future use in the interest of specific conservation goals.*
- *If the land has no intended human use other than for conservation, a fee simple donation to a conservation organization might be a better option.*



*Max Lake Covenant, Penticton, TLC*

## 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 there an adequate endowment or rent charge included to cover registration, monitoring costs and possible enforcement?
- Is the landowner motivated by conservation or are there other considerations?

## What are the steps in signing a Conservation Covenant?

1. **All parties:**
  - a. Review what a Conservation Covenant is and the goals 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 of 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 EGP coordinator for review and certification as ecologically sensitive.
4. **Landowner/developer should consult a lawyer** to seek legal guidance regarding tax and financial advice. Professional advisers can assist landowners/developers with exploring options and formulating a comprehensive plan.
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. All plant community maps with sensitive ecosystems indicated must be included with these.
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. The developer must contribute to a covenant endowment and defense fund to protect the conservation values perpetually.

When a Conservation Covenant is part of a subdivision or other local approval process, there must be clear communication and methodology surrounding terms, timing, costs and responsibilities between the developer, local government, and a land trust. The land trust must walk a narrow line -- they do not want to encourage land development, yet they do want to encourage ecologically sensitive development. Local government approval is a public process, while a Conservation Covenant is a contract between private parties. There are many uncertainties inherent in these negotiations: Is the landowner a willing participant in the covenant process? Should a Conservation Covenant be discussed at public meetings? Should a Conservation Covenant be signed prior to approval or after third reading? Should the municipality or regional district be a co-holder of the Conservation Covenant? Who is

responsible for the annual monitoring and record keeping? As much as possible, these questions should be resolved at the beginning of the negotiating process.

### Conservation Covenants and the Development Approval Process



**Photo: Islands Trust Fund**

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 reserves and parks, as well as provide community assets such as trails or buffers around creeks.

#### 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 additional 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](http://www.landtrustalliance.bc.ca) 250-538-0112.**

*"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](http://www.wcel.org).*

**Ecological Gifts Program website [http://www.cws-scf.ec.gc.ca/ecogifts/intro\\_e.cfm](http://www.cws-scf.ec.gc.ca/ecogifts/intro_e.cfm)**

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