



Like LTABC, Anna's Hummingbird is small, energetic and resilient.

Land Trust Alliance of BC

THE EARLY YEARS

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Introduction

In September 2019, as a director for the Land Trust Alliance of BC (LTABC) I was invited to the annual general meeting of the Cowichan Community Land Trust in Duncan. As I had been a director with LTABC for several terms over the years, I touched on the origins of the organization. However, John Scull¹, a director of that land trust and also a former director of LTABC, was able to gently correct some of that early history.

I realized that the facts around the inception of LTABC resided primarily in the memories of several individuals, information that might be fading away and in danger of being lost. Someone should collect information and recollections and document some of that early history of the LTABC. Why not me?

Background - Evolution of the Law

Conservation organizations usually want to negotiate a covenant with a landowner that permanently restricts or prohibits some uses of that land to conserve natural amenities. That concept was resisted by 16th century British common law. Those courts reasoned that it was bad public policy to let the “dead hands” of long-gone generations constrain what present-day landowners could do (although there seems to have been no concern about the dead hands of long-gone judges constraining modern Canadians). Therefore, the courts placed complex requirements in the way of covenants, requiring “dominant” parcels that were clearly benefitted by restrictions and “servient” parcels where the restrictions applied. They also required that the land use restrictions had to “touch and concern” (i.e. – be in close proximity to) the dominant tenement. Conservation organizations rarely could meet those requirements - they were unlikely to own land close or adjacent to land that needed conservation, and it was almost impossible to prove that the conservation organization’s bit of land would clearly benefit from conserving natural features on a nearby lot.

Of course, those common law requirements also made land use regulation difficult for governments, but legislation can bump common law. Therefore, the *Land Title Act* long ago authorized government to acquire a special type of restrictive covenant that did not

¹ John passed away in late July. In May, he reviewed an early draft of this article, and his comment was typical: “Nice article, although I’m not happy with being a know-it-all at the beginning.”

need not be near a dominant tenement. However, non-government organizations were still blocked from holding such a covenant.

Then a major change. The *Land Title Act* was amended in the early 1990s to allow government-approved non-government organizations to hold such covenants. Section 219 now provided that:

(3) A covenant described in subsection (4) in favour of... any person designated by the minister... may be registered against the title to the land subject to the covenant... even if the covenant is not annexed to land owned by the covenantee.

(4) A covenant registrable under subsection (3) may be of a negative or positive nature and may include... that land or a specified amenity in relation to it be protected, preserved, conserved, maintained, enhanced, restored or kept in its natural or existing state in accordance with the covenant and to the extent provided in the covenant.

Suddenly, a government-designated society could buy or accept a conservation covenant on any parcel of private land. Not only would the cost be much less than outright ownership, a land trust would not have to take on the many risks and responsibilities of a landowner, such as liability insurance and property taxes.

Early Learning

Not surprisingly, conservation-oriented groups such as natural history organizations were initially leery of this new legal beast. None had any relevant experience. However, there was one organization that had land trust experience, albeit from the USA – Turtle Island Earth Stewards. (“Turtle Island” is a name for the earth used by many First Nations; it was picked up by environmental activists.) Turtle Island Earth Stewards (TIES) is a non-profit organization that was founded in 1975 “to deepen the sacred connection between land and people”. TIES was familiar with “conservation easements” in the US, and thus understood the concept of conservation covenants.

Meanwhile, John Scull of the Cowichan Valley Naturalists was growing increasingly concerned about environmental conservation. First, he found that one of his favourite hiking areas had been turned into a subdivision. Then the North Cowichan Council converted a municipal park to a municipal forest to allow logging.

In 1994, John was invited to a one-day workshop on land trusts by Tyhson Banighen of TIES and by Linnea Farm, a conservation property on Cortes Island. Thus inspired, John began to organize the Cowichan Community Land Trust (CCLT), forming a society and

obtaining charitable status. By 1995, the CCLT was approved and designated as an organization that could hold a conservation covenant. Concurrently, the Nanaimo & Area Land Trust (NALT) and the Salt Spring Island Conservancy were established. BC's land trust movement was under way!

