

Property Assessments on Conservation Lands

A Guide for Land Owners, Land Trusts and Covenant Holders Case Studies and Resources

ABOUT THIS GUIDE

This Guide is intended to encourage property owners and Covenant holders to provide BC Assessment with information about existing or new Conservation Covenants registered under Section 219 of the *Land Title Act*. Sharing this information will ensure that Covenant restrictions on an owner's property are taken into account in annual property assessments. Owners may benefit from lower property taxes if BC Assessment reduces property assessments to account for the impact of Conservation Covenants.



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St John Point on Mayne Island. Photo by Snelgrovemages.com and courtesy Mayne Island Conservancy.

BACKGROUND

The British Columbia *Land Title Act* was amended in 1994 to allow designated Land Trusts and non-government entities to register Section 219 Conservation Covenants on private land.[1] The number of Conservation Covenants held by Land Trusts and Land Conservancies has grown to protect thousands of hectares of endangered habitats and ecosystems on private land over the past 26 years.

BC Assessment has a duty to annually assess all property in British Columbia. In fulfilling this role, BC Assessment must take into account any Covenant registered under Section 219 of the *Land Title Act*, including Conservation Covenants. These Covenants are typically unique but have a common outcome – significant restrictions to a land owner's use of their property.

In most cases, the restrictions imposed by a Conservation Covenant impact the Market Value (i.e., potential resale value) of the owner's property. The impact on the owner's property value depends on the size and location of the covenanted area, the nature of the restrictions, and general Market Conditions.

Section 219 Conservation Covenants have the following characteristics:

- The Covenant holders are the Province, Local Government, a Crown Corporation, or a person designated by the Minister (typically a recognized conservation society or land trust).
- The Covenant protect, preserve, conserve and protect land and natural values (described as *amenities in the Act*).[2]
- The conditions of the Covenant are described in a legal document. Covenanted areas are surveyed, and mapped, and become part of the legal document.
- The Covenant has provision for annual monitoring, enforcement of provisions, and penalties for breach of the conditions.

There is a growing record of examples available to improve our understanding of the impact of Conservation Covenants on property assessments.

Keep in mind that each property owner's situation is unique. The Vancouver Island and Gulf Islands case studies provided later in this Guide are intended to illustrate a range of possible property assessment outcomes related to Conservation Covenant impacts.



Low tide walk on Cortes Island.
Photo courtesy of Friends of Cortes Island.

[1] The focus of this Guide is a Section 219 Covenant, a specific type of Restrictive Covenant authorized under the *Land Title Act*. This Guide is not intended to provide general information on Restrictive Covenants.

[2] The *Land Title Act* defines an amenity to be any natural, historical, heritage, cultural, scientific, architectural, environmental, wildlife or plant life value relating to the land that is subject to the covenant.

Definitions (source of definition)

- **Conservation Covenant (West Coast Environmental Law Research Foundation)**

A Conservation Covenant is a voluntary, written agreement between a landowner and one or more Covenant holders. It can cover all or part of a parcel of property and can apply year-round or only to specific periods in the year. In the agreement, the landowner promises to protect the land or features on the land in ways that are specified in the Covenant. For instance, the landowner might agree to provide specific protection for important habitat or not to subdivide the land.

The Conservation Covenant is registered against title to the property in the British Columbia registry of land titles under section 219 of the *Land Title Act*. This ensures that it binds future owners of the land, not just the current landowner, since the Conservation Covenant is intended to extend in perpetuity. A society or local government who holds a Conservation Covenant can enforce owner compliance with the Covenant terms if the owner does not voluntarily comply.

- **Highest and Best Use (Appraisal Institute of Canada 2020 Uniform Standards of Professional Appraisal Practice, Section 3.3)**

The reasonably probable use of Real Property, that is physically possible, legally permissible, financially feasible, and maximally productive, and that results in the highest value.

- **Land Trust (Land Trust Alliance of British Columbia)**

A non-profit, charitable organization committed to the long-term protection of natural and/or cultural heritage. A Land Trust may own the land or hold a Conservation Covenant intended to protect or restore natural or heritage features on the owner's land. Land trusts also engage in stewardship, restoration and management of lands. The terms *Land Trust* and *Conservancy* are often used interchangeably.

- **Market Conditions (Land Ethic Consulting)**

The behaviour of buyers and sellers in a defined real estate market. Common measures of market conditions are changes in average monthly or annual property sale prices, the volume of property listed for sale, and days on the market. When market conditions favour sellers, for example when demand exceeds supply, the impact of a Covenant may be masked by other property factors such as quality of waterfront, exposure, quality of access, etc. Conversely, when market conditions favour buyers, typically when the supply of competing properties exceeds demand, buyers have more property options. In this scenario buyers will be very sensitive to the impact of Conservation Covenants on property use relative to similar non-covenanted properties.

