

Baseline Documentation Reports

The purpose of the Baseline Documentation Report (hereinafter, “Baseline”) is to document the conservation value(s) and the existing condition of a property at the time of a conservation easement conveyance. As such, the Baseline should focus on conditions on the ground at the time of the conservation easement conveyance.

The following guidance describes both *minimum* and *recommended* contents for a Baseline Documentation Report. Minimum contents are indicated by “must”; recommended contents are indicated by “should” or “may” statements.

Items recommended by the Center of Excellence to be checked off and completed have a box - .

Minimum contents for Baselines are described in the following U.S. Treasury Regulations, Land Trust Alliance (LTA) Standards and Practices, and Colorado Open Space Alliance (COSA) Best Practices. The conservation organization must meet these minimum standards for each transaction.

Treas. Reg. 1.170A-14(g)(5)(i). In the case of a donation made after February 13, 1986, of any qualified real property interest when the donor reserves rights the exercise of which may impair the conservation interests associated with the property, for a deduction to be allowable under this section the donor must make available to the donee, prior to the time the donation is made, documentation sufficient to establish the condition of the property at the time of the gift. Such documentation is designed to protect the conservation interests associated with the property, which although protected in perpetuity by the easement, could be adversely affected by the exercise of the reserved rights [...] The documentation, including the maps and photographs, must be accompanied by a statement signed by the donor and a representative of the donee clearly referencing the documentation and in substance saying “This natural resources inventory is an accurate representation of the protected property at the time of the transfer.”

LTA Standards and Practices 11.B. 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.

COSA Best Practice 5.1. Baseline Documentation Report. For every conservation easement having a donation component, the local government must develop a baseline documentation report prior to closing, signed by the Landowner and local government representative at closing. The local government should develop baseline documentation reports for all other conservation easements, with the same timing expectations. Only one possible exception exists for regulatory conservation easements where the baseline condition has already been documented in another manner by the local government.

Recommended contents set forth in this guidance were developed based on input from conservation organizations (also referred to as “donees,” “grantees,” “land trusts,” or “local governments” throughout this website) and conservation professionals with experience on these topics. Because each project is unique, a conservation organization may tailor recommended contents, as appropriate, to suit an individual property or project. Likewise, the organization of this checklist does not necessarily imply

an outline for the format of a Baseline; individual conservation organizations and/or Baseline preparers may develop unique Baseline formats to suit specific needs or preferences.

1. Timing and acknowledgement.

- Baseline field work should be completed in snowless conditions. If the Baseline field work cannot be completed in snowless conditions, a follow up report should be conducted in snowless conditions not more than 9 months post-closing.
- For a qualified charitable donation, a Baseline must be completed, along with a signed Acknowledgement Statement, by the date of easement conveyance.
- For a non-charitable donation, a Baseline should be completed, along with a signed Acknowledgement Statement, by the date of easement conveyance.
- The Acknowledgement Statement, signed by the grantor and grantee, must clearly indicate that the Baseline (including any narrative, maps, and photographs) accurately represents the conservation value(s) and condition of the property at the time of the conservation easement conveyance. At his or her discretion or the conservation organization's discretion, the Baseline preparer may also sign the Acknowledgement Statement.

2. General/background/introductory items and information. A Baseline should include the following items and general information, as appropriate:

- Cover page identifying the property and report name, date of report, and other information the conservation organization may request.
- Table of Contents including report headings, attachments, maps, figures and photos.
- Preparer's name, qualifications, and contact information.
- Contact information for the landowner, any lessees, property managers, or neighbors whose assistance is necessary to access the property, and the grantee.
- A basic description of procedures and site visits involved in preparing the document.
- Physical description of the property, including location, acreage, elevation, and county assessor parcel ID number(s), if possible.
- Property address, driving directions, and access instructions (gate codes, etc.) This section should distinguish between what the property's legal access is and how the property is physically accessed, with instructions for how to obtain a neighbor's permission when applicable.
- Brief description of the Baseline purpose, potentially including to a) comply with regulations and industry standards and practices, b) document the property's Conservation Values, c) document the existing conditions of the property, d) provide a basis by which to measure compliance with terms of conservation easement, e) provide materials for annual monitoring visits to property.
- A Baseline may include the following items and general information, as appropriate:
 - Brief description of the conservation easement acquisition, such as how and why contact was initiated, key players in the transaction, whether funding is involved, sources of funding and description of how property fits into larger conservation objectives of the conservation organization.

