

Chapter Three • Baseline Documentation Reports

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.

Baseline documentation reports are critical for establishing the condition of the property at the time the easement is transferred, and are the basis of future monitoring and enforcement. In addition, for certain easements for which a federal tax deduction is granted, some baseline documentation at the time of closing is required. While it is sometimes difficult for land trusts to prioritize or gather all the data required, baseline reports should be completed prior to closing, and signed by the landowner and the land trust at closing. In the event of poor seasonal conditions for documenting the conservation values of the property, an interim baseline report with a finalization schedule can be signed by both parties at closing. The interim report can include all of the data available by the date of closing and should specify when the final report will be completed. The baseline documentation and any interim data should meet the requirements of IRC §1.170A-14(g)(5)(i). The use of interim reports with the land trust and landowner's signature and date certain for finalization has proven effective in regions of the country where ground conditions prevent the completion of the full baseline documentation report at closing. In the past, land trusts may have accepted easements without a baseline documentation report. In these cases, the land trust should have a plan for completing documentation for all easements.

— From the *Background to the 2004 revisions of Land Trust Standards and Practices*

Learning Objectives

After studying this chapter, you should be able to:

- Explain the legal importance, value and uses of a baseline documentation report and who should prepare one
- Describe, in a general way, the baseline documentation required to enable a landowner to claim a federal income or estate tax deduction for the donation of a conservation easement
- Explain to a landowner why he or she must sign the baseline documentation report
- Explain the importance of creating the baseline documentation report before the closing of the conservation easement
- Draft a baseline documentation report policy or procedure for the organization that includes:
 - Timelines for the completion of the baseline documentation report
 - The process for ensuring landowner review of the document before it is finalized
 - Required, and optional, contents of the report
 - Qualifications of baseline documentation report preparers
 - Required signatories to the baseline documentation report
- Create, or work with a qualified professional to create, a baseline documentation report that:
 - Includes a baseline map
 - Documents the condition of the conservation values identified in the easement
 - Documents other important natural and cultural features described in the easement, as necessary to monitor and enforce the easement
 - Documents all man-made structures and improvements
 - Has background information on the property, as necessary to monitor and enforce the easement
 - Describes current status of reserved rights and prohibited uses
 - References or summarizes the easement, and contains language that the baseline subordinates to the easement
 - Includes photos (either digital or film) that document the conservation values and other features necessary to monitor and enforce the easement, and have appropriate identifying information and signatures

- Create, or work with a qualified professional to create, a baseline map that:
 - Clearly shows property boundaries
 - Clearly shows any special use areas and/or protection zones
 - Clearly shows any building envelopes
 - Indicates any reserved rights
 - Indicates photo point locations
 - Has a north arrow
 - Shows extent, location and, where possible, current condition of all roads, structures and other man-made improvements
 - Has a signature block for the preparer
 - Has a date
- Develop a strategy for completing baseline documentation reports for conservation easements currently held that do not have complete baseline documentation reports
- Understand why and how to update baseline documentation reports to reflect natural and man-made changes upon the protected property

Summary

Because the majority of conservation easements granted each year are drafted to be perpetual, monitoring, enforcing and otherwise administering these easements forever can seem a daunting task. One of the most valuable tools for completing this task is a well-prepared, thorough baseline documentation report. A baseline provides critical information that is not necessarily found in the conservation easement, including maps and photographs of the protected property, a full explication of the conservation values and existing man-made improvements, management plans and other information critical to understanding the property so that the land trust can fully monitor the terms of the easement.

In addition, if prepared in the ordinary course of business and in a consistent manner that reflects the highest professional standards, baseline documentation reports can help defend the easement by creating an exception to hearsay rules, allowing the baseline to be introduced as evidence in a court case involving the conservation easement, even though the preparer(s) of the baseline is no longer available to testify to the accuracy of the baseline. Well-prepared baselines will contain data

that support the public benefit provided by the easement and its qualification for tax benefits, if applicable. Baselines establish the condition of the property as of the date of the easement, so that restrictions and reserved rights can be accurately monitored over time.

Finally, baselines can serve as an important communication tool for current and future owners of protected land. Through the use of maps, photographs and supporting documentation, baselines can help landowners understand the special qualities of their land from the land trust's and the public's perspective. In addition, a baseline helps a landowner understand the application of the easement terms to his or her land.

Because of their unique importance to the perpetuity of conservation easements, baselines must be stored in accordance with a land trust's records policy, in a location that is free from possible damage or tampering, in order to ensure that these critical documents are preserved forever. See the Land Trust Alliance course "Nonprofit Law and Recordkeeping for Land Trusts, Volume II: Recordkeeping Essentials for Land Trusts" for more information on storing baseline documentation. Older easements that may not have had baselines prepared for them at the time they were granted will greatly benefit from the creation of baselines today. Land trusts should develop policies and procedures to ensure that every easement they hold is supported by a thorough baseline documentation report.



Older easements that may not have had baselines prepared for them at the time they were granted will greatly benefit from the creation of baselines today. Land trusts should develop policies and procedures to ensure that every easement they hold is supported by a thorough baseline documentation report.

Evaluate Your Practices

Conduct a quick evaluation of your land trust's baseline documentation practices giving your organization one point for every "yes" answer. Scores are shown at the end.

Does your land trust:

1. Understand the reasons why it should prepare a baseline documentation report for every conservation easement it accepts?
2. Have the ability to explain to a landowner the reasons why a baseline must be created in order for the landowner's easement to qualify for federal tax benefits, and what the baseline must contain to meet federal law requirements?
3. Create a schedule for preparing a baseline that permits sufficient time for landowner review and subsequent revisions?

4. Understand what should, and should not, be in the contents of a baseline documentation report?
5. Include an easement map in its baseline reports?
6. Include maps of the protected property and photographs of important man-made and natural features in its baseline reports?
7. Know who must sign the baseline documentation report?
8. Have a procedure for storing and updating baselines?
9. Have a baseline documentation report for every easement or a plan for completing the baseline for those easements without documentation?

If your organization scores:

8–9: Great! Your organization clearly understands the benefits of having thorough baseline documentation reports and is well on its way to excellence. This course may help you refine your baseline documentation report systems and practices. Share your expertise by sending the Land Trust Alliance samples of your work for posting on The Learning Center.

6–7: Good, but there is room for improvement. A complete understanding of baseline documentation reports and the benefits they provide will enhance your organization's already good practices.

4–5: You are on the right track, but much still needs to be done to improve your land trust's baseline practices and ensure the perpetual nature of the easements your land trust accepts.

0–3: It is time to gain a thorough understanding of baseline documentation reports, why they are necessary, how they are prepared and what they should contain in order to ensure your organization is preparing itself for the perpetual stewardship of its easements.

Introduction

Baseline documentation reports may be called by different names, including “baselines,” “BDRs,” “baseline inventories,” “baseline data,” “baseline study,” “baseline packet” and “easement documentation



Baseline documentation report: A record of the conservation values identified in the easement and the relevant conditions of the property used to monitor and enforce the easement. Contains maps, photographs and text, and is signed by the landowner and land trust at or before closing.



Biological baseline inventory: A thorough scientific evaluation and listing of the flora, fauna and sometimes other natural and geographic features of a piece of land.

reports.” Whatever the name, their purpose is the same: to record the condition of the property at the time the conservation easement is granted, in order to form the basis of future monitoring and enforcement, if necessary, of the easement over time. It establishes the “baseline” against which performance under the easement is measured and against which changes (both man-made and natural) to the land are evaluated. A well-prepared baseline report substantiates assumptions set forth in the easement, and provides support for the easement’s qualification under the Internal Revenue Code conservation purposes test and evidence of the public benefits the easement provides.

A baseline documentation report is not necessarily the same thing as the document biologists refer to as a “baseline inventory.” A biological baseline inventory is a thorough scientific evaluation and listing of the flora, fauna and sometimes other natural and geographic features of a piece of land. If a conservation easement is intended to protect biological resources on a property, aspects of a biological baseline inventory may be incorporated into a baseline documentation report, but not all easements will require this level of scientific assessment of a property’s biological resources.

Well-prepared baselines can serve a valuable role in ensuring the perpetuity of the conservation easement it amplifies. A baseline should always ensure that its contents are specific to the property in question and the terms of the easement encumbering the land. The contents of the baseline should be limited to the subject and terms of the easement only. The contents should be specific and measurable. In other words, simple conclusions such as the property provides “good habitat” or protects “scenic views” is not sufficient; additional data should be included so that these conclusions are fully substantiated. For example, you might say: “The property contains habitat for elk and bear with two miles of scenic vistas visible from Route 2,” and then provide photos, maps, wildlife habitat studies and so forth to support your statement. Maps and photo reference points should be easily related to conditions on the ground, and photo points should be replicable over time. The baseline should be understandable and clear, so that a new landowner will easily comprehend why his or her property was conserved. Anyone preparing or using a baseline should understand that it is a living document that should be updated or supplemented over time to reflect relevant changes that occur on the land. For that reason, baselines must be created, maintained and stored according to established policies and procedures.

