

Baseline Documentation Reports

If consistently and professionally prepared in the ordinary course of business, baseline documentation can help defend the easement by creating an exception to hearsay rules, allowing the baseline to be introduced as evidence in court even though the preparer(s) of the baseline is no longer available to testify to its accuracy. See Treasury Regulations 26 C.F.R. § 1.170A14(g)(5)(i).

Purposes of Baselines

1. Records both the important conservation values and the current conditions of the property
2. 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. Operates as evidence in future litigation, if it meets court-specific rules for admissibility, and provides a foundation for future monitoring and enforcement activities
4. Enables land trust staff to identify worthwhile projects, to retain institutional knowledge and to communicate with landowners about stewardship responsibilities

Minimally complete and adequate

A minimally complete baseline supports monitoring of the conservation easement and complies with IRS requirements. It has these minimum elements consistent with the Land Trust Accreditation Commission Guidelines and *Land Trust Standards and Practices* Practice 11B:

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
7. The land trust must have the baseline by the time of closing of the conservation transaction
8. See <http://www.landtrustaccreditation.org/pdf/11BGuidanceDocument.pdf>

Details and dealing with the less than ideal

1. While complete signatures are ideal, some older baselines are not signed, and if after diligent attempts the land trust finds it impossible to obtain the landowner signature, then documentation of those efforts and conclusion is sufficient.
2. 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.
3. Baseline supplements are in addition to an existing baseline and do not replace the original.
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. See Chapter 3 of *Conservation Easement Drafting and Documentation* (S. Bates ed., Jane Ellen Hamilton, 2008), <http://www.landtrustalliance.org/resources/publications>.
6. 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.
7. 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. These materials would have the current date and signature of the current landowner, if possible, and the current preparer of the baseline or the supplement.

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. The IRS commonly asks for such documentation during audits and recommends that the taxpayer attach the full baseline to the Form 8283 when filing a tax return. Discuss the following with an experienced lawyer:

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 of 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 including any supplements.

Additional 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.).
- Hamilton, J. E. Land Trust Alliance. 2008. Chapter 3. Baseline documentation reports. *Conservation Easement Drafting and Documentation* (S. Bates ed.).
- Land Trust Accreditation Commission [Guidance Document for Indicator Practice 11B Documentation](#).

DISCLAIMER: The Land Trust Alliance designed this material to provide accurate, authoritative information about the subject matter covered with the understanding that the Alliance is not engaged in rendering legal, accounting or other professional counsel. If a land trust or individual requires legal advice or other expert assistance, they should seek the services of competent professionals. The Alliance is solely responsible for the content of this series.

- Wroblicka, E. L. Winter 2005. Preparing for future litigation of conservation easements. *Exchange*, 24(1).
- *Baseline Collection in Conservation Defense Clearinghouse*.

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Contact us:

- Leslie Ratley-Beach (802) 262-6051 | lrbeach@lta.org
- Ailla Wasstrom-Evans (202) 800-2249 | awasstrom-evans@lta.org

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