

## Practice 11B. Baseline Documentation Report

*“For every easement, the land trust has a baseline documentation report (that includes a baseline map) prepared prior to closing and signed by the landowner at closing. The report documents the important conservation values protected by the easement and the relevant conditions of the property as necessary to monitor and enforce the easement. In the event that seasonal conditions prevent the completion of a full baseline documentation report by closing, a schedule for finalizing the full report and an acknowledgement of interim data [that for donations and bargain sales meets Treasury Regulations §1.170A-14(g)(5)(i)] are signed by the landowner at closing.”*

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### Key Elements of the Indicator Practice<sup>1</sup>

- The organization has a baseline documentation report for every conservation easement it holds (or a current condition report\* for older conservation easements [see below]). (This applies to every conservation easement, not just those conservation easements for which a landowner took a tax deduction.)
- Baseline documentation reports (or interim data and a schedule for finalizing the full baseline documentation report as detailed in the practice) are prepared prior to closing and signed by the landowner at or before closing.
- Each baseline documentation report documents the important conservation values and relevant conditions of the property as necessary to monitor and enforce the conservation easement.

### Additional Elements of Practice Implementation<sup>2</sup>

- Every baseline documentation report (or current condition report\*) includes the required contents (see below).
- The baseline documentation report is a distinct document that represents the condition of the property at the time the conservation easement was granted and is clearly identified as such.
- The organization completes a baseline documentation supplemental report or similar document concurrent with significant conservation easement amendments (such as amendments that change the conservation easement boundaries, authorize additional improvements, etc.). The supplemental report should include the date of completion, the organization’s signature, and the current landowner’s signature (or documented attempt to obtain the signature).

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<sup>1</sup> First-time applicants to demonstrate current practice is compliant. Renewal applicants to demonstrate practice is compliant over entire accredited term.

<sup>2</sup> First-time applicants and applicants for first renewal to demonstrate current practice is compliant. Second and subsequent renewal applicants to demonstrate practice is compliant over entire accredited term.

## Information on Required Contents of a Baseline Documentation Report

### *At first-time application and thereafter*

- Date of completion
- Information on the location of the conservation easement
- Property description
- Documentation of the conservation values and public benefits, including written descriptions along with related maps and photographs
- Documentation of existing conditions that relate to the conservation easement's restrictions and reserved rights, including written descriptions along with related maps and photographs (such as the location and condition of any manmade improvements, data that would influence the exercise of reserved rights, pre-existing conditions that are otherwise prohibited by the conservation easement, other features that may threaten the conservation values, etc.)
- Dated signatures of the landowner and organization acknowledging that both attest to the accuracy of the information contained in the report
  - If the landowner is receiving tax benefits for a donated conservation easement, the acknowledgement must be compliant with the Treasury Department Regulations [§1.170A-14(g)(5)(i)(D)].

### *At renewal application and thereafter*

- The authorship and qualifications and/or experience of the baseline preparer
- Other acknowledgements or information that would make the material admissible as a business record in court (such as an indication that the record was created at or near the time of the event rather than later in anticipation of litigation, that the record was created by someone with direct knowledge or who was given the information by someone knowledgeable, that the record was created and kept in the course of the organization's regularly conducted business, and that it is the organization's regular practice to create or maintain such records)
- One or more maps that 1) clearly show the property, such as by containing property boundaries, north arrow, scale, date the map was created, etc. and 2) contain features relevant to the enforcement of the conservation easement, such as a) existing manmade improvements or incursions, such as roads, buildings, fences or gravel pits; b) vegetation and identification of flora and fauna, such as rare species locations, natural habitat, animal breeding and roosting areas, and migration routes; c) land use history, including present uses and recent past disturbances; d) distinct natural features, such as large trees and aquatic areas, etc.; and e) special use areas, such as building envelopes, protected riparian zones, forest management zones, etc.

## **Information on Evaluation of and Requirements for Upgrading Old, Non-Compliant Baseline Documentation Reports**

The Commission will expect that a first-time applicant's baselines for its newest projects meet or exceed the contents identified as being required at first-time application. If an applicant's older baselines do not have all of the contents required at first-time application, the Commission may nevertheless accredit the organization if its older baselines have enough information to defend the conservation easement and contain (within a single report and/or by explicit reference to other identifiable documents, including the applicable conservation easement) the items below.

- Date of completion
- Documentation of the conservation values and public benefits, which can be written descriptions and/or appropriate photographs and maps
- Documentation of existing conditions that relate to the conservation easement's restrictions and reserved rights, which can be written descriptions and/or appropriate photographs and maps

In this situation, the Commission will also evaluate the organization's plans to upgrade substandard baseline information or create current condition reports\* over the five-year accreditation term and may request to see a sample upgraded report during the review process. The baseline updates, supplements, or current condition reports must at least meet the "at first-time application" requirements. The baseline updates should include the date of completion, the organization's signature, and the current landowner's signature (or documented attempt to obtain the signature). Similarly, if the organization did not secure landowner signatures on the original baselines, it will need to document its attempt to secure them from original or subsequent landowners. The Commission will expect that these upgrades and attempts to secure signatures will be completed by the time the organization applies for renewal and that at renewal the organization's baselines for its newest projects contain the "at renewal" contents. It is further expected that at renewal, all the organization's baselines will contain the contents identified as being required at first-time application.