Property Assessments on Conservation Lands

- **Market Value (Appraisal Institute of Canada)**

The most probable price which a property should bring in a competitive and open market as of the specified date under all conditions requisite to a fair sale, the buyer and seller each acting prudently and knowledgeably, and assuming the price is not affected by undue stimulus.

- **Property (Assessment Act) means *land and improvements*.**

- **Improvements (Assessment Act) are defined as:**

[A]ny building, fixture, structure or similar thing constructed or placed on or in the land, or water over land, or, on or in another improvement. Examples of improvements are houses, barns, roads, etc.



Lindsay-Dickson Nature Reserve. Photo by John Millen courtesy Denman Island Conservancy.

PROPERTY ASSESSMENT IN BC

A property assessment is the combination of a property's actual value, classification and applicable exemptions. The mandate of BC Assessment is to annually produce independent and uniform property assessments for all properties in British Columbia. Assessment notices are mailed to property owners at the end of the calendar year.

BC Assessment is guided by the *Assessment Act*, *Assessment Act Regulations*, and related legislation dealing with property assessment.

Section 19.1 of the Act defines actual value as the Market Value of the fee simple interest in land and improvements.

The term Market Value is defined by the Appraisal Institute of Canada as follows:

The most probable price which a property should bring in a competitive and open market as of the specified date under all conditions requisite to a fair sale, the buyer and seller each acting prudently and knowledgeably, and assuming the price is not affected by undue stimulus.

Taxing jurisdictions such as the Province and local governments levy annual property taxes according to property taxable value. A property tax notice sets out the taxable value and property taxes for General Municipal, School, Fire Protection, Regional District, and other purposes. Taxable value is the assessed value, adjusted for all tax exemptions that may be applicable. Since assessed value is generally equivalent to actual value for most properties in BC, an increase or decrease in property actual value will generally lead to an increase or decrease in property taxes.

The valuation date for property assessments is July 1st of the year preceding publication of the Assessment Roll. For example, the valuation date for the 2020 Roll Year was July 1, 2019.

Except for covenants registered under the Natural Area Protection Tax Exemption Program (NAPTEP) (discussed later in this document), BC Assessment is required under Section 19 of the *Assessment Act* to consider any terms or conditions in a Covenant registered under section 219 of the *Land Title Act*. In other words, if a section 219 Conservation Covenant is registered on the title of a property, BC Assessment must consider whether the actual value is negatively impacted. The challenge faced by BC Assessment, and appraisers in general, is that properties with Conservation Covenants do not regularly sell in local markets and each covenanted property represents a unique scenario – meaning there is little market information to assess the impact of Covenants.



Boardwalk construction in Elder Cedar Nature Reserve on Gabriola Island has helped to protect sensitive ecosystems.

Photo by Rob Brockley and courtesy of Gabriola Land and Trails Trust.

BC Assessment appraisal staff and independent valuation professionals may have different opinions on the impact of Conservation Covenants on property Market Value.

Property owners who are willing to provide BC Assessment a recent independent appraisal of the covenanted property can assist BC Assessment in determining the potential reduction in actual value, if applicable. We recommend you provide a recent appraisal reviewed by the Ecological Gift Appraisal Review Panel of Environment and Climate Change Canada Ecological Gift Program, or any other recent appraisal completed for other purposes, such as mortgage financing or an estate.

The *Assessment Act* requires BC Assessment to determine actual value based on the property condition as of October 31 of the year preceding publication of the Assessment Roll. For example, if a building is under construction, BC Assessment will estimate its state of completion as of October 31st, and the value of land and improvements as of July 1st, based on the October 31st state of the improvements.

Another task for BC Assessment is to classify property according to use. This step is necessary since it provides Tax Jurisdictions (i.e., Province and local government) the option to set different tax rates for different uses. The most common classification of property [3] in BC is 01 Residential. Conservation Covenants are commonly registered on property with Residential classification. Properties classed as Managed Forests or Farm (defined in assessment regulations) may also be subject to Covenants.

The Assessment Roll for each Tax Jurisdiction (i.e., City, Town, or the Province) forms the basis for the Taxation Roll. In spring of each year Tax Jurisdictions set annual tax rates for each Property Class. The tax rate for each purpose (e.g., School or General) and Property Class multiplied by the assessed value results in property tax payable. The total property tax for a specific property reflects any exemptions that may apply.

There are a small number of exceptions to the rule that actual value is equivalent to Market Value at July 1st of each year. The exceptions are specialized industrial facilities and utilities such as dams, power plants, pipelines, powerlines, and properties classified as Farm and Managed Forest lands. The actual values of these properties are based on regulated (i.e., legislated) rates. Since BC Assessment is required to adopt regulated rates for Farm and Managed Forest Lands there is no option to adjust the rates to account for Conservation Covenants. This issue is discussed later in the Guide.

[3] A brief explanation of property classification follows later in this section.

Conservation Covenants

Conservation Covenants are registered on the property title and are intended to run with the land in perpetuity. This means that the Covenant remains in force after a property is sold or transferred to an estate.

