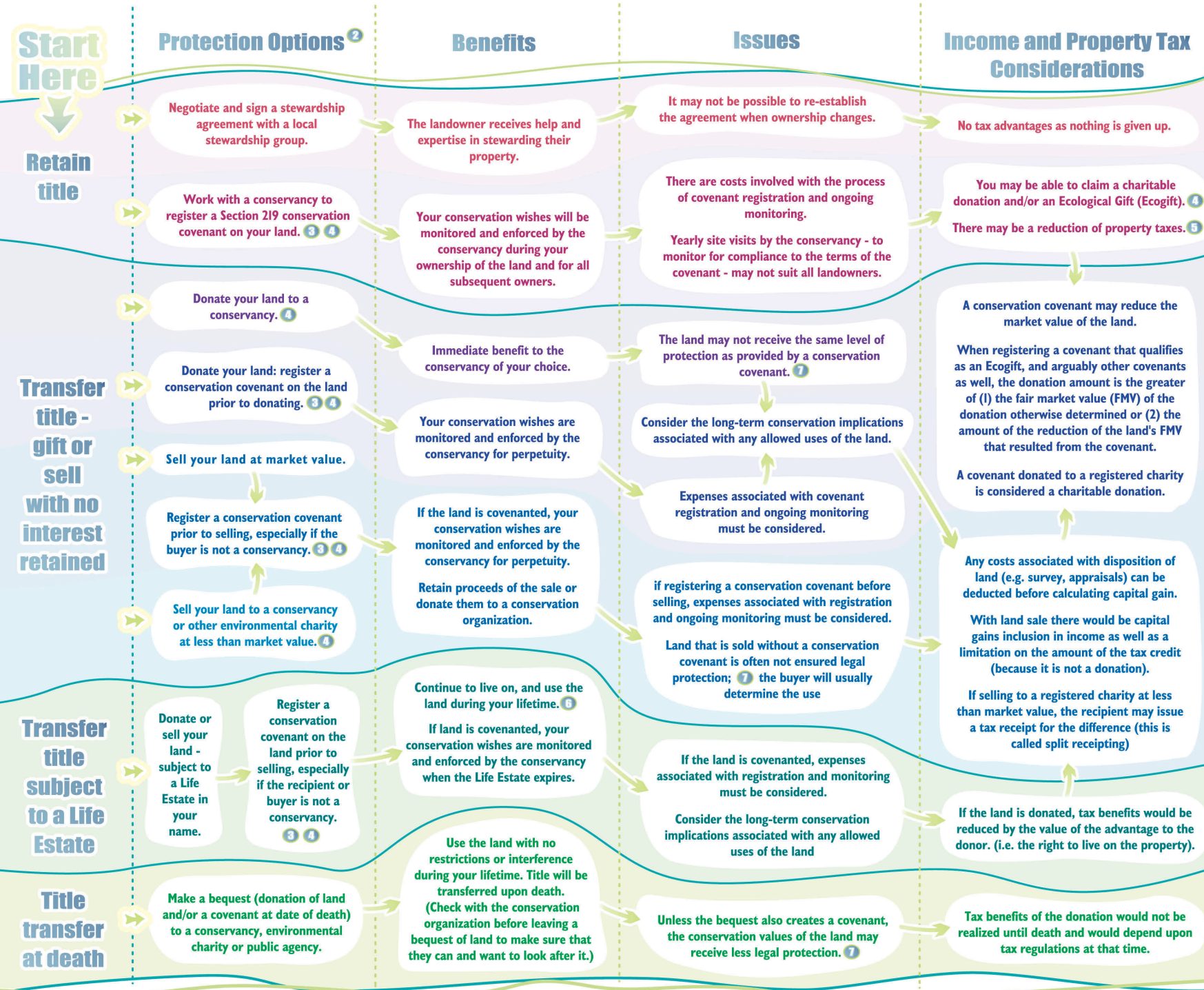


Land Protection Options and Their Implications¹



Very Important Footnotes

1. Be sure to contact your own financial and legal advisors, and local assessment authority, before donating lands or covenants as each case is very specific and you need to be sure of the implications before proceeding. This document is not comprehensive, it is intended to be used for basic purposes only.

2. Protection options may be applied to all or part of your land; if applied to a portion of the land, then survey and/or subdivision costs may apply. If your land is in the Agricultural Land Reserve and you wish to register a conservation covenant, contact the Agricultural Land Commission or consult a lawyer.