- Brief overview of climate in the area, such as average precipitation and any anomaly that would have affected what was observed at the time of the Baseline.
- A brief description of any natural hazard areas, such as steep or eroded slopes or wildfire potential.
- A description of current land use zoning of the property and surroundings.

3. Conservation Purposes.

- ☐ The Baseline must include a statement of the reasons for conveying the conservation easement (the Conservation Purposes). The statement may include one or more of the following, and should be consistent with, and limited to, the conservation purposes recited in the Deed of Conservation Easement:
 - To preserve “Significant Relatively Natural Habitat” [IRC § 1.170A-14(d)(3)]
 - To preserve “Open Space” [IRC § 1.170A-14(d)(4)]
 - That provides scenic Enjoyment to the public
 - Is Farmland or Forest Land
 - Where clear Governmental Policies Yielding a Significant Public Benefit can be demonstrated
 - To provide “Outdoor Recreation or Public Education” [IRC § 1.170A-14(d)(2)]
 - To preserve Historically Important Land or Certified Historic Structure [IRC § 1.170A-14(d)(5)]

4. Conservation Values i.e., physical characteristics of the property that support the Conservation Purposes.

- ☐ A Baseline must describe the property’s Conservation Values in detail. Conservation Values are physical features or characteristics of the property that support the Conservation Purposes (see Section 3, above). Conservation Values discussions may refer to relevant maps and photos in the Baseline, where appropriate.
 - i. To describe property features that support a Conservation Purpose of Significant Relatively Natural Habitat [IRC § 1.170A-14(d)(3)], the Baseline should, as appropriate:
 - Provide a general overview of the property’s environment, vicinity and surrounding landscape. Include landscape-scale and other scale descriptions as appropriate e.g., brief description of the geography of the area, the ecoregion, and watershed within which the property lies, etc.
 - Give a physical description of the property, including (as appropriate) topography, surface geology, soils, hydrology, importance within watershed, and surface water features including, wetlands and riparian areas, springs, streams, lakes, ponds, etc., which may contribute to the property’s significant relatively natural habitat.
 - Describe the extent and condition of major vegetation types or communities on the property, with approximate acreages and coverages, and how these contribute to the property’s significant relatively natural habitat. Describe any noxious weed occurrences and whether they pose a threat to the conservation values.
 - Describe threatened, endangered, or other special status species, or species of general conservation concern to the conservation organization (for example, big game); critical or significant habitat and/or migration corridors for such species, and the regional significance of the resources.

- Describe how the use of water rights protects the property's significant relatively natural habitat.
 - Refer to any biological inventories and wildlife, water, and other natural resources studies involving the property. Document everything as quantitatively and specifically as possible, such as local knowledge, radio collar wildlife data, and any vegetative or wildlife databases available. Include proper citations for any GIS datasets utilized.
- ii. To describe property features that support a Conservation Purpose of Open Space [IRC § 1.170A-14(d)(4)], the Baseline should, as appropriate:
- Describe scenic features, including the scenic values of the property as viewable from public roads and other public rights-of-way. (Remember that it does not matter if one can see scenic views *from* the property.)
 - Describe agricultural or forestry uses of the property and how they fit into the surrounding landscape, including irrigation water resources and how they contribute to the property's agricultural features.
 - Note any specific governmental policies that support conservation of the property and describe how conservation of the property provides public benefit.
 - May include references to studies pertinent to the property's or region's Conservation Values, other projects grantor has completed in the area, description of any public funding involved, letters from qualified individuals attesting to the importance of the project, description of how property fits into larger conservation objective, proximity and significance to other conserved properties and other indications of public benefit.
- iii. To describe property features that support a Conservation Purpose of Outdoor Recreation or Public Education [IRC § 1.170A-14(d)(2)], the Baseline should, as appropriate:
- Describe all recreational or educational features, improvements and uses, including any existing or proposed public access to the property.
 - Describe why protection of these resources is important to the Outdoor or Public Recreation Conservation Purpose of the conservation easement.
- iv. To describe property features that support a Conservation Purpose of Historically Important Land or Certified Historic Structure [IRC § 1.170A-14(d)(5)], the Baseline should, as appropriate:
- Describe any archeological or historic features, including any historic designations.
 - May refer to or attach documentation certifying any historic structures.
5. **Existing improvements and uses.** The Baseline should describe the existing improvements and uses of the property. The emphasis and level of detail of the descriptions should reflect the features and uses that are encumbered by terms and conditions in the Deed of Conservation Easement. For example, less emphasis is given to items which are not restricted or encumbered by the terms and conditions of the Deed of Conservation Easement. Existing improvements and uses discussions may refer to relevant maps and photos in the Baseline, where appropriate, and should include:
- Description of man-made improvements and structures on the property, such as residential and agricultural structures, fences, roads, trails, above ground utilities, irrigation and stock watering infrastructure. May include locations of boundary monuments.