If all of these criteria (and others described in this chapter, as discussed below) are met, a baseline documentation report can serve to help defend the easement and support resolution of easement violations. If an easement is subject to a court's review, a well-prepared and properly stored and protected baseline may be used to uphold restrictions or to assist the court in ordering remediation of a violation. *A baseline can help prove that an alleged easement violation did not pre-date the creation of the easement.* If a baseline is prepared in the ordinary course of the business of a land trust (and the land trust can so demonstrate to a court's satisfaction by, for example, adopting and following a baseline policy that requires the preparation of a baseline report for every conservation easement accepted by the land trust), it may qualify for an exception to the hearsay rules of court, which generally restrict materials from being used in litigation if the creator is not present to attest to their accuracy. The landowner's and the land trust's signatures on the baseline should be accompanied by a sworn attestation, recognized by courts as self-proving affidavits. Given that conservation easements are intended to last forever, this exception to the hearsay rules and sworn attestations of baseline signatures will prove very important to land trusts working to uphold their easements in perpetuity.



The contents of the baseline should be limited to the subject and terms of the easement only. The contents should be specific and measurable.

Anyone preparing or using a baseline should understand that it is a living document that should be updated or supplemented over time to reflect relevant changes that occur on the land. Therefore, baselines must be created, maintained and stored according to established policies and procedures.

Reasons for Baseline Documentation Reports

Complying with the Law

There are a number of reasons a baseline documentation report should be prepared for every conservation easement transaction (for more information about uses of baseline documentation reports, see the Land Trust Alliance course “Conservation Easement Stewardship”). For those easements that seek to qualify for federal tax benefits, the Treasury Regulations require baselines in some instances. The easements for which the Regulations require a baseline are those in which “the donor [landowner] reserves rights the exercise of which may impair the conservation interests associated with the property” [Treas. Regs. §1.170A-14(g)(5)(i)]. Further, the Regulations require that, for any natural resource protected by the easement's restrictions, the condition of that resource at or near the time of the gift must be established [Treas. Regs. §1.170A-14(g)(5)(i)(D)]. The Treasury Regulations define a baseline documentation report as “documentation sufficient to establish the condition of the property at the time of the gift” [Treas. Regs. §1.170A-14(g)(5)(i)].



Affidavit: A formal sworn statement of fact, signed by the declarant and witnessed (as to the veracity of the affiant's signature) by a taker of oaths, such as a notary public.



The IRS takes very seriously the requirement that a baseline be prepared for all easements seeking federal tax benefits.

In Colorado, where the Internal Revenue Service reviewed approximately 250 conservation easements in 2006, the IRS required many landowners to submit a copy of the baseline documentation. In addition, the IRS required copies of the baseline in audits of easements in other states as well. Moreover, in Colorado there have been inquiries by the IRS into the qualifications of the baseline preparer and the preparer's conclusions as to the presence, or likely presence, of certain wildlife species on the protected property. The IRS takes very seriously the requirement that a baseline be prepared for all easements seeking federal tax benefits. Because the Regulations only require a baseline documentation report in certain circumstances, a technical reading of the law may lead one to conclude that if an easement was created in which the landowner reserved no rights that might impair the conservation interests, a baseline is unnecessary. Although this may be a technically accurate reading of the Regulations, best practices require a baseline for *every* easement, regardless of its terms.

Effective Monitoring

Baseline documentation reports are important because they provide evidence of the conservation values identified on a particular piece of property. Baselines use several methods to provide such evidence, such as specific reports from experts (e.g., biologists explaining the significance of the habitat on the property), data from statewide or regional studies about the land (e.g., Natural Heritage Program data), maps from state or federal wildlife agencies, historic preservation designations, scenic designations and soils studies from the Natural Resources Conservation Service or local extension offices. Baselines also use maps and photographs to document the values and often include references to publications that offer support for the preservation of identified conservation values.

Baselines are critical to an easement holder's ability to monitor an easement. A baseline will contain information that is not generally found in a conservation easement, such as a map of the property's location, the street address and directions to the property and contact information for the landowner other than a mailing address. The aerial and onsite photographs of the improvements located on a piece of land and the natural qualities of the land as of the date of the easement are vital to effective easement monitoring. In addition, information about the specific values protected by the easement makes it easier for a monitor to determine if the easement terms are effective in protect-

ing those values and may be helpful in interpreting vague or ambiguous easement terms.

Selecting Projects

Site inspections prior to the negotiation of a conservation easement are often the first time land trust personnel will collect data for their baseline reports. Collection of these data can assist the land trust in deciding whether to protect a certain property. Further, these types of data can assist a land trust in determining exactly how to protect a property over time. For example, a site inspection that gathers preliminary information for a baseline report may yield information that demonstrates the resources on the property will require such a high level of land management that the land trust should acquire the property in fee instead of using a conservation easement. Or the site inspection may yield information that helps guide the types and extent of easement restrictions that are necessary to protect the identified conservation values.

Communicating with Landowners and Future Land Trust Members

Finally, many land trusts have found that one of the most important reasons to create baselines is as a tool for communicating with landowners. Sometimes land trusts learn that landowners may not be fully aware of the conservation values associated with their property or they are simply not used to seeing their land through “conservation eyes.” Reviewing the baseline, with its supporting documentation of the values and maps and photographs, can help educate a landowner about the special qualities of his or her land of which he or she might not otherwise be aware. Baselines have also been useful in educating successor generation landowners about the land they acquired, its particular conservation values and how the easement restrictions apply to their use of the land (what reserved rights remain, where certain activities are restricted, etc.). The Vermont Land Trust found over the years that the benefits of using baselines to communicate with their landowner partners are so numerous that the land trust made it a policy to prioritize the creation of baseline documentation reports for this particular use. In addition, baselines are very useful in educating new land trust personnel in charge of monitoring and enforcing conservation easements in the future. As those who drafted and completed the easements leave the organization or retire, baselines increasingly fill an important educational function.

Preparing Baseline Documentation Reports

Author

The Treasury Regulations require that a landowner “make available to the donee [easement holder], prior to the time the donation is made, documentation sufficient to establish the condition of the property at the time of the gift [grant of easement].” This language does not require a landowner to prepare the baseline; it only provides that the landowner ensure that the baseline is prepared so that it meets the requirements of federal law. Generally, because land trusts value well-prepared baselines so highly, they will assist or take the lead in preparing them.

Land trusts will often create the baseline for each easement they hold, sometimes at their own cost and sometimes for a fee paid by the landowner. The land trust should take the lead on creating the baseline in order to ensure that the document contains all the information that needs to be in a baseline (and no extraneous materials), that the report is prepared to the land trust’s standards and is consistent with other land trust reports and that the document is prepared within the requisite timeframe (prior to closing and executed at closing). If a land trust does not have the capacity to prepare baseline documentation, it should, at a minimum, adopt a policy that states that the land trust:



Land trusts should take the lead on creating baselines.

- Will only accept baselines that contain specified contents
- Has the ability to review and approve the baseline prior to the closing of the easement
- Receives a completed baseline by the closing

For an example of baseline standards for landowners and contractors, see the Sample Documents section at the end of this chapter.

Landowners will sometimes ask if they can prepare the baseline, and some may be qualified to do so. Again, the land trust should take the lead on the project and ask for assistance from the landowner in the form of securing any maps, studies or other information about the property. However, if the landowner insists on preparing the baseline, the land trust must provide the landowner with plenty of notice, in the form of written guidelines, of what it requires in its baselines, as well as advice about completing the documentation on time. The land trust should educate the landowner about how easement holders use baseline docu-

mentation reports and the importance of the reports to the perpetuity of the conservation easement. In addition, some landowners do not realize that the baseline is as important to them as it is to the land trust, because a baseline can be used by a landowner to prove he or she did not act in opposition to the easement terms, or to demonstrate that certain land use activities are consistent with preservation of the conservation values identified on his or her land. Educating landowners about the importance of baselines can be helpful in securing full landowner cooperation in their preparation and execution.

A growing number of private contractors provide baseline documentation report creation services and may be hired by either the land trust or the landowner to prepare the reports. Many of the issues that apply to landowners preparing baselines also apply to private contractors. A land trust should adopt policies to ensure that regardless of who hires the contractor, the baseline preparer must:

- Be qualified to prepare the documentation
- Meet all standards in preparation of the report
- Prepare a report that is consistent with the land trust's other baselines
- Prepare the report with sufficient time for the landowner and land trust to review and approve its contents and make any changes in time to execute the baseline at the closing of the easement

Finally, the land trust must determine who will pay the contractor to prepare the baseline. Will the land trust provide this service or is the landowner required to pay the cost of the baseline preparation?

Given the fact that there are several ways to create a baseline, a land trust is strongly advised to adopt a baseline policy and/or procedure that will guide the preparation of the report. Such a policy should address, at a minimum, the following issues:

1. Timeline for creating and finalizing the report
2. Process for preparing the report (site inspection, interviews, research, acquisition of maps, aerial and onsite photographs, etc.)
3. Required and optional contents
4. Reserved right to land trust to review and require changes
5. Qualifications of those preparing report



Educating landowners about the importance of baseline documentation can help secure their cooperation.



