



Practical Pointers Series: Baseline Documentation Reports

Baselines, consistently and professionally prepared in the ordinary course of business help defend the conservation easement and can be introduced as evidence in court even though the preparer(s) of the baseline may no longer be available to testify to its accuracy. The signature of the landowner strengthens the document's admissibility. Working patiently with grantors and successor landowners on baseline documentation can enhance relationships and expectations that prevent problems.

Purposes of Baselines.

1. *Land Trust Standards and Practices* practice 11B requires a complete, signed baseline at closing.
2. It serves to support qualification for tax benefits and substantiating overall public benefit by describing why the property is being conserved and documenting current conditions.
3. It provides evidence of conditions, if it meets court-specific rules for admissibility, and provides a foundation for future monitoring and enforcement activities and communication with landowners.

Minimally complete and adequate. A minimally complete baseline supports monitoring of the conservation easement and complies with IRS requirements and has these elements. A minimally adequate baseline may be a compilation of supplements and the original baseline or a current conditions report that allows your land trust to monitor the property.

1. Date of completion
2. Documentation of the conservation values and public benefits, including written descriptions along with related maps and photographs
3. Documentation of existing conditions that relate to the easement's restrictions and reserved rights, including written descriptions and related maps and photographs
4. Information on the location of the easement
5. Property description (an address is not sufficient; must be a full description)
6. Dated signatures of the landowner and land trust acknowledging that both attest to the accuracy of the information contained in the report

Practical pointers for dealing with signatures. The land trust must have the baseline at closing of the conservation transaction.

1. Some older baselines are not signed, and if after a good faith attempt the land trust finds it impossible to obtain the landowner signature, then documentation of those efforts is sufficient.
2. Treasury Regulations 26 C.F.R. § 1.170A-14(g)(5)(i) require a signed baseline for donated easements. TerraFirma Risk Retention Group eligibility asks for an attempt to obtain signatures on baselines and the accreditation *Requirements Manual* requires signatures with certain exceptions.
3. Call and explain the situation to a landowner before approaching with the baseline to sign. This gives the landowner time to think and ask questions before reviewing the documents in person. Since the relationship with the landowner is very important, it is advisable to be patient and cooperative. The landowner may not feel comfortable signing and the land trust should not pressure the landowner to sign an old baseline. The baseline at closing should always be signed.

Practical Pointers for dealing with content. Baseline supplements are in addition to an existing baseline and do not replace the original. Keep the original in your files.

4. Baseline documentation does not need to include a complete *biological inventory* unless the conservation easement protects specific biological resources.

5. Baseline content should be limited to information that supports the conservation easement's purposes, restrictions and reserved rights in order to prevent ambiguity. Individuals with the level and type of qualifications necessary to collect and evaluate information documenting the conservation values that relate to the reasons the property is being conserved should prepare the baseline. What constitutes adequate qualifications may be easement specific and may be challenged in certain circumstances, such as in court.
6. If your land trust holds easements for which it has no baselines, or if existing baselines are lacking important materials, adopt and implement a plan to create or supplement these materials.

Certification of Baselines. Certification of Baselines supports a landowner's tax deduction purposes and for proving authenticity as evidence admissible in court. The requirements for certification may vary by context and by state. Discuss the following with an experienced lawyer in your state:

1. What statements need to be included in Baselines to satisfy IRS requirements
2. What constitutes authentication under relevant federal and state rules of evidence
3. Who should sign on behalf of the land trust for example, the BDR preparer, a records manager or an authorized representative of the land trust
4. What process for signatures for example, whether the signatures need to be notarized, witnessed, completed at the same time or any other relevant legal formality

Storage and Supplementing Baselines. Store baselines to preserve content and credibility. Follow a recordkeeping policy that ensures an original copy of each baseline is secure from damage or loss. Your baseline policy and procedures should include a cycle to supplement your older baselines and accumulated annual monitoring reports. If your state has a record title act with a term for title exam, you might set your updates to match that term. Or set a term after consultation with your team. You might also supplement if circumstances change significantly such as an amendment or full exercise of reserved rights or after the resolution of a major violation or trespass.

RESOURCES

For additional articles and other information on Baselines, see these resources:

- Bouplon, R.J. and B. Lind. Land Trust Alliance. 2008. Chapter 3. Using baseline documentation reports. *Conservation Easement Stewardship* (S. Bates ed.). Available at <http://www.landtrustalliance.org/resources/publications/pubs-alphabetical-listing#c>.
- Hamilton, J. E. Land Trust Alliance. 2008. Chapter 3. Baseline documentation reports. *Conservation Easement Drafting and Documentation* (S. Bates ed.). Available at <http://www.landtrustalliance.org/resources/publications/pubs-alphabetical-listing#c>.
- Wroblicka, E. L. Winter 2005. Preparing for future litigation of conservation easements. *Exchange*, 24(1).
- Land Trust Accreditation Commission *Requirements Manual 11B*.
- Open Space Institute. 2012. Appendix 2. Baselines and Current Conditions Reports: Authentication and Admissibility.
- *Easement Revitalization: A problem solving guidebook for land trusts*. Available at ADD LINK.
- *Baseline Collection in Conservation Defense Clearinghouse* at <http://clearinghouse.lta.org/>.

DISCLAIMER

Land Trust Alliance furnishes materials as tools to help land trusts. The Land Trust Alliance is not engaged in rendering legal, accounting or other professional counsel. If a land trust requires legal advice or other expert assistance seek the services of competent professionals. The Land Trust Alliance is solely responsible for the content of this series.