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- Brief description of other encumbrances that affect the property (e.g., covenants, leases, utility or access easements, other third-party rights-of-way etc.), which may include or refer to the title report or policy.
 - Description of current, historic, and intended future land uses of the property and management activities on the property, such as residential uses; agricultural production including irrigation and cultivation of crops, livestock grazing, weed control programs, haying and timber harvest; commercial and industrial uses; mineral/energy development; habitat manipulation; environmental education; recreational uses; and dumps or other environmental hazards.
 - Description of water rights with the property and their use on the property, and whether water rights will be encumbered by the Deed of Conservation Easement.
 - Summarize the status of the property's mineral rights. A mineral remoteness report should be referenced, if applicable. If there are any mineral leases on the property, the terms of the lease(s) should be briefly described as well as what activities have taken place on the property under the lease(s), otherwise, such material should be handled by the mineral remoteness report.
 - Mention any management plans in place such as Natural Resource Conservation Service, State Forest Service, or Colorado Parks and Wildlife plans, and describe the affected areas.
6. **Maps.** Should be clear and easy to interpret, and must contain preparer's name and business name, date created, and clear reference to any datasets or basemaps used. Symbology should be as simple and clear as possible for reproduction and recording purposes. Maps must contain a north arrow and scale. If the map is not a survey, the map should contain a note that "All locations are approximate" (or similar). The conservation organization, at its discretion, may require that the Baseline Preparer provide GIS shapefiles created for the Baseline maps to the conservation organization. Maps may be combined in whatever manner fits the project so long as the maps illustrate the following, as appropriate: vicinity/regional map showing the property location in relationship to nearby cities, highways, etc. and in relationship to public lands and other protected areas (suggested scale is 1:100,000).
- Boundary map that clearly shows the property boundaries, acreage and building envelopes, exclusions and special use areas. May include survey or plat map if available.
 - A recent aerial photo map with the property boundary (taken as close to the date of the conservation easement as possible) and at an appropriate scale to view the property as closely as possible.
 - Topographic map with the property boundary at an appropriate scale to view entire property as closely as possible.
 - Road map illustrating directions to property.
 - Improvement location map that indicates the extent and location of improvements, especially those improvements encumbered by terms and conditions of the Deed of Conservation Easement. Improvements shown may include buildings and structures, roads, trails, utilities, fences, man-made ponds or reservoirs, ditches, areas of mineral development (gravel pits, oil wells, etc.), locations of fuel storage tanks, dumps, etc.
 - Photo point map that indicates photo point locations.

- Biological information, soils mapping, vegetation mapping, and wildlife range maps as dictated by the Conservation Values. May include rare plant locations, animal breeding and roosting areas, and migration routes as dictated by the Conservation Values. May include special biodiversity areas mapping such as Colorado Natural Heritage Program Potential Conservation Areas.
- If applicable, may include a water rights and irrigation map showing location of ditches, laterals, headgates, irrigated areas, developed springs, etc.