Land trusts should adopt a baseline policy and/or procedure that will guide their preparation of reports.

6. Required signatories on the report, including the landowner, land trust and baseline documentation report preparer
7. Acknowledgment of signatures by sworn statement before a notary public

Timing

One of the greatest challenges in preparing a baseline documentation report is ensuring that it is prepared and completed on time. The question of when a baseline must be completed is answered in part by the Treasury Regulations, which require that the baseline document the condition of the property as of the date of the grant of the easement (the closing date). Baselines that fail to demonstrate that they accurately reflect the condition of the property at closing may endanger any federal tax benefits for which the easement might otherwise qualify. In fact, as of 2007, the IRS challenged at least one donated conservation easement's eligibility for federal tax benefits solely upon the fact that the baseline for the easement was not created until one and a half years after the closing of the easement. While this challenge may not succeed, it demonstrates the seriousness with which the IRS regards the date on which a baseline documentation report is prepared.

Because it can take a good deal of time to prepare a baseline, meeting the requirement that the baseline reflect the condition of the land at the date of the closing of the easement can be a challenge. Land trusts must establish a system that provides a complete baseline by closing that reflects the condition of the property *at* closing, while understanding that the site work, research and document preparation that is required to complete a baseline must be commenced sometime *before* closing. Many land trusts prepare their baselines weeks, if not months, before an easement closes, and consequently adopt procedures to ensure that the conclusions about the condition of the property are still accurate as of the date of closing. Land trusts often schedule a site visit to the property sufficiently close in time to the closing date that they can be sure the conditions reflected in the baseline will remain the same by closing, yet with enough time to make changes to the baseline if the site visit indicates changes are necessary to reflect the property's condition at closing accurately.

Easements not intended to qualify for federal tax benefits must still have a baseline, and these baselines should also be prepared so they reflect the condition of the property as of the date of the easement and

can be executed at closing. Some land trusts have found that once an easement is closed, they have little luck securing a landowner's signature on the baseline (which is rather curious, because the baseline benefits the landowner as well as the land trust), and thus have learned that they have the most leverage to secure the landowner's signature if execution of the baseline is a condition of the easement closing. Other land trusts secure a letter agreement from the landowner in which the landowner promises to sign the baseline and any supplement, or place this language in the easement itself. Some land trusts will take the baseline to a landowner's home in order to explain the baseline contents and its importance and to make it easy for the landowner to sign the report. Many land trusts insist that the signatures on their baselines be notarized (through a sworn statement before a notary public), in some cases for legal reasons by virtue of state law or to ensure that the document may be introduced as an exception to hearsay rules, and other times in order to impress upon the landowner the importance of the baseline report. Land trusts should have baseline signatures notarized for these reasons.

In some parts of the country, land may be inaccessible, or the land cannot be thoroughly analyzed at particular times of year, due to snow cover or the fact that the growing season has not yet begun or has ended. In such situations, the land trust should prepare and execute a baseline at closing with all information that is possible to collect at that particular time of year. In addition, the land trust must establish a schedule for completing the baseline when conditions permit, and secure an agreement from the landowner (preferably in writing) that the landowner will permit the baseline preparer entry to the property to complete the documentation and that the landowner will execute the final report with the supplementary information. In this manner, an interim baseline report is prepared and executed at closing, and is supplemented with material sufficient to create a complete baseline when weather and/or growing conditions permit. See Sample Documents at the end of this chapter for additional information.

Baseline Information

Two types of information are found in baseline documentation reports:

- Required/recommended information
- Optional information

Both types of data must be evaluated for their applicability to the land and the easement terms. Required information is either that mandated by law or information that the land trust needs to document the conservation values and allow stewardship of the easement in perpetuity and to demonstrate its adherence to *Land Trust Standards and Practices*. Optional information supplements the required information, but is not so ancillary to the easement's purpose as to be confusing or to create ambiguity about the conservation values or easement terms. Information that is not relevant to the easement terms should not be included in a baseline report.

For example, a land trust may work with a landowner to protect a property's scenic agricultural lands. Therefore, the easement's terms are limited to those necessary to conserve the land's scenic and agricultural qualities. The landowner, however, may be interested to learn about all the animal species that live on or use his or her property. Placing such information in the baseline may lead to confusion in the future, as easement monitors wonder why a species list was included in the baseline of an easement that is silent with respect to wildlife habitat. Therefore, such information should generally *not* be included in the baseline, or only included in such a way as to make it clear that the information is present for interest only and not to support the easement terms (in an exhibit, for example, entitled "Supplementary Property Information"). Finally, it is critical to make sure that the baseline does not attempt to change the easement terms or to impose additional restrictions on the property through its language.

Required/Recommended Information

Every baseline should include the following:

1. *Documentation of existing conditions that relate to the easement's restrictions and reserved rights.* A baseline must include data relating to the natural and/or historic resources that are protected by the easement (e.g., biological inventories or other natural resource studies, scenic inventories, evidence of historic designation, soils maps) and their condition at the time of closing. Thorough documentation of all man-made improvements that exist on the property is also necessary, and should include a narrative description of the improvements, their location on a map and photographs of their condition. The status of any reserved rights and prohibited uses contained in the conservation easement should also be documented (e.g., if the easement

permits a total of two single-family homes on the protected land, it is important that the baseline documents how many homes exist on the land as of the date of the easement).

Some conservation easements contain land management restrictions that are reflected in management plans, Natural Resources Conservation Service plans or forest harvest plans. In general, such plans should not be made part of and attached as an exhibit to the easement, because these plans are intended to change as the land changes and/or as land management practices evolve, but rather should be included in the baseline. The benefit of this practice is that the easement would not need to be amended in the event the management plan is revised, yet the plan's placement in the baseline ensures that all versions of the plan are forever a part of the conserved property's record. Under some circumstances, such as when there is no anticipated change in management practices over time or public notice is desirable, these plans are recorded with the easement or recorded separately as part of the baseline.

2. *Documentation sufficient to meet the Treasury Regulations requirements.* The Treasury Regulations do not give us much information about what must be included in a baseline for an easement intended to qualify for federal tax benefits, but simply state that the items discussed in this section “may” be included in a baseline [§1.170A-14(g)(5)(i)]. However, best practices oblige land trusts to treat this list of inclusions as *required* baseline contents rather than as optional contents. Land trusts should, at the same time, keep in mind that only those data that are directly relevant to the conservation easement terms and protection of the conservation values should be part of the baseline documentation. The Regulations suggest the following items be included in a baseline:
 - A. The appropriate survey maps from the US Geological Survey, showing the property line and other contiguous or nearby protected areas.
 - B. A map of the area drawn to scale, showing all existing man-made improvements or incursions (such as roads, buildings, fences or gravel pits), vegetation and identification of flora and fauna (including, for example, rare species' locations, animal breeding and roosting areas and migration routes), land use history (including present uses and recent past disturbances) and distinct natural features (such as large trees and aquatic areas).

- C. An aerial photograph of the property at an appropriate scale taken as close as possible to the date the easement is granted.
 - D. Onsite photographs taken at appropriate locations on the property. If the terms of the donation contain restrictions with regard to a particular natural resource to be protected, such as water quality or air quality, the condition of the resource at or near the time of the easement grant must be established.
 - E. A statement signed by the landowner and land trust that clearly references the baseline documentation report (including the maps and photographs) and that says in substance: “This natural resources inventory is an accurate representation of [the protected property] at the time of the transfer [grant of easement].”
3. *Documentation sufficient to explain fully how the easement satisfies the IRS conservation purposes test (if applicable), addresses the land trust’s mission and goals and provides a public benefit.* Such documentation can include copies of relevant governmental policies, references to other projects the land trust completed in the area, descriptions of public funding received for the project, letters from qualified individuals attesting to the importance of the project, etc.
 4. *Photo point map.* As noted above, the Regulations provide that onsite photographs should be taken at appropriate locations on the property. Such locations will be different for every project, but are generally those necessary to document the conservation values and existing man-made improvements. In order for a land trust to be able to monitor its easement terms adequately, it must be able to return to the place where such photographs were taken to monitor natural and man-made changes to the land. In order to do so, a photo point map must be created, indicating the location at which every photo in the baseline was taken. This map may be as simple as a topographic map with photo point locations noted, or it may use compass headings to locate the photo point, or GPS data to provide the photo point location. Whatever system is used, the preparer must be sure to note in what direction the camera was pointed when the picture was taken.
 5. *Date.* Every baseline should be dated as of the date of the conveyance of the conservation easement and its acknowledgment statement must affirm that it accurately reflects the

condition of the property as of the date the conservation easement is granted.

