

Reviewing Conservation Easements & Covenants in BC

If you've been reading about the recent review of conservation easements in the US and think that these conservation tools are not beneficial – think again. In BC a similar legal instrument, the Conservation Covenant, became accessible to non-government organizations in 1995. Since then over 30 Land Trusts (sometimes called Conservancies) have formed. They protect areas of natural or cultural significance through public education and stewardship programs, through conservation covenants, and by acquisition. Our member Land Trusts have registered over 136 covenants on properties in BC totaling over 2,578.46 hectares. (See <http://www.landtrustalliance.bc.ca/registry/> for more info) Sometimes the Conservation covenant restricts any changes to the land (leave it alone) and sometimes it has specific restrictions, such as no introduction of non-native species. Sometimes it simply removes future subdivision (mostly used on farms).

In Canada, the owners of properties with covenants on them get minimal if any tax benefits / compensation for registering a conservation covenant on their land. If the ability to subdivide land is removed, then the land is re-assessed without the subdivision potential. Any restrictions on use are rarely, if ever, appraised with a different property value, as our land appraisal system only values what can be developed under existing zoning, and does not value the ecological attributes of streams, wetlands, or grasslands. If a forest is protected, then the timber value alone is assessed. Under Canadian tax law, if a landowner does receive a charitable receipt for a donation of land or an interest in land (a covenant) the charitable receipt is treated like a gift of cash, and they may then be required to pay GST and capital gains for having donated a part of their land for the public and community's future benefit. For older folks, they might even have their pension clawed back! Thus most often a landowner is providing a legacy to present and future generations – protecting their land through a conservation covenant, which will result in protection of biodiversity and other ecological services such as clean water, air, flood control, and more which actually provides a public benefit.

Land trusts were given the legal ability to hold conservation covenants in 1995 because previously, when only government bodies held covenants, they were seldom monitored or enforced if the terms of the covenant were violated. Today, land trusts monitor covenants annually, set funds aside to protect and defend them, have processes to transfer easements to other organizations if the original grantee ceases to exist, and they have the willingness to defend them in Court.

Numerous Conservation easements in the US have been defended in court, (where this tool has been used for a longer period of time) including a New Jersey case where a developer built a house outside of the agreed building envelope. The Land Trust sued to have it stopped and removed, and the judge agreed and forced the developer to tear down the house, remove the foundation and restore the natural topography with native plants.

Most of the criticisms in the US are based on the appraisal process, which is different in Canada. The Appraisal Institute of Canada and/or the Realty Institute of British Columbia designates all appraisers. Most conservation covenants in BC today are registered under the Government of Canada's Ecological Gift program, which requires that the appraisal must be verified by an independent review panel established by the Canadian Wildlife Service.

Conservation covenants are a wonderful tool to protect features on private land, to provide corridors and buffers next to parks, and registered on regional and municipal parks, they add another layer of protection to ensure that these areas remain protected in perpetuity. Virtually all land trusts in BC belong to the Land Trust Alliance of British Columbia. We have published Standards and Practices, that have been recently revised nationally, which we advise all land trusts to adopt as their "code of practice." Like any non-profit, they are run by a board of directors who is responsible for the financial and legal operations of the Trust. All conservation covenants are registered with BC Land Titles, most are monitored at least annually, and the monitoring report is kept both with the land trust and the landowner. When the land changes hands, like any title restriction – the covenant is right there in black and white (or rather green and blue – the colour of conserved land and water in BC.) For further information on conservation covenants, or other lands protected by land trusts in BC, please go to www.landtrustalliance.bc.ca.

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