Property owners and others can search their property title and retrieve the Conservation Covenant. A title search can be completed online through the Land Title & Survey Authority website.

Section 219(1) of the *Land Title Act* authorizes the provincial government, a Crown corporation, local governments or a local trust committee under the *Islands Trust Act* to work together with a property owner to establish a Conservation Covenant on the owner's property.

Section 219(3)(c) of the *Land Title Act* provides other non-governmental entities, designated by the Minister responsible for the Act, the authority to enter into Conservation Covenants with property owners.



Arbutus berries and a snowy winter at one of Habitat Acquisition Trust's North Saanich covenants.

Photo courtesy of HAT.

IMPACT OF COVENANTS ON ACTUAL VALUE

Conservation Covenants create obligations and/or restrictions on a land owner's use of some or all of their property, leading to potential impacts on Market Value and in turn, property actual value.

During the assessment roll process, BC Assessment appraisers will review the restrictions imposed by a Conservation Covenant. The next step is to evaluate the available market information to determine the impact of the Conservation Covenant on the property actual value. The value impact is typically considered as an adjustment, if any is required, to the unencumbered or unrestricted property actual value.

The primary and most common obligations and/or restrictions that may impact actual value are as follows.

General Impacts

- **Restrictions on the type and extent of improvements, including buildings, out-buildings, roads, and trails.**

A Conservation Covenant may restrict or eliminate residential building sites, and restrict the size, location, or alteration of buildings and related site improvements (e.g., septic field or well). For example, the best building site for a waterfront property typically offers ocean, river, or lake views. If a Conservation Covenant eliminates building sites near the water or within a water view envelope, the value of the land will likely be impacted. Conversely, if the Conservation Covenant is limited to protection of natural values in no-build areas, such as a wetland system, a no-build restriction for the wetland may have no measurable impact on value.

- **Restriction on property subdivision.**

When property can be legally subdivided and subdivision is financially feasible, a Conservation Covenant restricting subdivision will likely impact property value. The first step is to identify whether subdivision is legally probable under the local government zoning and Official Plan designation. If subdivision is possible or probable, the degree of Covenant impact (none to severe) will depend in part on the feasibility of subdivision (development cost versus lot sale value), local demand and probable timing (immediate or long-term). Land-use restrictions, such as an Agricultural Land Reserve designation or flood hazard controls, may eliminate subdivision potential. A real estate appraiser is best qualified to determine and document the impact of a restriction on property subdivision potential.

- **Restriction on separate sale of multiple properties (i.e., separate land titles).**

A Conservation Covenant may extend over multiple titled lots with common ownership, preventing separate sale of the lots. In other words, the property can only be sold as one portfolio of lots. This restriction may impact the Highest and Best Use of the property and Market Value. For example, a Conservation Covenant binding two adjoining acreage lots with common ownership, but separate legal access, will eliminate the option for future separate sale of each lot. The level of impact will require an analysis of the Market Value of each lot, at its Highest and Best Use, considering local Market Conditions. The sum of the separate lot values can be compared to value of the lots combined as a single property to establish a loss in value. A real estate appraiser is best qualified to determine and document the impact of a Conservation Covenant restriction on separate sale of titled lots under common ownership.

- **Restrictions on alteration of natural vegetation (e.g., no vegetation clearing), soils, and watercourses.**

In practical terms this means that an owner will be restricted from clearing land for a garden, crops or pasture, or to improve the view. This restriction will reduce the appeal of the property to a number of potential buyers, often impacting Market Value.

Owners will also be unable to re-route or alter creeks, complete bank stabilization, or install culverts and bridges over watercourses. These restrictions may lead to higher than anticipated costs for road access and/or extension of power and telephone service.

In some cases, mainly with larger acreages, a property may have commercial forest cover. A Conservation Covenant that prevents vegetation removal may impact the property value assuming the market recognizes the commercial value added by the forest cover. A Professional Forester's opinion will assist a property owner and the owner's appraiser in determining the value of the standing trees and potential impact on property value, if any. Keep in mind that there are multiple variables impacting the economics of logging on private land, including the size of the property and potential timber volumes, quality and value of standing timber (i.e., the stumpage value), log export status, cost of logging, and distance to log markets.

Restriction on alteration of natural vegetation and soils will also restrict log transportation on existing or newly-built roads passing through the Covenanted Area.

- **An obligation to provide unfettered access to the Covenant holder for periodic inspection of the covenanted area.**

The holder of the Covenant, generally a Land Trust, has the right to conduct an annual inspection of the covenanted property to ensure that the natural values protected by the Conservation Covenant are maintained. A Statutory Right of Way, or SRW, is generally registered on title at the same time as a Conservation Covenant. The SRW provides the Covenant holder unfettered legal access to the property. This right represents a potential impact on value since potential buyers would likely assign a value impact to the nuisance factor associated with the Covenant holder's unfettered access to the property.