3. A conservation covenant is registered on title under Section 219 of the Land Title Act and will be binding on both current and future owners of the property. It protects conservation features by specifying the restricted and allowed uses of the land. A management plan for the land may be included as part of the covenant. A well drafted covenant will allow the agency(ies) that hold the covenant to monitor and enforce its terms. Covenant costs may include appraisal, baseline inventory, legal fees, and the establishment of an endowment fund to help cover the costs of monitoring and enforcing the covenant. Grants to landowners to assist with covenant costs may be available; contact the Land Trust Alliance of British Columbia for more information: www.ltabc.ca.

4. You may qualify for income tax benefits under the Ecogift (Ecogift) Program if your land is deemed to be ecologically sensitive. Both lands and covenants can be donated as Ecogifts. An additional process including an appraisal, is required for registering an Ecogift. If the land and/or covenant qualifies as an Ecogift, you are entitled to a tax credit of up to 100% of the donation amount (as opposed to only 75% if the donation is not an Ecogift). An Ecogift is not subject to tax on any capital gains realized in respect of the property.

Informative Websites

- Green Legacies www.givegreencanada.ca
- Land Trust Alliance of BC www.ltabc.ca
- West Coast Environmental Law www.wcel.org/category/publications/conservation-covenants

A tax credit as a result of an Ecogift can be applied in the year of donation and any unused portion can be carried forward for up to five years. Under the Ecogift Program, an unauthorized change in use or disposition of the land by the recipient will be subject to a tax penalty. An Ecogift can be used in conjunction with, and can strengthen, a conservation covenant. Visit the Ecological Gifts Program: www.ec.gc.ca/pde-egp/default.asp?lang=En.

5. Call your local government to ask if there is a Natural Areas Protection Tax Exemption Program (NAPTEP) available.

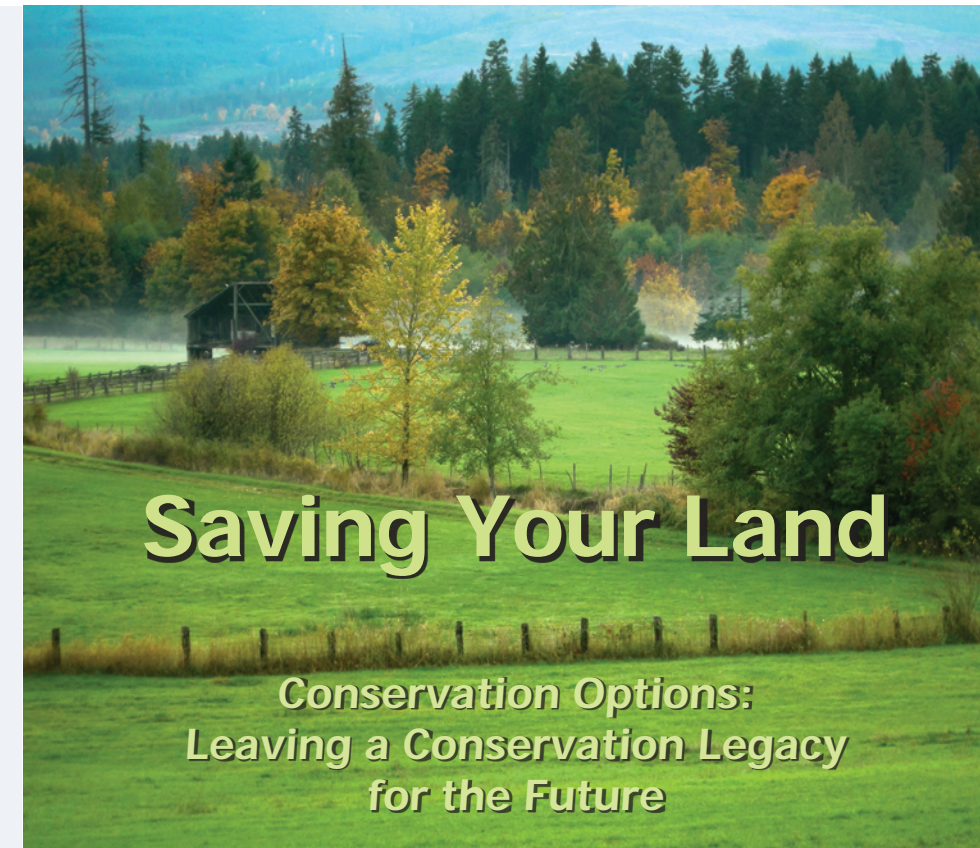
6. If the land is an Ecogift, restrictions apply to the use of the land during the term of the Life Estate.