6. *Authorship and qualifications.* Every baseline should indicate who prepared the document and should be signed by the preparer. Further, the qualifications of the party that prepared the baseline documentation report should also be stated.*
7. *Background information.* Background information describing the conservation project can be extremely valuable in helping subsequent generations understand the project. A well-prepared baseline will provide a context for the easement by including a section describing how the property fits within a larger conservation objective, or how it was funded using public and/or private dollars, or how the project may have been referred from another conservation organization or governmental entity, for example. If there are tenants on the property or it is leased for grazing or timber harvesting, contact information for the lessees should be included in this section. In addition, although the vast majority, if not all, of easements include the mailing address of the landowner who donated the easement, they do not contain telephone or cell-phone numbers, facsimile numbers, e-mail addresses or even the specific location of the conserved property. Therefore, contact information for the current landowner (updated each time the land changes ownership) and a description of the conserved land's location (if necessary) should be placed in the baseline documentation.
8. *Baseline or easement map.* An easement or baseline map is critical to the understanding and interpretation of conservation easement terms in the future. Many land trusts include such a map as an exhibit to their conservation easements and others include the map only in the baseline. Attaching the map to the easement ensures that it will be part of the public record and thus not subject to loss or damage as might be the case if it were only found in a baseline. However, a number of reputable land trusts only place the map in the baseline and then take strong measures to ensure it is not lost or damaged in the future. Easement maps can be very high-tech, created by a professional using Geographic Information System (GIS) or other mapping technology, but perfectly adequate maps can

* When auditing conservation easements in Colorado, the IRS has investigated the qualifications of baseline preparers, particularly with reference to "natural habitat" easements.

be created without the necessity of such technology. (For more information on using GIS in land conservation work, including online training, see www.landtrustgis.org.) See Sample Documents at the end of this chapter for examples of easement maps. An easement or baseline map, or collection of maps, must, at a minimum:

- Show property boundaries clearly
- Show special use areas and/or protection zones
- Show any building envelopes, building development areas or building exclusion zones
- Indicate reserved rights
- Have a north arrow and scale
- Indicate the extent, location and, where possible, the current condition of all man-made improvements
- Indicate photo point locations
- Reflect the date the map was created
- Contain a signature block and contact information for the preparer

Optional Information

When land trusts consider how they will ensure that the conservation easements they hold will meet the promise of perpetuity, they realize that recordkeeping is key. Communicating specific details about a conservation project to those who will be responsible for monitoring and enforcing the easement 50, 100 or 1,000 years from now is critical, and a baseline is an excellent way of communicating. For this reason, some land trusts include more information in their baseline reports than might otherwise be necessary in order to communicate such details to future landowners and land trust representatives. Alternatively, the information listed below can be kept in a project or stewardship file, so long as the land trust's recordkeeping policy and practices ensure that such documents will be available to use, if necessary, to enforce an easement in the future. Such optional materials might include the following:

1. *Zoning of property.* Making note in the baseline about what zoning restrictions (if any) applied to a particular property at the time of its conservation can assist future parties to understand whether easement amendments might be appropriate or not. For example, if an easement was negotiated to reserve to the landowner the ability to construct a residence on the ridge-line of a property, and the county in which the land was located

later adopted ridgeline regulations that prohibited building in such a location, knowing the facts that existed at the time of the easement can help a land trust understand that a landowner who requests an amendment to relocate such a building envelope to another, buildable location may be fully justified in that request.

2. *Tax or parcel map and assessment information.* Information on the property obtained from the local property tax assessment office can also provide valuable information on the property and its uses.
3. *Names and contact information of adjacent property owners.* Some land trusts include the names and contact information of adjacent property owners, for several reasons. For example, if these owners undertake activities that have spread onto the conserved property, or identify a violation on a conserved property, the land trust may need to follow up with the neighbors. In addition, some land trusts include this information as part of an effort to protect additional lands in the vicinity of the original conserved property.
4. *Copies of minutes or resolutions regarding conservation easement.* Documents showing organizational approval of the transaction may be attached as part of the project history.
5. *Easement summary or copy of conservation easement.* If an easement summary is placed in a baseline, the baseline should contain a statement that the baseline is subordinate to the complete easement. Such language ensures that in the event there is a difference between the terms of the two documents, the easement language will control the interpretation of the terms.
6. *Legal information.* Certain types of legal information could be placed in a baseline documentation report, and are generally attached as exhibits to such reports. This type of information might include a copy of the title work the land trust acquired for the project, and copies of any title exceptions. If a land trust requests or requires that the landowner provide it with a copy of the landowner's conservation easement appraisal, a copy of the appraisal could be placed in the baseline, as could a copy of IRS Form 8283, which the land trust will execute to verify it received a donation of a conservation easement. For easement purchases, the appraisal the land trust commissioned for the property could be placed in the baseline, as well as a copy of IRS Form 8283 (if the land trust purchased the easement at a



Title exception: In a title insurance policy, a statement of an item that will not be insured. These items include zoning ordinances, restrictive covenants, easements, certain water rights and current taxes and special assessments.



If the land trust has a copy of the appraisal, it could include it in the baseline along with IRS Form 8283.

bargain sale value). Other similar types of information, such as funding agreements, subordination agreements, leases and so forth, can also be placed in the baseline in order to ensure that important information relating to the project is maintained.

7. *Directions to the property.* This item may surprise some people until they realize that a conservation easement often contains no street address for a conserved property (only the landowner's mailing address) and that in some parts of the country, a property's legal description will often not include such information either. The only place that future monitors might be able to find such information is in the baseline documentation report or in a separate stewardship project file.

Baseline Documentation Photographs

The number and type of photographs that should be placed in a baseline documentation report is often the subject of debate. A baseline must contain photographs that document the property's conservation values, as well as any man-made structures and improvements that exist on the property as of the date the easement, any possible encroachment areas (where human activities might encroach upon special protection areas) and any features necessary to monitor and enforce the easement. However, photographs should not be so numerous, or repetitive, that they add no meaning. For example, if a large forest on the property is part of what is intended to be conserved by the easement, it is only necessary to document the extent of the forest coverage on the land, the health of the forest and perhaps other aspects of the protected resource, but it is not necessary to include multiple pictures of the trees.

Each photograph in the baseline should assist a reader in understanding the nature of the land at the time the easement was granted, or should assist an easement holder and landowner in understanding how the easement terms will apply to the land. They should be used to document the status of any natural resources that are the subject of the conservation easement purpose as of the date of the easement. Photographs should be labeled to indicate their location on the property and what they represent (e.g., hay barn, principal dwelling, guesthouse, eroded gully, etc.). The name of the photographer should be placed in the baseline, the photographer should sign the baseline, and the date on which the photographs were taken should be noted. Alternatively, many land trusts ask the photographer to sign and date each photograph to assure their utility in any future easement enforce-

ment action. Most land trusts try to take baseline photographs when leaves are off the trees and the weather is clear.

Baseline photographs only need to be re-shot in order to preserve them (if they are in danger of degrading with time) or to reflect changes, either man-made or natural, in the physical landscape. Ideally, all photographs should be dated and signed by the photographer (either individually or on a sheet of photos printed out for the baseline). Also, many land trusts ask the landowners to initial each photo in the baseline as well as any subsequent re-shot photos to clearly indicate their agreement that the photograph accurately represents the condition of the property. Other land trusts believe that the landowner's signature on the baseline acknowledgment is sufficient for this purpose.

Some land trusts have strong opinions about what type of photographs to use in their baseline documentation reports. Some land trusts believe that using professional-quality black-and-white film will yield the clearest pictures and will last the longest. Others believe that color photographs are necessary to capture the conservation values completely (which may certainly be the case when conserving historic structures). Some land trusts are concerned that the use of digital photographs might expose them to accusations of tampering, because digital photos are easily manipulated. Other land trusts respond to such criticism by pointing out that today's technology allows regular print photos also to be easily manipulated, and the fact that many state's criminal laws permit the use of digital photos as evidence means that the law will recognize the digital photographs in court, if necessary. One fact that differentiates digital photos from regular photographs is that if a photo must be enlarged for a court action, regular film photographs enlarge much more clearly than digital photographs (unless a very sophisticated digital camera with high resolution is used). Some land trusts now use video cameras to create a record of the property. Land trusts using this method for their baselines must consider how to authenticate the video, how to store the video, and how to ensure that the video will be available in the future as technology continues to evolve.

Information That Should Not Be in Baselines

Only the information necessary to support, explain and amplify the contents of a conservation easement should be placed in a baseline report. Extraneous information may cause confusion to future landowners and land trust representatives. Remember, the perpetual nature of easements means that they will be around a lot longer than those

who originally negotiated and drafted them. Therefore it is important to make sure that data placed in a baseline do not create confusion or ambiguity about easement terms or the purpose of the easement. It is also important to make sure that the baseline do not include or try to impose additional restrictions on the use of the property not contained in the conservation easement. Any extraneous information a land trust or landowner wants to place in a baseline should be clearly marked as such and, preferably, kept in the project file, or if the landowner insists on its inclusion in the baseline, placed in an exhibit or appendix to the baseline and clearly marked as supplementary information.

Managing Time and Costs

There is a significant amount of time, and sometimes cost, involved in the creation of a baseline documentation report that meets the requirements of Practice 11B. Land trusts often try to devise ways to manage these issues, and incorporate such management techniques into the policies and procedures they adopt for preparing baselines at their organization. When conducting their first site inspection for a potential project, for example, many land trusts will acquire some of the basic information that will ultimately be included in their baseline. Other organizations adopt a policy that they will not begin incurring costs or spending time on baseline preparation until they are sure the project is likely to proceed, perhaps upon receipt of an executed project letter similar to the one included on pages 80–2.