- **An obligation to allow the Covenant holder to restore covenanted areas impacted by the actions of the property owner.**

If an owner has not met the terms of the Covenant (i.e., disturbed a covenanted area), the Covenant holder can enforce the provisions of the Covenant for restoration of the land and/or natural values. This obligation represents a risk for any property owner who owns land subject to a Conservation Covenant. The impact of this risk on property value, similar to the impact of the obligation to permit access to the Covenant holder, is difficult to measure separately.

- **A Rent Charge, as part of the SRW (noted above) registered on the title of the property. A Rent Charge provides mechanisms for enforcing Covenant violations and applying financial charges should a Covenant violation occur. The Rent Charge is triggered upon breach of the Covenant terms. The Rent Charge often receives priority over all other charges on title and can be a significant financial liability to a property owner, once enacted.**

There will be a nuisance impact related to the Rent Charge, similar to the impact associated with the covenant holder's access SRW. Each potential buyer will form their own opinion of the value impact imposed by the enforcement options and the Rent Charge.

In some cases, Conservation Covenants restrict the types of crops that may be planted or restrict land use practices on lands designated as Agricultural Land Reserve. In these scenarios, the Covenants must be approved by the Agricultural Land Commission. A link to an Agricultural Land Commission bulletin on this subject is provided at the end of the guide.

Many of the Conservation Covenant impacts on property value discussed in this section may seem intuitive to property owners. However, there are scenarios where a Covenant may have little to no impact on property actual value. The scenarios to follow are intended to provide examples of these situations.



Quadrant clam count on low tide day.
Photo courtesy of Cowichan Land Trust.

Limited to No Impact Scenarios

Scenario 1 – Market Does Not Recognize Impacts

The local real estate market (i.e., buyers and sellers) for small rural residential lots may not recognize the Covenant restrictions on land use if a residence can still be built and the restrictions on vegetation removal for the remaining area are consistent with a purchaser's desire for privacy. In other words, the Market Value (and actual value) of the land remains the same before and after the Covenant.

Scenario 2 – No Subdivision Before and After

A Covenant restricts further subdivision of a property. This Covenant would not likely impact the property use and value if the property zoning and Official Plan designation prohibited subdivision and there was little likelihood of a change in land use controls.

The nuisance impact of the Covenant on property value would remain.

Alternatively, if the property is offered for sale, some buyers may discount their purchase offer since land-use controls may change in future, but subdivision is restricted in perpetuity (i.e., the option to subdivide is lost).

Scenario 3 – Farm Classification of Property

BC Assessment has classified the use of a property as Farm. The actual value of land classified as Farm is set at farm productivity rates (i.e., statutory rates) rather than Market Value. This means that the actual value for property classed as farm will not change as a result of a Conservation Covenant.

The same scenario applies to land classified as Managed Forest.

Scenario 4 – Forest Cover Contributes to Aesthetic Value

An acreage property may have forest cover with commercial value. However, removal of all or part of the forest cover may diminish the aesthetic value that a buyer may assign for residential use – translating to a loss in Market Value, especially for waterfront properties. In these scenarios the aesthetic contribution of the forest cover to Market Value must be compared to the probable timber value to determine whether the Covenant restriction on vegetation removal has a net impact on property value.

A qualified forester and appraiser who specializes in rural acreage and timber property valuation can assist owners in analyzing this scenario.



Munson Pond, a park naturalization project near Kelowna BC.

Photo courtesy of Central Okanagan Land Trust.

Scenario 5 – Small Area Covenanted

In the event the Covenant for a large acreage is restricted to a small area, such as a defined wetland, steep slope area, or a pocket Garry oak meadow, the impact on value may be not be measurable if the probable land use is the same before and after the Covenant is established.

The nuisance impact of the Covenant on property value would remain.

Scenario 6 – Natural Area Protection Tax Exemption Program

When a property with a Conservation Covenant already receives a property tax exemption under the Natural Area Protection Tax Exemption Program (NAPTEP), set out in the *Islands Trust Act*, the Assessor does not double count the impact of the Covenant in determining actual value. The NAPTEP tax exemption is described in the section to follow.

NATURAL AREA PROTECTION TAX EXEMPTION PROGRAM (NAPTEP)

NAPTEP is the only program in British Columbia to date that offers a property tax exemption as an incentive for land conservation. The program was created by the Islands Trust (a federation of local governments in the Gulf Islands and Howe Sound Islands) and administered by its conservation arm, the Islands Trust Conservancy.

NAPTEP offers landowners an annual 65% property tax exemption on portions of land protected by a Conservation Covenant.

To qualify for the program, the owner's property must:

1. Be located in the Islands Trust Area
2. Contain one or more natural features or amenities prescribed in the Islands Trust Natural Area Protection Tax Exemption Regulation, BC Reg. 41/2002; and
3. Be subject to a Conservation Covenant in favour of the Islands Trust Conservancy.