It was one thing to form an organization, but how was one to actually be a land trust? Conservation values would have to be recorded in baseline reports and formally registered in the government's Land Title offices. Conservation areas would have to be monitored forever, and compliance with complex conservation agreements would inevitably require enforcement. As the CCLT and NALT were getting established, word spread among conservation-oriented individuals in other communities who began seeking advice and assistance.

There was clearly an increasing need for an umbrella organization that could provide information for new and developing land trusts. To that end, NALT and CCLT secured a room at Malaspina College on a weekend in February 1997. Guests included Bill Turner, then of the Nature Conservancy of Canada, who explained Britain's National Trust and summarized learnings gleaned at a 1995 workshop of the American Land Trust Alliance in California. Tyhson Banighen of TIES had additional information. Ron Pither of Mayne Island and John Scull of CCLT shared their knowledge. That event was hugely positive and energetic. The gathering unanimously voted to create a land trust alliance. A board of directors was acclaimed and set about drafting a constitution and bylaws for incorporation in 1997. The Land Trust Alliance of BC was registered as a charity in 1998 and had 20 members (individuals and land trusts) at its initial annual general meeting, including existing local conservation societies such as the Galiano Conservancy Association.

A couple of provincial-scale land trusts were already in place – the Nature Trust of BC had been created in 1971 and TLC The Land Conservancy had been incorporated in 1997. Ducks Unlimited and the Nature Conservancy of Canada had an even broader reach – these were national land trusts. BC's land trust movement now included local, provincial and national organizations.

Under Way

LTABC began hosting a gathering of BC land trusts, the Seminar Series, in 2000 to keep its members up to date and informed about engaging landowners, legal requirements around conservation covenants and the technical requirements of land deals, monitoring, mapping and dealing with potential infractions down the road. Each

conference was held in a different region or location, featuring visits to local protected areas. By 2000, LTABC had 40 members and was developing a Protected Land Registry, helping to develop land trust standards and practices, developing an economical provincial insurance program and issuing a semi-annual newsletter, *The Kingfisher*.

Land trusts continued to evolve, with energetic individuals such as John Scull, Bill Turner, Kathy Dunster, Ron Pither, Ann Richardson, Eileen Palmer and Sheila Harrington communicating and assisting on diverse projects². For example, an annual summer training program was established in 1999. Rather than each small land trust having to provide training, students were offered a week of intensive training at a camp on Salt Spring Island with instructors from various land trusts and professionals in both government and resource sectors.

In 2004, LTABC carried out a national survey of monitoring practices across Canada. That produced improved guidelines for the national Standards and Practices which would be finalized in 2005. Over 800 sample land trust documents were collected, revised and collated. Work began toward forming a national land trust alliance; the Canadian Land Trust Alliance was formed in 2005. Most BC land trusts were on the coast and most of LTABC's activities had been focused on them, so the Seminar Series moved to Naramata in 2005 to link with conservationists in the Okanagan.

In 2006, LTABC published a major community mapping project, the *Islands in the Salish Sea- A Community Atlas*. Other projects included workshops and a guide for conducting baseline inventories. In subsequent years LTABC compiled and publicized case studies involving a dozen successful land trust projects. Workshops and articles were produced to inform associated professionals, including lawyers, appraisers, accountants and financial planners.

Retrenchment

By 2009, a global financial crash significantly reduced interest rates which resulted in a significant decrease in grant availability from both private foundations and governments. The effects took a couple of years to be felt, but LTABC and its 30 member land trusts had to work harder to secure funding for projects. Over the ensuing years, LTABC adjusted to tighter times. The Seminar Series went from annual to biennial, the organization produced less documentation while increasing its virtual presence, office

² Those output of most of those early projects are itemized at LTABC's website <https://ltabc.ca/> under "Programs" and "Resources".

space shrank. But LTABC endured, continuing to communicate by e-news, offering group insurance, providing programs for schools and community groups, compiling guidelines for land conservation, encouraging improved tax incentives for conservation and providing workshops and resources to professionals.

As of 2020, LTABC had 37 member land trusts, comprising 95% of the land trust community in BC. LTABC also represents 15 associate organizations, including four land trusts in Alberta.