Once an organization has gone through the process of preparing a baseline, it gains a better understanding of the time it takes to complete the document. At this point, the land trust can establish a baseline preparation schedule to ensure that it has plenty of time to complete the document prior to closing and that the landowner has sufficient time to review the document and approve any revisions. For more information, see “Guidance on Preparing a Conservation Easement Baseline Documentation Report,” pages 255–7.



Only the information necessary to support, explain and amplify the contents of a conservation easement should be placed in a baseline.

Storing and Updating Baseline Documentation

Baseline documentation reports are critical to ensuring the perpetuity of conservation easements because of the vital assistance they provide in monitoring and enforcing the easements they represent. Because of the importance of these reports, the land trust must implement good

recordkeeping policies to ensure baselines are prepared in accordance with best practices; stored in a secure, fireproof, weatherproof location; and protected by policies adopted pursuant to Practices 2D and 9G to guard them from tampering or alteration, except as specifically permitted.

Practice 9G. Recordkeeping. Pursuant to its records policy (see 2D), the land trust keeps originals of all irreplaceable documents essential to the defense of each transaction (such as legal agreements, critical correspondence and appraisals) in one location, and copies in a separate location. Original documents are protected from daily use and are secure from fire, floods and other damage.

Land trusts should prepare three original copies of every baseline documentation report. One should be treated as the original and stored securely in accordance with the land trust's recordkeeping policy. The land trust should send one to the landowner, and the third (or a copy) should be kept in the offices of the land trust so that it can be referred to on a regular basis as necessary. If the conservation easement is co-held with another entity or creates any third-party rights, such as a right of enforcement, or if it identifies a backup grantee, the land trust should provide an original copy of the baseline to these parties. Generally, the land trust's original office copy of the baseline remains in the office, and a photocopy is used for field or monitoring visits or for other purposes.

Some land trusts use computerized storage of baseline documentation and other easement documents, such as Erler's LandSteward Software. A digital system for storing stewardship records can improve the organization of these records and allow easier access to them, as well as ensuring that all data (maps, photos, monitoring reports, easement document, etc.) are linked. However, computer data must still be stored properly so that they are not lost. Land trusts must back up the data in an original hard copy and on disc and store both in accordance with good recordkeeping policies. In addition, land trusts must periodically assess the technology to ensure data are not lost when upgrading to a new system. For more information on recordkeeping for land trusts, see the Land Trust Alliance courses "Nonprofit Law and Recordkeeping for Land Trusts, Volume II: Recordkeeping Essentials for Land Trusts" and "Managing Conservation Easements in Perpetuity."



Land trusts must implement good recordkeeping policies to ensure baselines are prepared in accordance with best practices, and stored in accordance with Practices 2D and 9G.

Because a baseline's primary purpose is to document the condition of the property as it existed on the day the conservation easement was granted, some land conservation professionals believe the baseline should never change. Although it is absolutely true that the original baseline should always be kept in its original form, without alteration, all baselines must be updated or supplemented over time. Because the land trust uses the baseline to evaluate whether conservation easement terms have been followed, whether reserved rights have been exercised and whether affirmative obligations have been met, the baseline must always reflect the current state of the property. Therefore, land trusts must adopt policies and procedures about how to update their baselines to reflect changes in the land.

Changes to the land that should be reflected in baseline updates include natural changes due to wildfires, flood or earth movement. Human-made changes also need to be reflected in baseline updates, including the exercise of rights reserved in the conservation easement by the landowner (such as the right to build a new home or a new road, or the subdivision of the property), or the fact that certain restoration or enhancement actions were conducted on the property. In other words, a complete baseline documentation report will thoroughly document the condition of the property as of the date of the easement, and then reflect all changes to the land since that time. In addition, a baseline should be updated whenever the land changes ownership or is subdivided in order to reflect the new ownership and contact information for the new owner(s). Any changes to a baseline should be described in a narrative that relates to any relevant easement provisions, and should be shown on maps and in photographs or a video of the property.

Some land trusts request that new owners of conserved property sign the updated baseline as an indication they received a copy and an explanation of its terms. Such records can be important if the land trust and landowner end up in a dispute about the easement's provisions, because the signature demonstrates that the land trust gave the landowner full information about the easement, its terms and the status of any reserved rights.

The form of the baseline documentation report update is not as important as the fact that the land trust creates one. Some land trusts feel strongly that the baseline itself should not be physically updated, and view their annual monitoring reports (which they maintain in their stewardship project file) as the official update. At a minimum, the land

trust must ensure that the monitoring reports, or any other documents reflecting the current condition of the property, address all of the items discussed in the preceding paragraph. The land trust must also store such reports or other documents in accordance with established baseline storage policies and procedures. In other words, these monitoring reports or other documents must somehow be tied to the baseline and maintained as if they were part of an original baseline documentation report. They should not be stored in a separate, unsecure location. Other land trusts prepare a more formal supplement to the baseline documentation in order to reflect changes to the land over time, attach the supplement to the original baseline and store all supplements in accordance with their baseline storage policies.

Completing Baseline Documentation for Easements without Baseline Reports

Land trusts should complete baselines so that they can be executed at the same time the conservation easement is granted. Sometimes, however, the pressure to close numerous easements at the same time, such as at the end of the year, causes some land trusts to neglect preparing baselines in time for the easement closing. Further, some older easements do not have baselines because the critical importance of baselines to the perpetuity of an easement was not recognized at the time. Because we now understand the importance of this documentation, all land trusts should complete baselines for all easements, even those that may be several years old. Some land trusts may find this task daunting because of financial or capacity constraints, but addressing the challenge is worth the cost because of the value baselines bring to land trusts. The best way to manage this task is to create a plan for how these baselines can be completed and a timeline for completion.

Any baseline documentation report prepared to support an older easement, regardless of when the easement was granted, needs to document the property in its current condition, because it would be extremely difficult to document a property in its past condition. Another reason for preparing the baseline to reflect the current condition of the property is that attorneys who have examined this issue believe it is questionable whether a baseline that tried to document past conditions could be used as evidence in court. These baselines should be prepared using the same procedures the land trust uses to create all of its baselines, and should be subject to the same standards.

Many land trusts have found themselves with a backlog of baselines to complete and most pay for the work necessary to generate these baselines from their ordinary operating funds. These organizations use staff, interns, volunteers and/or private contractors to complete this work, but many believe the best baselines are created by staff members. If a party other than a staff member familiar with baseline preparation is involved in this work, it is imperative that he or she be trained. Some land trusts have raised money to pay for this baseline catch-up from major donors, explaining that conservation easement best practices require this work. Land trusts who have gone through the process of completing baselines for easements without them caution that the work can be tedious, and recommend that the individuals tasked with completing this work be permitted to do other work too, in order to provide some relief.

If possible, landowners should sign baselines prepared for older easements just as those prepared for current easements. Land trusts who have worked on completing a backlog of baselines have had some success in securing landowners' signatures on the documents, but rarely find that every landowner is willing to sign the baseline. Nevertheless, creating the document is still important, and when signed by the land trust as accurately representing the current condition of the property, the baseline provides great benefits to the stewardship of the easement over time.

Baseline Contents

This exercise is designed for either in-classroom training or self-study.

The following “Whereas” or recitals clause and easement restrictions have been taken from an actual conservation easement. Review these clauses and answer the questions that follow. List the materials and information you believe necessary for a complete baseline documentation report for the property described in these clauses.

Guidance follows on page 237.

WHEREAS:

- A. Grantor is the owner in fee of real property (the “Property”) consisting of approximately 555 acres in one (1) tax parcel in the Town of _____, _____ County, New York, more particularly described in Exhibit A and shown on Exhibit B (the “Easement Map”) attached hereto;
- B. The Property consists of significant and relatively natural habitat, is open space (forestland) that provides important scenic benefits to the public and whose conservation is encouraged by governmental policies, and the land is of sufficient size to maintain its ecological and scenic integrity. The Property contains one single-family home, two barns, unpaved roads, stone walls, logging roads and related access ways;
- C. The Property is of particular importance as an ecologically diverse and scenic natural area located on the Taconic Mountain Ridge bordering New York State and Massachusetts. The Property forms the eastern edge of the Route 22 Corridor in New York State, a designated Scenic Byway, and the western edge of the Berkshire Mountains in Massachusetts;
- D. Protection of the Property will serve to buffer the adjoining 1,500-acre Harvey Mountain State Forest and the 632-acre Alford Springs Preserve, owned by the Berkshire Natural Resources Council. Protection of the Property will provide for the scenic enjoyment of the public by limiting incompatible development visible from these adjacent, publicly accessible properties;
- E. Protection of the Property will maintain the land’s significant ecological integrity and will allow the Property to continue to provide habitat for a number of plant and animal species, some of which are listed as “imperiled” due to habitat loss by the New York Department of Environmental Conservation (“DEC”);