Information on NAPTEP and the associated conservation covenant is available online at <http://www.islandstrustconservancy.ca/naptep/>.^[4]

Section 19(7.1) of the *Assessment Act* states that BC Assessment does not take into account the impact of properties with Conservation Covenants where those properties qualify for tax exemptions under the *Islands Trust Act* (i.e., NAPTEP). The NAPTEP results in a blanket 65% tax exemption applied to the assessed value of the covenanted portion of the property. In other words, owners with a NAPTEP exemption cannot benefit from additional reduction in the actual value as a result of Conservation Covenant.

Keep in mind that the Market Value, or value in the open market, of the covenanted property may still be impacted by the Conservation Covenant under the NAPTEP.

[4] The Land Trust Alliance of BC has been working to encourage the Province to expand NAPTEP to a province-wide program <https://ltabc.ca/programs/tax-incentive-program/>.

STEPS TO TAKE WHEN A CONSERVATION COVENANT IS ON TITLE

1.

Advise BC Assessment that a Conservation Covenant has been registered on the property title and provide an electronic copy of the Covenant document and associated survey plan to the local Assessment Area Office.

2.

Provide BC Assessment the Appraisal Report prepared for the Ecological Gifts Program, assuming it has been completed within the past year or two, or any other recent appraisals. This Report will assist BC Assessment in determining the reduction in actual value associated with the Conservation Covenant.

3.

If you are buying property subject to a Conservation Covenant, confirm with the seller, or their agents (i.e., realtor or lawyer) that the Covenant has been provided to the local BC Assessment Regional office. If not, provide BC Assessment the Covenant after the sale closing. This a good time to review the Covenant and consider whether the property actual value reflects the impact of the Covenant.

4.

Contact BC Assessment in early January, when annual property assessment notices are sent to all property owners, if you have concerns about the accuracy of the actual value. If you cannot resolve concerns over actual value with BC Assessment staff during the initial review period, file a Notice of Complaint. This step is relatively easy and can be completed online from the BC Assessment website.

You must file a Notice of Complaint before **January 31st** of the year the Assessment Roll is published (i.e., within 3 to 4 weeks of receiving your Assessment Notice) or you will lose your right of appeal.

More information on the appeal process follows.



Guided forest walk on Cortes Island.

Photo courtesy of Friends of Cortes Island.

ASSESSMENT APPEALS

An owner's assessment complaint, if not resolved through discussion with the assessor, results in an informal and generally brief (15-20 minute) hearing before the Property Assessment Review Panel, known as PARP. The BC Assessment website provides a good explanation of the complaint process. Hearings can be in-person, by teleconference, and in some cases through written submissions.

The onus of proving the assessment is incorrect lies with the complainant (i.e., property owner, agent, or any other party who appeals) rather than BC Assessment. The PARP Hearing is an opportunity for owners to present evidence and arguments in support of a reduction to the property actual value. Keep in mind that the PARP will be looking for facts and reasoning related to the value impact of the Conservation Covenant, such as the information in a recent Appraisal Report. As part of your submission you should state your opinion of the corrected actual value. A property owner's unsupported personal opinion may not be given much weight.

A property owner may wish to request assistance from the Land Trust responsible for the Covenant when preparing a submission for a PARP Hearing.

The PARP typically recesses for a few minutes after submissions by the Property Owner/Complainant and BC Assessment, and reconvenes to provide a verbal decision. The PARP can order a reduction in the actual value, no change to the actual value, or in very rare cases, an increase in actual value. The PARP decision is provided verbally to BC Assessment at the end of the hearing. BC Assessment is required to implement the change in actual value, if any, on the final or Authenticated Assessment Roll and subsequent Taxation Roll for the jurisdiction.

The complainant, BC Assessment, or any other party, may appeal the PARP decision. These appeals are filed with the Property Assessment Appeal Board (PAAB), a more formal judicial tribunal. A PAAB appeal must be filed by or before April 30 following the decision of the PARP. Appeals of PARP decisions are not common due to the additional cost and effort required to continue the appeal process.

LANDS OWNED BY A LAND TRUST

Private lands may be either sold or donated (i.e., gifted) to a Land Trust by an owner who wishes to protect the natural and cultural values of their property in perpetuity. The Land Trust then becomes the registered owner of the sold or gifted property.

The type of a property owner, whether it is a Land Trust or any other party, is not a factor affecting actual value. BC Assessment is restricted to considering the factors identified in the *Assessment Act* and *Regulations* when determining the actual value of land and improvements.

However, the restrictions imposed on a covenanted property owned by a Land Trust may affect the property actual value. For example, the preservation of a seabird-nesting site, restoration of a wetland or prevention of road construction may restrict the most probable use of the property and in turn impact the actual value.

EXEMPTIONS FROM TAXATION

The *Community Charter* and *Local Government Act* provide the authority to a Municipality or Regional District to exempt properties from taxation for a variety of reasons. The exemption occurs when the Municipality or Regional District passes a Bylaw by October 31 of the year before the next taxation year.