\*According to the Standards and Practices Curriculum, a baseline documentation report prepared to support an older conservation easement should document the property in its current condition. It is extremely difficult to document a property in its past condition, and it is questionable whether a baseline that attempted to document past conditions would be admissible in court.

### **Land Trust Alliance and Other Related Resources**

- [Practice 11B](#)
- Standards and Practices Curriculum course, "[Conservation Easement Drafting and Documentation](#)" (chapter 3)
- Putting it into Practice: [Accreditation and Signatures on Older Baseline Documentation Reports](#)

## Practice 11C. Easement Monitoring

*“The land trust monitors its easement properties regularly, at least annually, in a manner appropriate to the size and restrictions of each property, and keeps documentation (such as reports, updated photographs and maps) of each monitoring activity.”*

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### Key Elements of the Indicator Practice<sup>1</sup>

- The organization monitors its conservation easements at least annually (see below).

*At first-time application (required at time of pre-application)*

- A monitoring frequency that meets one of the following evaluation methods.
  - There is at least one monitoring inspection each calendar year for a minimum of three years (or annually since date the conservation easement was acquired). (Beginning in 2017, the Commission will expect all first-time applicants to show three years of monitoring. The second option listed below will no longer be acceptable.)
  - The last two consecutive monitoring inspections are approximately 12 months apart. (In defining “approximately 12 months apart,” occasional intervals up to 15 months apart are acceptable. Under no circumstances are intervals of greater than 15 months acceptable if relying on this method for evidence.)

*At renewal application and thereafter*

- At least one monitoring inspection each calendar year during the entire five year accredited term (or annually since date the conservation easement was acquired).
- The organization documents its annual monitoring activities in writing for each conservation easement (see below).

### Additional Elements of Practice Implementation<sup>2</sup>

- The organization’s monitoring reports contain the required elements.

*At first-time application and thereafter*

- Identification of the specific conservation easement being monitored

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<sup>2</sup> First-time applicants and applicants for first renewal to demonstrate current practice is compliant. Second and subsequent renewal applicants to demonstrate practice is compliant over entire accredited term.

- o Date of the inspection
- o Identification of the monitor
- o Observations relative to the restrictions, reserved rights and conservation values recorded during the inspection

*At renewal application and thereafter*

- o Information to substantiate the specific monitoring visit, such as
  - Description of the area that was observed during the inspection (such as the entire property, eastern boundaries and south road, etc.)
  - Information that helps substantiate the monitor's observations (including substantiation of "no change observed")
  - Observation of the conditions and context of the inspection (such as weather or ground conditions, routes of travel, means of travel, etc.)
- o A notation of the presence or absence of the landowner or other party

### **Information on Annual Monitoring and Documenting Monitoring**

Conservation easement monitoring is defined by the Commission as annual documented visual inspection of a conservation easement-protected property to ensure that the terms of the conservation easement are being upheld with on-the-ground physical inspections as the site warrants. The organization must maintain written, annual documentation of the condition of the property, even if the organization drives or walks by or otherwise inspects the property on a regular basis. The documentation must be contemporaneous to when the inspection occurred.

If the organization closed on a conservation easement at the end of one year, the organization needs to monitor the conservation easement by the end of the next year. (For example, if a conservation easement closed in October 2011, the first monitoring visit must be before the end of 2012.)

If a conservation easement is on a property that is owned in fee by a public agency or another conservation organization, the organization still needs a record of annual monitoring. If the applicant shares its monitoring responsibilities with, or delegates them to, another entity (such as a public agency, a co-holder, other partner, etc.), the organization will need to have documentation of its own annual monitoring or will need to provide evidence of the annual monitoring inspections conducted by the other entity. Failure of one co-holder to monitor does not release the other co-holder from the responsibility.

If there is an isolated and rare gap in monitoring a conservation easement annually, the Commission will review any explanation of the circumstances resulting in the gap in monitoring and will also consider the organization's monitoring history in its evaluation of this practice. The Commission will also consider modest variations to calendar-year monitoring if the organization routinely monitors its conservation easements at year-end and/or within a specific season that results in monitoring falling outside the

calendar year. (For example, the following pattern would be acceptable for a renewal applicant even though the calendar-year 2012 visit occurred in 2013: December 2010, December 2011, January 2013, December 2013, and December 2014.)

### **Information on Aerial Monitoring**

If the organization relies on aerial photography or imagery as part of its conservation easement monitoring protocol, the Commission will evaluate the organization's monitoring practice based on the scale of the project, the type of conservation easement, whether the organization's monitoring protocol was developed by a qualified professional, the quality of the data documented for the visual inspection, and whether the organization's use of technology is appropriate to its capacity.

It is acceptable for an organization to aerially monitor its conservation easements annually, if the organization does all of the following:

- Supplements the aerial monitoring with on-the-ground monitoring generally at least once every three years (depending on each conservation easement's particular circumstances)
- Has aerial photographs verifiable to a specific date
- Has aerial photographs that provide sufficient information to monitor the properties (including easily identifiable boundaries and restrictions appropriate to aerial monitoring)
- Keeps documentation of the monitoring
- Immediately follows up on any potential violations with an on-the-ground inspection

### **Land Trust Alliance and Other Related Resources**

- [Practice 11C](#)
- Standards and Practices Curriculum course, "[Conservation Easement Stewardship](#)" (chapters 3 and 4)