- F. Several state and local programs and laws have been implemented to recognize, encourage and, in some cases, mandate the protection of lands, like the Property, which contain scenically and ecologically significant acreage. New York State encourages the conservation of woodlands through Article 49, Title 3, of the New York Environmental Conservation Law and tax exemptions (e.g., Real Property Law Section 480). While the Town of _____ does not currently have zoning, in 1999, the Town of _____ adopted the “Town of _____ Site Plan Review Local Law.” The Purposes of this law include “to promote the health, safety, general welfare and economic vitality of the Town. A clean and attractive environment is important to the health and safety of the inhabitants of the Town and such an environment is essential to the maintenance and continued development of the economy of the Town and the general welfare of its inhabitants.”;
- G. The current New York State Open Space Conservation Plan (September 2002, DEC) states that conservation of the Taconic Ridge in Columbia County “continues to be a high priority due to the region’s high biodiversity, scenic view, recreational value, working forests . . . and connection to other protected lands . . .” The plan further states that conservation of properties in the Taconic Ridge will “protect important open space along the Route 22 Scenic Byway corridor and surrounding areas . . . protect watersheds and water quality, and preserve critical wildlife habitat for several threatened and endangered species.” In addition, the Plan recognizes that “when development surrounds State Forests, traditional outdoor recreational uses . . . become more difficult to undertake . . . Therefore, given the importance of maintaining a diversity of recreational opportunities, as well as maintaining the ecological, scenic and undisturbed qualities that contribute to an area’s outdoor recreational value, the Committee places a high priority on expanding or buffering State Forests . . .”;
- H. An area of particular ecological significance has been identified and mapped as shown on Exhibit B as the Environmental Protection Area. The Environmental Protection Area covers the hemlock ravines and riparian areas buffering 2,500 linear feet of Scribner Brook, a NYS DEC classified AA stream, and its tributaries, and this buffer is intended to protect the Brook’s current water quality;
- I. Maintaining the Property’s scenic beauty, its ecological significance, and its forestry resources and, in particular, maintaining the Property free from new structures that would substantially interfere with its scenic, open natural character, woodlands and stream corridors, and permit-

ting only appropriate uses and limited development compatible with the natural surroundings and scenic beauty of the Property, are critical to the protection of this important forest property, as well as the open and scenic character of the general area, including the Route 22 Corridor in New York State, the Taconic Mountain Ridge and the Berkshire Mountains in Massachusetts. The conservation of the Property, subject to the terms of this Conservation Easement, will yield significant benefits to the public by protecting the scenic beauty, forestry resources and wildlife habitat of the Property in addition to buffering nearby streams from incompatible development.

Restrictions:

- 4.3. Structures and Improvements. The existing structures and improvements on the Property, including, without limitation, the existing residence, and accessory structures, barns, sheds, access and farm roads, trails and fences are permitted. The existing structures and improvements, including the residence, may be maintained, repaired, removed, rebuilt, improved or replaced within its respective area as defined below, provided that any such activities are not inconsistent with the restrictions set forth in this Conservation Easement. All existing residential structures and their accessory structures are located within the Building Envelope, as shown on the Easement Map and as documented in the Baseline Documentation Report.

No permanent or temporary structures or other improvements shall hereafter be placed or maintained on the Property, except as specifically provided for below, with prior notice and/or approval pursuant to Section 5.2.

- 4.10. Waterways and Wetlands. No waterways or wetlands located on the Property shall be in any way diverted, dammed or otherwise materially altered by Grantor, except with Grantee's prior approval as provided in Section 5.2. Grantee shall grant such approval so long as Grantee determines that the waterway and/or wetland alteration proposed by Grantor will enhance the conservation goals of this Conservation Easement by, for example, increasing the size of the wetlands or waterway, increasing habitat diversity or assisting in the removal of exotic species.

Discussion Questions

- 1. What information, data or documentation would you need to place in the baseline in order to describe and support the conservation values protected by the conservation easement and why?
- 2. What information, data or documentation would you need to understand, monitor and enforce the restrictions and why?

Guidance

1. You will need the following materials and information in your baseline documentation specifically to describe and support the conservation values protected by the easement:
 - A vicinity map showing the location of the property, the state forest and preserve mentioned in the recitals, any adjacent public roads and any protected lands in the area in order to locate the property and understand its significance in a larger context.
 - An improvements map showing the location and extent of all the man-made improvements listed in the recitals so that the land trust understands how the existing improvements relate to the easement terms.
 - Documentation of the property's scenic values, including a map of its location relative to the designated scenic byway and showing the Berkshire Mountain range in relation to the property, as well as the Harvey State Forest and Alford Springs Preserve (preferably on a map that shows such designations), statements supporting preservation of lands visible from the scenic byways and state forests, and photographs of the property from locations in each of these four identified areas. One of the conservation values is protection of scenic attributes, so the baseline needs to support the easement claims by showing the property in relation to these areas and providing any evidence of government support for the protection of these scenic resources.
 - A list of the imperiled plant and animal species listed by the New York Department of Environmental Conservation that may be present on the property. One of the conservation values is protection of habitat for these species, so supporting documentation is necessary to amplify the recitals clause statements.
 - Copies of laws cited in the recitals supporting conservation of the property. These documents provide evidence that the project is supported by governmental conservation policies.
 - Copy of relevant portions of the New York State Open Space Conservation Plan. This document provides evidence that the project is supported by governmental conservation policies.
 - Description of what AA classification of a stream by the New York Department of Environmental Conservation means and a description of the current water quality in the stream. These narratives demonstrate

PUTTING IT INTO PRACTICE

the public benefit in protecting the stream and help provide a basis for monitoring restrictions intended to protect water quality.

2. You will need the following materials and information in your baseline documentation specifically to monitor and enforce the restrictions:
 - A copy of the easement map or other map that shows the location and size of the building envelope and location of all structures and improvements existing outside of the building envelope on the date of the easement. This information is necessary in order to monitor restrictions on structures and improvements.
 - A copy of the easement map or other map that shows the location of all wetlands and waterways on the property and data (photos, narrative) about whether they are dammed. This information is necessary in order to monitor the restriction that prevents their alteration, diversion or damming.

Baseline Documentation Report Policy Template

Conservation easement stewardship is made easier by the use of forms that are consistent in content and structure. Adoption of a baseline documentation policy that includes a checklist for baseline documentation report contents can ensure that such reports are prepared for every conservation easement project and that the reports include all information necessary to conform to applicable laws and best practices.

A baseline documentation report policy that is adopted and implemented will help ensure that the baselines will always be available to monitor and defend an easement and are prepared in a consistent manner that serves all the uses the land trust intends to make of the baseline.

The template that follows contains a brief description of common elements found in many land trust baseline documentation report policies accompanied by an example from a land trust policy demonstrating how different land trusts craft language for these common elements. These examples can be used as a starting point for creating your land trust's policy, but the language should be altered as necessary to reflect your own land trust's unique mission and the community it serves.

Philosophy

Well-prepared land trust baseline documentation report policies commence with a brief statement or discussion about the land trust's commitment to preparing baselines for every conservation easement project and for what purposes baselines are prepared (e.g., to meet the requirements of the Treasury Regulations for tax-deductible easements and to educate future land trust staff/volunteers and landowners about the conservation values and easement terms applicable to a particular property). Such a section can be entitled "overview" or "introduction" — the terminology is not as important as the language that demonstrates the organization's commitment to meeting both the legal requirements for a baseline (when applicable) and the land trust's commitment to adhering to *Land Trust Standards and Practices*. If a land trust does not prepare baselines itself for the conservation easements it accepts, it should address the need to review and approve the form of the baseline before accepting the easement, and may choose to commit itself to providing guidance to those preparing baselines through written standards or training landowners or their advisors to assure complete baselines are provided in a consistent form.

Example

A baseline documentation report is a written and visual report that describes the physical and biological condition of a parcel of land subject to a conservation easement at the time

the easement is granted. It is a snapshot of the property at a single point in time. The ____ Land Trust prepares baseline property reports for all lands on which it holds a conservation easement. Each separate easement will have a corresponding baseline property report. The following guidelines apply to all Land Trust property reports.

Timing

A baseline policy should address the timing for preparation of a baseline report to ensure that as much of the report as possible is prepared and signed by the date of the easement, and should also address how a baseline should be supplemented or updated over time. The policy should assure that adequate time is provided to a landowner for review of the draft report, and to make changes to the baseline documentation report, if necessary, prior to finalizing the easement and report. In addition, a policy should address issues related to managing timing when a landowner or private contractor is preparing a baseline rather than the land trust itself.

Example

For land trusts that prepare their own baselines:

The baseline report *must document the condition of the property at the time the easement is completed*. Therefore, a report should be completed as close as possible to the time the easement is executed, and with adequate time provided to the landowner for review and changes, if necessary. Ideally the report would be completed and signed at the same time as the easement. However, in many instances it may take some time to collect the information needed and complete the report, in which case the report signed at closing will be as complete as possible, and the land trust will secure a written commitment from the landowner to cooperate in preparing a supplement to the baseline report and to sign it when completed. This event would typically occur not later than three months from the time the easement is completed. Much of the information needed to complete a baseline report will have been gathered earlier as a basis for determining whether to complete an easement through the land trust's site inspection visits. If not, the information on the property will be collected at the time the report is compiled.