The *Local Government Act* applies to land in a rural area and in a municipality. The *Local Government Act* Section 391(4) gives a Regional District the authority to issue permissive exemptions from property taxation for:

land or improvements, or both, owned or held by, or held in trust by the owner for, an athletic or service organization and used principally for public athletic or recreation purposes.

This section is permissive, meaning Regional Districts are not required to approve an owner's property tax exemption request. Therefore, the exemption may or may not apply to property owned by a Land Trust. In addition, the Regional District may decide on the value to be exempted.

Section 391 (3) states that the Regional District Board must adopt a bylaw by at least a 2/3 majority vote to approve a Section 391(4) property tax exemption. This exemption does not include land that is leased or rented to other occupiers, or life estates where the donor continues to occupy the property.

Another statute, the *Taxation (Rural Area) Act*, is intended to apply only to rural areas, or areas outside a Municipality. The Area Assessor has the authority to determine whether a property is entitled to an exemption under Section 15(1)(q) and questions about this provision should be addressed to BC Assessment.

Section 15(1)(q) of the *Taxation (Rural Area) Act* provides an exemption for

- (q) land and improvements if the land and improvements are
 - (i) owned or occupied, and
 - (ii) used exclusively by a non-profit organization for activities that are of demonstrable benefit to all members of the community where the land is located

Land Trusts in rural areas have generally been exempted from property tax under Section 15(1)(q) because they are non-profit organizations whose land conservancy activities are deemed to provide a demonstrable benefit to the surrounding community. Note that the *Act* states that the qualifying property must be owned or occupied and used exclusively by a non-profit organization.



View of Nanaimo from Mount Benson Regional Park.
Photo courtesy of Paul Chapman, Nanaimo and Area Land Trust.

If the subject property is situated within a Municipality[5], the Community Charter applies as well as the *Local Government Act*. Section 224 of the Community Charter provides a municipality the authority to pass a permissive exemptions from property tax. An extract from Section 224 is reproduced below.

General authority for permissive exemptions

(2) Tax exemptions may be provided under this section for the following:

(a) land or improvements that

(i) are owned or held by a charitable, philanthropic or other not for profit corporation, and

(ii) the council considers are used for a purpose that is directly related to the purposes of the corporation;

Section 224 (2) (a) has been applied to a number of Land Trust properties.

However, similar to the *Local Government Act*, this section is permissive – council may grant an exemption but is not required to do so. Consequently, Land Trusts may or may not receive a property tax exemption, depending on whether council passes a bylaw to grant such an exemption. Moreover, Section 224(4) stipulates that such an exemption must be renewed after 10 years.

Other Tax Consequences

Transferring property ownership to a Land Trust and creating a Conservation Covenant has legal and economic consequences. Be sure to contact your own financial and legal advisors before transferring property or entering into a Conservation Covenant. Beyond property taxes, and taxes due upon purchase or sale, donations of land or interests in land (e.g., a Conservation Covenant) may also affect income taxes and capital gains.

[5] The Community Charter applies to all municipalities except the City of Vancouver. Within the City of Vancouver, s. 396(1)(c)(i) of the Vancouver Charter may provide a tax exemption for property owned by a land trust. It states that an exemption exists for:

(c) Real property

(i) if

(A) an incorporated charitable institution is the registered owner or owner under agreement, either directly or through trustees, of the real property, and

(B) the real property is in actual occupation by the incorporated charitable institution and is wholly in use for charitable purposes.

However, please note that “charitable institutions” is a much more limited category than “nonprofits”, and that the subject property must be “in actual occupation” by the charitable institution and “wholly in use for charitable purposes”

DONATIONS OF ECOLOGICALLY-SENSITIVE LAND

The Ecological Gifts Program provides a way for Canadians with ecologically sensitive land to protect natural areas and leave a legacy for future generations. It offers significant tax benefits to landowners who donate ecologically sensitive land or a partial interest in land to a qualified recipient. Donors receive a tax receipt for the full value of their ecological gift that can be applied against 100% of their net annual income, whereas typical tax receipts can only be applied against 75% of the donor's income. Corporate donors deduct the amount directly, while individuals use it to calculate a non-refundable tax credit. Any unused portion of the receipt may be carried forward for up to 10 years. For most gifts 50% of any capital gain is taxable, whereas, for an ecological gift, none of the capital gain is taxable.

The fair market value of all ecological gifts must be certified by the federal Minister of the Environment and Climate Change, or delegate, typically based on a recently prepared Appraisal Report that conforms to the Ecological Gifts Program Guidelines for Appraisals. Property owners may submit this Report to BC Assessment to support a review of the property actual value, as discussed earlier.

Changes to Conservation Covenants donated under the Ecological Gifts Program may require approval from Environment and Climate Change Canada.

CASE STUDIES

The case studies to follow represent properties owned by Land Trusts and private owners, that are subject to Conservation Covenants.

