

Covenant Policy

Purpose

To describe general practices associated with negotiating, holding and monitoring The Land Conservancy of British Columbia (TLC)'s conservation covenants.

Background

TLC is registered with the Solicitor General of British Columbia as an authorized entity to hold Section 219 Conservation Covenants. Conservation covenants provide the covenant holder with an interest in a parcel of land, typically privately owned, however in some cases including lands owned by government for park purposes. 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.

TLC has an annual program for monitoring lands over which it holds conservation covenants to document changes to environmental conditions and ensure that landowners are in compliance with the terms of the covenant. Regular monitoring keeps landowners and covenant holders in communication and ensures that both parties are satisfying the requirements of the covenant.

A: Policy – General

1. TLC's Board accepts donations of interest in land by registering a covenant on title to preserve and protect significant biological diversity within British Columbia. Unless specifically authorized by TLC's Board, TLC does not purchase conservation covenants.
2. TLC's Board requires, as part of a covenant donation, a monetary donation (i.e. annual monitoring fee and/or endowment) in order to assist with ongoing and future costs of maintaining, monitoring and legally defending the covenant.
3. TLC's Board will consider co-holding covenants with another conservation organization if specifically requested by a landowner, or if the covenant is located outside the core operations geographic region of TLC. In such cases, TLC's Board will require than an agreement (MOU) between covenant holders outlining roles and responsibilities, including cost sharing, be signed prior to registration of a covenant.
4. The general intent of conservation covenants held by TLC's Board is to preclude development and uses that may disturb or impact the natural features of the property.
5. TLC's 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 TLC.
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.

¹ A gift is defined as a voluntary transfer of property without valuable consideration to the donor. Gifts may include the Federal government's Ecological Gift Program (Ecogifts).

7. TLC's 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. TLC's Board requires each covenant to include an indemnity by the landowner in favour of TLC and its staff or agents against liability arising out of the owner's ownership, use, occupation or maintenance of the lands.
9. TLC's Board may not incur a liability to its members, therefore TLC will not provide indemnities to landowners.
10. 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 \$10,000 and will increase each year on January 1 by the CPI.² 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.
11. A Section 218 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.
12. Where access to the covenanted land is via easement or right of way from adjacent lands and not from a dedicated highway, TLC's Board will ensure that those easements or rights of way extend to TLC for the purposes of accessing the covenanted lands.
13. The landowner is responsible for all costs incurred by the landowner to complete the covenant, except for registration at the Land Titles Office. In cases of financial need, TLC's 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.
14. TLC's Board will review and approve all covenants for signing before they are registered.

B: Policy: Monitoring

15. Each property covenanted by TLC's Board will be monitored annually by TLC staff or a qualified TLC contractor.
16. TLC's Board will budget amounts sufficient to cover regular monitoring for all its covenants.
17. 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 in compliance with covenant restrictions.
18. 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 Victoria, BC where 2016 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.

19. Generally, TLC will not undertake monitoring on other agencies' covenants where TLC 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 TLC Board may assist with monitoring a covenant held by another group if that group will cover all costs associated with the monitoring and the property is adjoining a TLC property or covenant that would be monitored at the same time.
20. In cases where TLC and a second group hold a conservation covenant jointly, TLC's Board may take the lead in contracting independent monitoring unless the partner group or TLC have staff resources to conduct the monitoring. In either case, monitoring must be done to TLC standard and costs may be shared.
21. In the event of harassment from a landowner, TLC staff should adhere to the following protocol:
 - a. Let the offending party know you find their behaviour unacceptable or unprofessional and ask them to stop. This is ideally in written format to ensure a record is kept.
 - b. Make notes about the altercation including the date it occurred, what the behaviour was, how you felt, what you did about it, and who else was present.
 - c. Tell TLC's Executive Director the event occurred and determine if further intervention is required. This may include additional informal procedures, mediation or formal complaints.
 - d. Know that you have the right to file a formal complaint if you feel harassed and are making the complaint in good faith.

References

Land Title Act

Canadian Land Trust Standards and Practices (2019)

Greening Your Title: A Guide to Best Practices for Conservation Covenants. West Coast Environmental Law (2013)

TLC Acquisitions Policy

TLC Covenant Enforcement Policy

TLC Anti-Harassment Policy (2013)