Number of Original Copies and Storage Requirements

A baseline policy should establish how many original copies of each baseline report are prepared and to whom such copies are distributed (land trust, landowner, a funder of the easement acquisition, co-holders of the easement, etc.). The policy should also address storage of the land trust's original copy of the baseline, which

will generally be in accordance with the organization’s recordkeeping policy that ensures the baselines will be kept safe from damage and tampering. Some land trusts also specify that an original baseline is kept at the land trust offices in order to be available for reproduction for use in monitoring, for educating new land trust personnel about a particular protected property or in meeting with new owners of the protected land. Some land trusts have adopted digital methods of storing baselines, and address such issues in their policy as well.

Example

At least two original, signed copies of each baseline report will be needed — one for the landowner and one for the Land Trust. *The Land Trust copy will stay in the office.* If more than one landowner is involved, additional copies of the report should be prepared for each landowner. A copy of the original baseline report will also be provided to each subsequent landowner as an educational tool. An additional copy of the baseline report will be for use with the monitoring workbook. For remote access and archival purposes, a PDF copy of the baseline report will be made and kept on the Land Trust’s computer network. The Land Trust staff member or volunteer who scans the property report into PDF format will enter his or her name and the date the property report was scanned on the property report cover page.

Baseline Preparation

Some land trusts address the actual steps necessary to prepare a baseline documentation report in their baseline policy, such as how to prepare for a site visit (e.g., what background information should be gathered and/or what sources to research), how to complete the site visit (e.g., early in the morning to document bird populations) and how to document observations made that are relevant to the baseline contents (e.g., written descriptions accompanied by photographs). A land trust may require in its policy that more than one visit be made to the property to field-check previous observations or to record aspects of the property at different times of the year (e.g., taking photographs to document scenic values both when leaves are on the trees and when they are not).

In their policy, land trusts should also address who is authorized and qualified to create and/or execute a baseline on behalf of the land trust. (For example, a land trust volunteer may complete the work for the baseline, but only a land trust staff or board member is authorized to sign the baseline on behalf of the organization, after field-checking the baseline report for accuracy.) If a land trust does not

prepare its baselines internally, its baseline policy should address the qualifications necessary for a professional baseline preparer the land trust hires. Such qualifications might include, for example, substantial knowledge of local biology or ecology for natural habitat easements.

Example

Field visits completed during the baseline assessment require considered preparation to ensure efficient and comprehensive collection of needed information. Prior to field visits, the observer should prepare as follows:

- (1) Become acquainted with all preliminary information, including maps, photos, property location, landowners' conservation interests and known resource information
- (2) Review and/or prepare maps or photos with property boundaries, locations of known resources and conservation interests
- (3) Prepare a preliminary photo documentation map to help the observer identify representative photo points
- (4) Identify resources that will require additional consideration and invite necessary experts
- (5) Determine the best times for field surveys, such as early mornings for breeding-bird surveys
- (6) Obtain landowner permission for site visits
- (7) Prepare needed materials, including:
 - Necessary forms
 - Resource records
 - Maps
 - Photos
 - Compass
 - Digital camera with extra batteries
 - GPS unit
 - Measuring tape
 - Plant, field identification books
 - Photo documentation data form
 - Colored pens/pencil
 - Binoculars
 - Hand lens
 - Flagging tape
 - Plant press
 - Plastic bags
 - Clipboard

A baseline report may be completed by staff or by a volunteer under staff supervision. The report should identify the person completing the report, when the property was visited and by whom and when photographs were taken and by whom. *Only a staff person can sign a property report certification on behalf of the Land Trust*, so the conservation staff person responsible for the project must be familiar with the property and the property report.

Contents of Baseline

A land trust baseline policy should establish both the minimum contents for a complete baseline and specifications about items that must be present in every baseline (e.g., landowner and land trust certification that the baseline accurately reflects the condition of the property as of the date of the easement). The policy might also discuss optional contents for a baseline report and when such optional contents might be appropriate for inclusion. Finally, the policy should be clear that materials and data not related to the conservation easement terms and the conservation values to be protected by the easement are not to be included in the baseline; or, alternatively, that such information should only be included if specifically labeled as additional or extraneous information. Examples of what may be included in a baseline contents list are noted below; however, this list is not comprehensive and should be expanded, if necessary, to address a land trust’s particular needs.

Example

The baseline report should contain any and all information necessary to describe the physical and ecological condition of the property at the time the easement is completed with respect to the conservation values being protected by the easement and the restrictions contained in the easement. All baseline reports prepared for the Land Trust will generally be placed in three-ring binders and will have the following introductory components:

- Cover page
- Certification statement
- Table of contents

These are to be followed by the subsequent components, each separated by a divider:

- Overview
- Maps
- Photographs

The Land Trust has a standard template for each component. Instructions on the details to be included in each component are set out in the annotated templates. Additional components

may be included if useful or helpful in understanding, monitoring and enforcing the easement. These items should be identified in the table of contents.

Cover Page. The name of the project, date of its completion, names of the parties to the easement and name of the baseline preparer should be clear.

Table of Contents. A listing of all attachments, maps and lists.

Acknowledgment/Certification. This language must satisfy the Treasury Regulations requirements for tax-deductible easements. Sample language you might consider:

This is to certify that I/We _____, as Grantors and I _____, representing _____ Land Trust, the Holder of a conservation easement on land located in _____ known as _____, executed by the parties and recorded in the real property records of _____, are familiar with the condition of the land subject to said conservation easement and do acknowledge and certify that this Baseline Documentation Report, and all of its inclusions, is an accurate representation of the condition of the property as of the date of the conservation easement.

The preparer of the baseline should sign the document.

Some land trusts list all of the inclusions by name before the signature line for the acknowledgment, such as:

1. USGS topographic map _____, 15-minute series, showing approximate location of the protected property
2. Color photographs of the property taken _____, 200__ by Land Trust employee _____
3. Etc.

Some land trusts add a notarization block to the signatures when required by state law, when deemed necessary to authenticate the document and preserve its use in future enforcement actions as an exception to the hearsay rule and when the land trust believes it will help focus landowners on the importance of what they sign. This notary block indicates that the acknowledgment is a sworn statement.

Background Information. When deciding what to put in this section, ask what types of information will help future land trust personnel understand why this easement was accepted, who are the important people your organization must be able to contact, what other types of information would be helpful to understand the context of the project?

1. Landowner(s) contact information: name, address, phone, cell phone and e-mail address; same information for land manager, tenant or other party using the property
2. Historical information regarding the donation/acquisition
3. Summary of easement provisions and/or copy of conservation easement
4. Evidence of the significance of the protected property; support for conservation values
5. Directions to property from closest public road
6. Description of easements, leases and other encumbrances on the property
7. Description of proximity to other conserved properties
8. Description of historical and current uses of property
9. Names and contact information for parties providing funding for easement acquisition, co-holders or other executory interest holders, etc.

Physical and Ecological Features. What types of data will help the organization steward the easement in perpetuity and document the natural features at the time of the easement?

1. Regional map showing easement location
2. Survey of property, if available; otherwise tax assessor's map or similar map
3. Section of local road map showing easement location
4. Section of USGS 7.5-minute topographic map showing easement location
5. Map(s) or surveys of property showing all relevant physical and ecological features, including man-made improvements (roads, buildings, fences, trails, power lines, etc.), irrigated lands, waterways, wetlands and riparian areas with accompanying narrative description.

Documentation Necessary to Address Conservation Purposes Test and Public Benefit. Not all easements will have to demonstrate compliance with the IRC conservation purposes test, but all must demonstrate they provide a public benefit. One way of showing this public benefit is to meet the conservation purposes test. When choosing materials for this section, ask what data your organization will need to document the conservation purpose and public benefit of the project.

Examples include:

1. For agricultural lands: description of products, methods, grazing intensity, water rights and any agricultural plans in place (such as NRCS management plan) may be included with a copy attached, and the location of any prime or unique soils or soils of statewide interest indicated on a soils map
2. For forestry lands: description of forest cover and status, past harvest practices
3. For natural habitat: a description and list of flora, fauna, extent and nature of natural communities, threatened or endangered or sensitive species; identify critical or significant habitat or migration corridors; narrative description of regional significance of biotic resources; attach data from qualified sources indicating significance of features (such as state wildlife department maps or biologist report)
4. For scenic resources: a narrative description of scenic qualities, discuss in detail from where does general public see the scenic features, identify whether the property is visible from: a public road, scenic byway, public lands, waterways, copies of any scenic inventories or other information supporting scenic importance of land
5. For public access/recreation: describe the nature of recreation and any existing or proposed public access and show on map
6. Describe any local governmental policies that demonstrate the easement as furtherance of current and adopted local government conservation policies; copies of master plans or other existing government policies must be attached
7. For archaeological or historical features: document significance of historical structures or uses; document archaeological features; describe significance

Photographs. Some land trusts feel strongly that the photographer and the land-owner should both sign each photograph in order to ensure that the photographs will be acceptable as evidence if the easement needs to be enforced in the future. This requirement should be a part of the baseline policy if deemed necessary by a land trust.