These cases are unique, and are intended to illustrate a range of possible actual value outcomes that may occur.

Each owner is encouraged to consider the implications of the Covenant affecting their property. Owners may wish to obtain advice from qualified Appraisers to establish the impact of the Covenant on their property value.

Keep in mind that the Market Value of property is dynamic and is often linked to changes in Market Conditions. Recall that Market Conditions favouring sellers may reduce the expected impact of a Conservation Covenant where a buyer may still use the property for residential purposes. This scenario may occur when there is strong demand and few alternative properties for sale. Certain buyers may be prepared to overlook or place less weight on physical or legal impairments such as steep slopes, impaired views, and restrictive covenants. Conversely, in a stagnating or declining market, buyers will generally have many choices and will pay close attention to property impairments and legal restrictions, such as Conservation Covenants, in negotiating sale prices.



A Highlands residence with a Covenant protecting native vegetation and restricting further buildings. Covenants are co-held by the Nature Conservancy of Canada and The Land Conservancy of BC.

Saltspring Island Non-Waterfront Acreage

In 2018 a Conservation Covenant was registered on a 23-acre semi-treed south Saltspring Island rural acreage with restricted access, and then was gifted to a Land Trust. The Covenanted property was created through subdivision of a larger estate. A condition of subdivision approval was a restriction on further subdivision – eliminating the subdivision potential of the new parcel to be covenanted. There was little change in the most probable use before and after the Covenant registered. A review of the 2018 and 2019 property assessments indicates a 26% reduction in the actual value, in part due to Market Conditions and the restrictions imposed by the Covenant.

Saltspring Island Waterfront Acreage

In 2017 a Conservation Covenant was registered on a 5.3-acre waterfront portion of an 18.3-acre south Saltspring Island waterfront estate. The property had short-term potential for subdivision into 3 waterfront lots. The Covenant reduced the subdivision potential to development of two lots on the 13-acre non-covenanted portion of the estate. The outcome was a 90% loss in Market Value for the 5.3-acre covenanted area. BC Assessment had classified the entire estate as Farm. The Farm classification was retained after the Covenant since farm use continued on the 13-acre non-covenanted area. The actual value of property classified as Farm is typically much lower than similar property classified as Residential. Refer to the earlier section of this Guide entitled *Limited to No Impact Scenarios: Scenario 3 – Farm Classification of Property*. There was no material change in actual value of the land before and after the Covenant given the Farm classification of the property.

Denman Island Waterview Acreage

In 2017 a Conservation Covenant was registered on a 6.3-acre sloping treed rural acreage on Denman Island with restricted access (extension of a public road required). This property was gifted to a Land Trust after subdivision from a larger parcel. The Islands Trust had approved the subdivision subject to very restrictive zoning – consistent with the restrictions imposed by a Conservation Covenant. An independent appraiser determined the 2017 Market Value of the gift property before the Covenant and restrictive zoning at ± \$280,000. BC Assessment added the new parcel to the 2018 Roll (as of July 1, 2017) with an actual value of \$131,000, representing a 54% reduction from the 2017 Market Value.

Maple Bay Rural Acreage

In 2015 a Conservation Covenant was registered on a 16.27-acre sloping treed rural acreage near Maple Bay (east of Duncan). About 15 acres was fully protected with the remaining ±1.2 acres designated for an existing residential dwelling. The main impact of the Covenant was to eliminate the subdivision potential of the property. Prior to the Covenant, a multi-lot subdivision was possible under the North Cowichan District zoning bylaw. The Covenant eliminated the subdivision potential, vegetation removal (i.e., logging) and construction of any buildings. BC Assessment reduced the actual value of the land (entire parcel) by 35% to account for the impact of the Covenant.

Highlands Rural Acreage

In summer 2012 a Conservation Covenant was registered on a 57.4-acre undulating heavily treed rural acreage on Millstream Road, in the Highlands District of Greater Victoria. About 56 acres was fully protected with the remaining ± 1.4 acres designated for a future residential building site. The property was split zoned residential and green belt. The main impacts of the Covenant were to eliminate the subdivision potential of the residential zoned part of the property and elimination of potential logging. The owner's appraiser had engaged a professional forester as part of the Ecological Gift Program process. The forester established the value of the standing timber to be \$125,000. BC Assessment reduced the actual value for the covenanted area by 21% for the 2013 Roll Year.

Pender Island Acreage

In 2009 a Conservation Covenant restricting removal of nearly all trees, and restricting building expansion and new buildings was registered on a 3.68-acre property. The property was heavily treed with very limited water views. Most owners would have removed tree cover to obtain good water views. BC Assessment recognized the view impact of the Covenant and possible over assessment of the property in prior years. The 2010 assessment was reduced from \$791,000 to \$538,000, or -32%.