7. A gift, bequest or even sale of property that is intended to be used only for a specific recreational or conservation purpose, even without a covenant, may result in a legally enforceable charitable trust; however, such trusts will generally be less detailed and provide less legal protection than a covenant, and may be difficult to enforce. If you want to donate land to a conservancy and do not wish to restrict the use to a particular purpose, you should be clear that the gift or bequest is for any use that the conservancy sees fit.

Chart reprinted with thanks:



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Saving Your Land

Conservation Options: Leaving a Conservation Legacy for the Future

Photo: Mike Munroe

Do you want to protect features on your land, conserve areas and retain ownership or sell your property with some protection in place?

Land trusts and conservancies work with people who are interested in leaving a conservation legacy for the future. Do you want to protect a shoreline, native grasslands, a forest or a stream? Or, do you want to find creative solutions to promote ecologically sensitive agriculture, forestry or sustainable development? Land trusts also work to preserve our cultural and historic heritage as well as ensuring wildlife such as wild birds, mammals and rare species have secure homes for the future.

The decision to protect some aspect of the land you own is a personal decision, based on motivations that are unique to you and your situation. Some landholders want to protect the land's natural or cultural features before passing it on to the next generation. Others may see conservation as a way to resolve property or potential income tax challenges. Other motivations may include ensuring privacy from neighbours or determining the future use of a property jointly-owned by members of an expanding family or community group. This guide is intended to provide some background information and a few examples of conservation options and the potential financial benefits.



Beautiful British Columbia

British Columbia has an abundance of natural diversity. BC's top scientists have identified that more than 42% of identified species are listed as a provincial conservation concern. The variety and richness of our landscapes, ecosystems and species produce a wide range of ecological "goods and services" such as clean air and water, drought and flood control, natural pesticides, productive soils, regulation of local climate and many other benefits. Climate change, urban sprawl, and unregulated development jeopardize the health and resilience of our natural diversity and the services it provides. In BC, more than half of all greenhouse gas emissions are due to degradation of forests, as a result of timber harvesting and deforestation from development. Conserving existing natural carbon sinks, such as forests, grasslands and wetlands, will help store carbon and shield us from climate change. Private landowners have an increasingly important role to play in protecting BC's biodiversity.

Caring For Your Property

There is a wide array of stewardship or conservation options that can help you care for and protect the special features of your property. Caring wisely for your land is one of the best things you can do for future generations, providing for the long-term health of your community and British Columbia. Land trusts can help you review the many options available ranging from short-term voluntary actions to long-term legal agreements that will last beyond your lifetime.

The decisions you make about your land now will be in effect for generations

to come and, therefore, need careful consideration. Choosing to conserve aspects of the land is the first step; next, you may want to talk with your local land trust to explore how best to suit your needs and protect the values of your land. It is always a good idea to discuss your plans with your family, legal and financial advisors.

Many land trusts and conservancies have stewardship and education programs. These can include a site visit by a local biologist or naturalist to help identify important natural or cultural features, assistance with land management decisions, or information on green

Property owners have numerous conservation options available:

- A donation or bequest of land
- The sale of property to a land trust
- A life estate
- A conservation covenant

landscape design or restoring the natural vegetation in your area. Some land trusts may have programs to encourage mixing rural, farm or forest land uses with conservation objectives, which in some cases can maintain or provide for reduced property tax status.

Legal Options

Creative strategies for protecting your land through transfer:

- Sell or donate the land to an organization with a conservation mandate

- Reserve a "life estate" when you give or sell the land, meaning that you or a family member can continue to live on the property until your death or theirs
- Sell or donate the land and then lease it (or a portion) back for a certain period
- Subdivide off the ecologically significant portion of the property, and transfer it to a land trust
- Protect areas or features with a conservation covenant.

Legal options offer a more permanent form of conservation. You can donate or bequeath part or all of your land to a land trust, and receive tax benefits. Alternatively if your land has significant natural or cultural values, a land trust might consider purchasing it, or providing you with some form of financial compensation. There are also options that would allow you to donate or sell the land to a land trust, but you continue to live on or use the land. Another option for protecting your land is the conservation covenant. This is a permanent legal agreement between a landholder and a designated land trust organization which would allow you to leave a legacy of conservation for the future, which protects particular features of the land but allows you to continue to live on the property.

Transferring Your Property

One of the most permanent ways to protect your land into the future is by arranging to transfer the property to a land trust now or at a later date.

Most land trusts are registered charities, and can therefore offer a tax receipt for gifts of property. The land would need to

be independently appraised to determine fair market value. A gift of ecologically significant land may qualify for the Government of Canada's Ecological Gifts Program. This program offers significant income tax benefits to landowners who donate land or a partial interest in land to a qualified recipient.