7. Photos. The Baseline should include documentary ground photography at appropriate locations in order to:

- Adequately demonstrate the Conservation Values of the property.
- Document significant natural and manmade features of property, especially those features encumbered by terms and conditions of the Deed of Conservation Easement, including:
 - Photos documenting scenic values of the property may be taken from nearby public roads or public lands to help demonstrate that the property is visually accessible to the public.
 - Photos should be in color and be linked to a standard photo point system, which indicates the date of the photo, UTM coordinates (including datum and zone), compass directions of photo, and brief photo description.
 - Photos should be taken in clear weather prior to closing either in snowless conditions or with a follow up report conducted in snowless conditions not more than 9 months post-closing.
 - Photos may document any areas with a strong potential for encroachment to assist with future monitoring and enforcement of the conservation easement. For example, include a photograph of a boundary shared with a neighbor whose activities appear to have the potential to encroach on the property, such as dumping, burning, or construction.
- **Notes**
 - The landowner must acknowledge the accuracy of the photos. At the conservation organization's discretion, the Baseline must either include a statement signed by the landowner attesting to the authenticity of the photos (this statement may be embedded in the Acknowledgement Statement described in Section 1) or landowner acceptance can be noted by signing and dating individual photo pages.
 - The conservation organization, at its discretion, may require that the Baseline preparer provide the original digital photo files for the photos used in the Baseline to the conservation organization.

8. Baselines and phased conservation easements.

To be a qualified charitable donation all phased conservation easements must be accompanied by a Baseline that meets minimum requirements outlined in Treas. Reg. 1.170A-14(g)(5)(i). There are several acceptable approaches to providing Baseline documentation for a phased conservation easement project, outlined briefly below. Each conservation organization must consider the characteristics of a given project, on a case-by-case basis, to determine the most suitable approach.

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- a. Prepare a Baseline for the entire property prior to the conveyance of the first phase. This approach may be appropriate if no significant changes to the physical condition of the property are anticipated during the execution of the project, and if the entire property will be encumbered under a single Deed of Conservation Easement (amended for each new phase). If no significant changes have occurred on the property since a baseline was prepared for a previous phase, grantor and grantee may provide an update letter specific to the new phase stating that no changes have occurred on the property since the original Baseline was prepared, or supplement the original Baseline with updated descriptions, photos and maps as appropriate. If conservation values or purposes differ between phases, they should be specifically described for each phase.
- b. Prepare individual Baselines for each phase of the project. This approach may be appropriate if significant changes to the property or the project configuration during the course of the project are anticipated, if each phase is to be encumbered by a separate Deed of Conservation Easement, if the phased areas are capable of being legally subdivided from each other, or if each phase has different conservation values.
- c. Prepare individual interim Baselines for each phase of the project, and a final all-encompassing Baseline upon completion of the project. This approach may be appropriate from a records consolidation approach to aid the conservation organization in monitoring and enforcement of a large conservation easement following the final conveyance.

9. **Supplemental Information for Baselines.** Some conservation organizations or Baseline preparers may choose to include or attach any or all of the following supplemental information to a Baseline (if applicable to the property):

- The property's legal description
- The recorded or final draft conservation easement
- Title insurance commitment
- Water rights decrees
- Mineral rights documentation
- Mineral leases
- Mineral Assessment Report
- Phase I Environmental Assessment
- Management Plan
- County master plan (or similar)

Such supplementation is optional, and at the discretion of the conservation organization. Baselines may be considered adequate and acceptable if supplemental information is referenced, paraphrased, or quoted in the Baseline, rather than included or attached. Considerations are as follows:

- Where the possibility for inconsistencies between the Baseline and Deed of Conservation Easement exists e.g., in a legal description or quantitative water rights description, the Baseline may refer to the Deed of Conservation Easement rather than duplicate this information.

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- Where a standalone document exists e.g., a Deed of Conservation Easement, title insurance commitment, Mineral Assessment Report, or a county master plan, it may be preferable if the Baseline references, quotes, or paraphrases relevant information from these documents (with appropriate bibliographic references), instead of incorporating or including such supplemental documents as attachments.

A Baseline may, at the conservation organization's discretion, include information that is not strictly or directly related to the existing conditions or conservation values of the property at the time of the conservation easement conveyance. However, such a practice is not recommended. While a Baseline may briefly describe or outline future management practices or plans for future improvements on the property, the Baseline is not a management plan, or a commitment to future planned activity on the property. Similarly, the Baseline focuses on existing conditions on the ground, and is not a predictive document. A Baseline should not be expected to state theoretical future effects of climate change or catastrophic events beyond the landowner's control on the property's conservation values.