Nanaimo Rural Waterfront Acreage

In April 2008 a Conservation Covenant was registered on the west 67 acres of a tourism resort in Cedar, a rural neighbourhood south east of Nanaimo. The resort was on land zoned commercial and the undeveloped land was zoned rural. The Covenant was placed on the rural zoned land. The covenanted property had about 1,760 lineal ft. of waterfront with potential for subdivision into 10 to 12 five-acre lots. The Covenant eliminated the subdivision potential, logging, and construction of any buildings. BC assessment reduced the actual value of the covenanted area for the 2009 Roll Year by 73% to account for the impact of the Covenant.

Pender Island Waterfront Acreage

In April 2007 a Conservation Covenant was registered on a 1.7-acre waterfront Pender Island property with no subdivision potential. The Covenant eliminated the potential to develop a waterfront residential dwelling or disturb any vegetation. An independent appraiser prepared a report for the Ecological Gifts program and determined the Covenant restrictions resulted in an 90% reduction in Market Value. The owners were successful in obtaining a NAPTEP exemption leading to a 65% property tax reduction. The NAPTEP exemption was applied to the property taxable value – meaning there was no change in the BC Assessment actual value (i.e., no double counting of the property tax benefit).

North Saanich Acreage

In November 2000 a Conservation Covenant was registered on a 7.7-acre rural residential lot. The main impact of the Covenant was to eliminate the subdivision potential of the property. Prior to the Covenant, a 5-6 lot subdivision was possible. BC Assessment was not informed of the Covenant until 2003. The 2003 assessment, \$502,000, was revised by BC Assessment after receiving information about the Covenant. The land actual value was reduced to \$420,000, representing a -16.3% adjustment for the Covenant.

SUMMARY

- The term Actual Value is synonymous with Market Value for most properties in B.C.
- A reduction in a property actual value will generally lead to a reduction in property taxes. However, each covenanted property is unique. The impact on land use and actual value may range from negligible to significant.
- Property owners and Covenant holders should ensure BC Assessment is informed of a Section 219 Conservation Covenant. Information documenting the impact on property value, such as a recent Appraisal Report, will assist BC Assessment in reviewing the impact of the Covenant.
- Market data illustrating the impact of Conservation Covenants on property actual value is limited – meaning an estimate of a Covenant's impact on property actual value is challenging. A related challenge is the variability of Covenant terms and unique nature of most covenanted properties. However, the case studies indicate that a reduction in actual value can be expected for most properties affected by Conservation Covenants.
- Covenanted properties with Farm or Managed Forest classification (for assessment purposes) will not receive a reduced assessment since actual values for these properties is based on a regulated rate, rather than Market Value.
- Covenanted properties participating in the Islands Trust's Natural Area Protection Tax Exemption Program (NAPTEP) receive a tax exemption, which reduces their property taxes. There is no change to the actual value of properties with NAPTEP approved exemptions. While the actual value of covenanted properties with NAPTEP status may be similar to that of non-covenanted properties, the Market Value will likely be lower.
- Property owners and Covenant holders may appeal the property assessment (i.e., actual value) if they do not agree with BC Assessment's position on the impact of a Conservation Covenant.
- BC Assessment reviews and establishes property assessments annually. This means that property actual value will change periodically. Property owners should monitor the assessment annually to ensure it continues to reflect the impact of the Covenant.
- Changes in Market Conditions represents one of many factors that influence the actual value of covenanted property from year to year.



***Railway Grade Marsh
Covenant Area,
Denman Island.***

Photo courtesy of
John Millen;
Denman Conservancy
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Resources for property owners and Covenant holders related to the Conservation Covenants impacts on property values are available from the LTABC website or by contacting our office directly.

Conservation Covenant and Tax Online Resources

Agricultural Land Commission. Guidelines for Conservation Covenants in the ALR. https://www.alc.gov.bc.ca/assets/alc/assets/library/land-use-planning/guidelines_for_conservation_covenants_august_2011.pdf

BC Assessment: *How Does a Conservation Covenant Affect Property Value.* <https://info.bcassessment.ca/Services-products/property-classes-and-exemptions/conservation-covenants>

Land Title & Survey Authority: Authority to Hold Covenants (Section 219 Land Title Act). <https://ltsa.ca/practice-information/authority-hold-covenants>

Environment & Climate Change Canada – Ecological Gifts Program. www.canada.ca/ecological-gifts

Hillyer, Ann, Judy Atkins and Ben van Drimmelen, *Greening Your Title: A Guide to Best Practices for Conservation Covenants*, 3rd edition (2015: Vancouver, West Coast Environmental Law Research Foundation). <https://www.wcel.org/publication/greening-your-title-guide-best-practices-conservation-covenant-3rd-edition>

The NAPTEP Program of the Islands Trust Conservancy. <http://www.islandstrustconservancy.ca/napterp/>

The Land Trust Alliance of British Columbia offers many resources on Covenants and related topics including research on the economic values of conserved lands, videos and a Registry of Covenants and lands owned by Land Trusts in BC www.ltabc.ca

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