If you are willing to sell your land to a land trust at a reduced price, the Ecological Gifts Program allows split-receipting, where the land trust can issue a charitable tax receipt for the difference between the appraised value and the agreed sale price. Guidelines on split-receipting are published by the CRA in the Income Tax Technical News No. 26.

Should a land trust be interested in purchasing your land, time is often needed to raise funds. Installment payments, a mortgage, or an "option to purchase" can allow the land trust to raise funds over a longer period to meet your purchase price.

Another option is to grant a conservation land trust the "right of first refusal." This means that the land trust would have first rights to buy the property, if and when you decide to sell.

If there is no urgency to transfer the property, you could plan to donate the land through your will. To ensure that your objectives for the land are realized, the details for such a donation (known as a bequest) are best achieved in advance through discussions with a land trust and your lawyer.

A life estate involves giving your property to an organization, while retaining the right to use the property for a lifetime or a predetermined number of years. With this type of gift the land trust would hold the land title while you would retain a residual interest in the land. With minor exceptions, you would

have the same rights to use and possess the land as an owner. Upon the end of the life estate, the land trust would assume all responsibilities as the owner.

If your land does not have natural or cultural heritage value you can support conservation work by donating property explicitly for the land trust to sell in order to provide funds to acquire more ecologically significant lands. Gifts of cash or goods, including securities, are accepted by land trusts. These will help provide for the ongoing costs of stewardship, land management, monitoring, insurance, maintenance and record-keeping.

Conservation Covenants

Conservation covenants (called easements or servitudes in other provinces and the US) are a voluntary tool which allow a landowner to preserve natural, historic, or cultural features of the land in perpetuity, while still retaining ownership and use.

A conservation covenant is a legal agreement made between a current landowner and a designated land trust

Common restrictions in a conservation covenant include:

- No subdivision
- No herbicides or pesticides to be applied within covenant area
- No removal of natural vegetation
- No alteration or interference with watercourses and natural hydrology

organization and/or a government agency. It is registered on the title to the land, and it will remain in effect after the land is sold or transferred, binding future owners of the land to the terms of the covenant. This agreement will ensure that features of the land that you want protected will remain in perpetuity.

The conservation covenant helps protect specific features and areas by restricting uses. The landowner still holds title to the land and can continue to live on and use it, but must retain the agreed terms of the covenant.

The land trust or conservation organization that will hold the covenant can help you design the terms, including reserved rights and restrictions. In order to ensure that these long term agreements can be monitored and enforced over time, two land trust organizations (or a local or regional government and a land trust) may share the legal responsibility of protecting, monitoring and defending the covenant. An annual site visit and report are required to monitor and ensure the maintenance of the covenant values, creating an on-going record of the land's condition.

Normally, a conservation covenant restricts use, development or practices which would damage specific natural, cultural or heritage features of the land. In some cases, the conservation covenant may apply to a portion of the property only, allowing development, building or other uses in the remaining areas.

As binding, perpetual agreements, covenants can be tailored to meet a landowner's desires, the land's unique natural and cultural values, and the goals of the conservation organization(s) that now will be registered on title as the covenant holder(s).

Considerations

When you place a conservation covenant on land, you are creating a legacy that will last far into the future. You will be helping your community and future generations by preserving natural, cultural or heritage resources that might otherwise be destroyed. In addition, you will be adding to a network of conserved areas that will help maintain habitats and that support wildlife, provide adaptation and mitigation to climate change, provide ecosystem services and provide for a healthy landscape for British Columbians. Because of your initiative, you will help preserve the land that you own. Local land trusts and the Land Trust Alliance of BC (LTABC) can help you determine the best way to protect the specific values on land you now hold.

There are financial implications to consider. You will need independent legal and financial advice to review the covenant and evaluate the tax consequences. You may also need a survey, and you will likely need to hire an appraiser. Finally, you may wish to consider how the organization holding the covenant will pay for the long-term monitoring of the land. This can be part of your legacy - leaving additional funds, called a stewardship endowment, to provide for the costs of maintaining the covenant in the future.

Beyond Saving Your Land - Endowments

Whether property has a covenant placed on it, it is donated, or purchased, costs to maintain the conserved land are significant.

It is recommended that, as a minimum, 15% of the value of the property be invested in a long term endowment to provide for the management of the property. These funds allow for annual monitoring, maintenance and restoration. You may wish to donate or bequeath an endowment to a land trust for this purpose or you may wish with a land trust to help raise funds to provide for sustainable long term protection of your gift.

A property value of \$600,000 would require approximately \$90,000 in endowment funds. The yearly interest (3-5%) would allow a land trust to manage your land in perpetuity, ensuring your conservation legacy.



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