



ISLANDS TRUST CONSERVANCY BOARD POLICY

Policy number: 2.4

Title: Conservation Covenants

Approved By: Islands Trust Conservancy Board

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Revised

Date: Jan. 23, 2014 Resolution #: TFB-2014-006

Chair Signature:

PURPOSE

To describe general practices associated with negotiating, holding and monitoring Islands Trust Conservancy **conservation covenants**.

SCOPE

Policy 2.5 Natural Area Protection Tax Exemption Program provides additional policies for covenants within that program.

BACKGROUND

The *Islands Trust Act* establishes the Islands Trust Conservancy to acquire, hold and manage land, and receive donations for the purpose of carrying out the object of the Islands Trust.

As a means of carrying out the object of Islands Trust, the Islands Trust Conservancy Board may receive donations of conservation covenants. Covenants provide the covenant holder with an interest in a parcel of private land. The covenant is a contractual agreement between the landowner and the covenant holder(s) that indicates what the parties will do to protect or conserve the covenanted land.

The Islands Trust Conservancy has an annual program for monitoring lands over which it holds conservation covenants to ensure that landowners are in compliance with the terms of the covenant. Annual monitoring keeps landowners and covenant holders in regular communication and ensures that both parties are satisfying the requirements of the covenant.

A: Policy - General

1. The Board accepts covenant donations to preserve and protect significant features and values within the Islands Trust Area. The Board does not purchase conservation covenants.
2. The Board may request or require, as part of a covenant donation, a monetary donation to the Covenant Management and Defense Fund or towards the creation of a specific endowment, in order to assist with ongoing and future costs of maintaining, monitoring and legally defending the covenant.
3. The Board will endeavor to co-hold covenants with another conservation organization wherever possible. The Board may require that an agreement between covenant holders outlining roles and responsibilities, including cost sharing, be signed prior to commencing negotiation of a covenant.
4. The general intent of conservation covenants held by the Board is to preclude development and uses that may disturb or impact the natural features of the property.
5. The Board will issue a charitable receipt to the donor if the covenant is a gift.¹ The donor must provide an appraisal (at his or her cost) that clearly identifies the value of the covenant, undertaken by an individual accredited in real estate appraisal in Canada and who is independent from both the donor and the Islands Trust Conservancy.
6. Where a landowner who wishes to donate a covenant may qualify for Environment Canada's Ecological Gifts program, the staff will assist with completion of the application form.
7. The Board will review and approve a covenant template from time to time to guide covenant negotiations. The approved covenant template will provide the basis for all covenant negotiations.
8. Covenants will generally include restrictions on:
 - a. the cutting of native vegetation;
 - b. the alteration of the hydrology of the land; and
 - c. the removal or alteration of soil and rock.
9. The Board requires each covenant to include an indemnity by the landowner in favour of the Board and its staff or agents against liability arising out of the owner's ownership, use, occupation or maintenance of the lands.
10. The Board may not incur a liability without Ministerial approval and therefore the Board will not provide indemnities to landowners.
11. A Rent Charge (which is a deterrent, fine-like charge) will be required with each covenant on private land as a deterrent to undertaking restricted activities. As of the date of this policy, the Rent Charge amount will be set at \$6,000 and will increase each year on January 1 by

¹ A gift is defined as a voluntary transfer of property without valuable consideration to the donor.

the CPI². The Rent Charge will be increased by 110% of the market value of any flora or fauna, soil, rock, gravel or minerals which have been damaged in connection with a breach of the covenant.

12. A Statutory Right of Way (SRW) will be required with each covenant to enable access for annual monitoring and for restoration and maintenance of the natural values protected by the covenant. If the covenant area is not adjacent to a legal road access, the SRW will be requested over the whole of the land.
13. Where access to the covenanted land is via easement or right of way from adjacent lands and not from a dedicated highway, the Board will ensure that those easements or rights of way extend to the Board for the purposes of accessing the covenanted lands.
14. The landowner is responsible for all costs incurred by the landowner to complete the covenant. In cases of financial need, the Board may consider assisting a landowner with the costs of covenanting, such as land survey, appraisal, ecological baseline, and registration fees, at the request of the landowner. Landowners entering the *Natural Area Protection Tax Exemption Program (NAPTEP)* are expected to cover their costs except in special circumstances (refer to Policy 2.5).
15. The Board will review and approve all covenants for signing before they are registered.

B: Policy: Monitoring

16. Each property covenanted by the Islands Trust Conservancy Board will be visited and monitored annually by either Islands Trust Conservancy staff or an Islands Trust Conservancy contractor.
17. The Board will seek budget amounts from Trust Council sufficient to cover regular annual monitoring for all its covenants.
18. Written documentation (a report, updated photographs and maps) of each monitoring visit will be developed to confirm that the present use of the covenant area is consistent with the baseline recorded at the time of covenant registration. The written report will be provided to the Board for review and approval. Following the Board's review of the report, staff will notify landowners regarding their compliance with the covenant.
19. Monitoring of Ecological Gifts³ will include confirmation that the present use of the property is consistent with the use of the land at the time of the covenant donation. Monitoring documentation for Ecological Gifts will be made available to Environment Canada upon request.

² "CPI" means the All-Items Consumer Price Index published by Statistics Canada, or its successor in function, for Vancouver, BC, where 2014 equals 100.

³ An Ecological Gift is a gift of land or a covenant on land that is certified as ecologically sensitive by the federal Minister of the Environment or his or her designate in accordance with the provisions of the federal Income Tax Act and otherwise meets the requirements of the Income Tax Act and that gives rise to special tax benefits.

20. Generally, the Board will not undertake monitoring on other agencies' covenants where the Board has no legal interest in the covenant (e.g. covenants held by local trust committees, local, regional, provincial or national conservancy/land trust groups). However, if requested, the Board may assist with monitoring a covenant held by a local trust committee or island municipality if the local trust committee or island municipality will cover all costs associated with the monitoring and the property is adjoining an Islands Trust Conservancy property or covenant that would be monitored at the same time.
21. In cases where the Board and a second group (e.g. local trust committee or local, regional, provincial or national conservancy/land trust) hold a conservation covenant jointly, the Board may take the lead in contracting independent monitoring unless the partner group or the Islands Trust Conservancy has staff resources to conduct the monitoring. In either case, monitoring must be done to the Islands Trust Conservancy standard and costs may be shared.
22. Any observed or reported breach will be investigated according to ITC Policy 2.8 Covenant Enforcement and the related Breach Investigation and Covenant Enforcement procedure.
23. The Board will educate others about the responsibilities associated with holding conservation covenants and will advocate that other parties within the Islands Trust monitor their conservation covenants annually.

REFERENCES

Islands Trust Act

Land Title Act

Canadian Land Trust Standards and Practices 2005 (Technical update, 2007). Available online through the Land Trust Alliance of BC at www.ltabc.ca.

Hillyer, A. and J. Atkins, 2005. *Greening your title: a guide to best practices for conservation covenants. Second Edition*. Published by West Coast Environmental Law Research Foundation. Vancouver, B.C. Available online at www.wcel.org

ITC Policy 2.2 Assessing Conservation Proposals

ITC Policy 2.5 Natural Area Protection Tax Exemption Covenants

ITC Policy 2.8 Covenant Enforcement