1. Aerial photos of the entire property
2. Onsite photos, documenting all important natural and man-made features, as well as conservation attributes, from easy-to-find photo points recorded on a map

Legal Information. Some of this information might be considered optional; see the discussion in this chapter regarding components of baseline documentation reports.

1. Copies of title work and exceptions to title
2. Copy of appraisal and/or Form 8283
3. Copy of leases
4. Legal description
5. Property zoning
6. Copy of conservation easement

References

1. List of sources, books, maps, names of persons interviewed and other technical or scientific materials used to complete the baseline
2. Qualifications and contact information for preparer

Optional Information. What types of data does your organization need, in addition to the above, to monitor and defend this easement forever?

Examples include:

1. Copy of forest harvest, land management or grazing management plan
2. Property tax/assessor's information about property (value, maps, etc.)
3. Names and contact information for adjacent property owners

Importance of Baseline Documentation Western Reserve Land Conservancy, Ohio

The Western Reserve Land Conservancy, operating in northeast Ohio, was founded in 1987, has a staff of 22 and works to protect important natural areas and wildlife habitat, water resources (including wetlands) and working farms and ranchlands. The land trust currently protects, through conservation easements and fee ownership, more than 8,400 acres of land.

One of the easements held by Western Reserve is on a five-acre property that buffers a native trout stream and contains wetlands and a pond, both of which help filter water before it reaches the stream. This small easement was a critical part of a much larger protection project, including other conserved private lands and a large public park. A baseline documentation report was prepared with the conservation easement, and was referenced in the easement, but it was not recorded as an exhibit to the easement.

The Internal Revenue Service alerted the owners of the five-acre parcel that it had chosen the conservation easement for an audit, based upon a concern that the small parcel did not meet the conservation purposes test of the Internal Revenue Code and accompanying Treasury Regulations. During the course of the audit, the IRS visited the offices of Western Reserve, where they examined the original baseline documentation report and project files. The baseline for the five-acre property was very detailed in its description of the important ecological features of the land, including its wetlands and pond, and thoroughly described how the conservation of the small parcel contributed to the larger conservation project adjacent to the land. Following its review of the baseline documentation report, the IRS notified the landowners that it had decided to drop its case and that it accepted the fact that the parcel did, in fact, meet the requirements of the conservation purposes test.

Discussion Questions:

1. Why do you think the IRS questioned the conservation purpose of this conservation easement?
2. How did a review of the baseline documentation report help the IRS determine that the project met the conservation purposes test?
3. What could a land trust do differently to avoid having an easement like the one described in the case study selected for an audit by the IRS?

Guidance

1. The conservation easement did not adequately describe how the project satisfied the conservation purposes test; therefore, the IRS could not determine if the test had been met without examining supporting documentation. Furthermore, easements on 10 or fewer acres often attract attention from the agency because of their relatively small size. For this reason, experienced land conservation professionals will often take extra care in explaining, in both the easement and the baseline, how the project satisfies the conservation purposes test and how conserving the land provides a public benefit.
2. The IRS was able to evaluate the project by reviewing the maps and data showing the ecological significance of the parcel, and how its wetlands helped preserve the water quality of the native trout stream adjacent to the land. Information about the significance of the stream and its maintenance of a native trout population also helped underscore the importance of conserving the property in order to help protect the water quality of the stream. Further, through a detailed narrative description of the larger area conservation project, and maps and aerial photographs showing the land's relationship to the larger project, the agency was able to understand that not only did the property protect relatively natural habitat itself, but was also conserved pursuant to a governmental conservation policy that had led to the expenditure of governmental funds on large components of the greater project.
3. A land trust could expand its recitals clauses to address more thoroughly how the project satisfies the IRC conservation purposes test and how the project fits into a larger conservation project. The description of the baseline documentation report contained in the easement could be expanded to illustrate the data contained in the baseline to support the public benefit associated with conserving the parcel. Finally, some land trusts record the baseline as an exhibit to the easement, so that the recorded easement contains all of the background information and supporting data contained in the baseline report.

Conclusion

Land trusts should prepare baseline documentation reports for every conservation easement they accept, and pay particular care to the form and content of baselines that support easements intended to qualify for federal tax benefits. Baselines serve many important purposes, including forming the basis for monitoring and enforcement of easements, satisfying legal requirements for tax-deductible easements and educating land trust personnel and landowners about a conserved property and its easement terms. Every baseline report should be prepared prior to closing of the conservation easement and signed by the landowner and land trust as an accurate representation of the protected property as of the date of the easement's execution. Whenever possible, land trusts should take the lead on the preparation of the baseline report, and ensure adequate time for landowners to review and make changes to the baseline prior to its execution. If weather conditions or time constraints make it impossible to finish a baseline by the easement closing, a land trust should prepare as much of the report as it can prior to closing and secure an agreement from the landowner to complete the baseline after the closing date.

All baseline reports should document the conservation values identified on the land to be protected and those necessary to satisfy the IRC conservation purposes test. Baselines should include an easement map and other maps as necessary fully to understand the nature of the protected property. All baseline reports should also contain photographs or videos that identify the conservation values and extent of the improvements on the property, and a photo point map indicating the locations at which photographs or videos were shot. Baseline reports should be supplemented or updated either through formal updates or annual monitoring reports so that they continue to reflect the current status of the land, including any natural or man-made changes that occurred after the conservation easement was granted. If a land trust holds easements for which it has no baseline reports, or if existing reports are lacking important materials, the land trust should adopt a plan to create or supplement these materials for every easement. All of an organization's baseline documentation reports should be prepared in accordance with an adopted baseline policy that ensures consistency among the reports. All baseline reports should be stored in accordance with the land trust's recordkeeping practices.

Sample Documents

Guidance on Preparing a Conservation Easement Baseline Documentation Report (*page 255*)

This form, including a handy checklist, was created by a land conservation consultant for a land trust client that was wrestling with the problems created by landowners hiring baseline preparers who were not qualified to prepare the documents and did not prepare baselines that satisfied either federal laws or accepted best practices for baseline preparation. The land trust distributed this guidance to landowners to assist them in securing adequate baseline documentation reports. Note the caution that the land trust reserved the right to review and approve the baseline as a condition of accepting a conservation easement.

Sample Conservation Easement Map, Columbia Land Conservancy, New York (*page 258*)

This map is an example of the easement map created by the Columbia Land Conservancy for each of its conservation easements. It is drawn by hand using drafting tools readily available in art or office supply stores, and is a good example of the kind of detail that can be created without using expensive GIS equipment.

Sample Aerial Map, Columbia Land Conservancy, New York (*page 259*)

Land trusts can use aerial imagery to create maps for baseline documentation reports. Note the different details visible in this map compared to the other two maps of the same property. Aerial imagery is useful for viewing the property in detail, and can often be obtained inexpensively and at different scales from public agencies such as the Natural Resources Conservation Service or state transportation department.

Sample Topographic Easement Map, Columbia Land Conservancy, New York (*page 260*)

Included here is a basic easement map with the property drawn on a topographic map. To complete this map, building envelopes, special use areas and other important aspects of the easement terms should be shown. This map is included to demonstrate that an easement map can be relatively simple yet still serve the purpose of assisting easement holders and landowners in understanding the easement's terms and restrictions.

Sample GIS Maps, GreenInfo Network, California (*page 261*)

One of the main advantages to GIS mapping is the ability to place many layers of information on a map, such as waterways, roads, utilities, improvements and habitat information. GIS can examine many types of information and relate each layer to the other, allowing a user to analyze a piece of property and communicate this analysis to others. GIS is not essential to creating a good easement map, as shown in the previous examples. However, using this technology can produce very good maps, so long as the data shown are appropriate for the map's intended use. One of the chief drawbacks to GIS is that it can be relatively expensive for land trusts in terms of investment in hardware, software and training; however, assistance is available through resources such as www.landtrustgis.org. Another drawback is that preparers may include too many GIS layers (too much data) on a single map, which sometimes renders the map difficult to understand and use. When data are chosen appropriately and the GIS map is created skillfully, GIS can be a very useful tool for land trusts.

Preparing a Conservation Easement Baseline Documentation Packet, Columbia Land Conservancy, New York (*page 263*)

The Columbia Land Conservancy created this document to educate its new staff, committee and board members about the land trust's practices. The Baseline Data Storage Information summarizes some of the research CLC has done into finding the right materials to store baseline data on or in for long-term storage.

Baseline Documentation and Monitoring Program Guidelines and Baseline Documentation Procedures Checklist, Marin Agricultural Land Trust, California (*page 267*)

The Marin Agricultural Land Trust's Guidelines and Checklist represents a good example of procedures adopted at a land trust to ensure that all of the organization's baselines address the mission and goals of the land trust and are prepared in a consistent manner with the inclusions the land trust identifies as important to the perpetual stewardship of its easements.

Baseline Property Report Guidelines, Minnesota Land Trust (*page 289*)

This baseline policy demonstrates how the Minnesota Land Trust creates, stores and uses its baseline documentation reports. It shows one method of supplementing/updating baselines, namely, through the use of annual monitoring reports, rather than specific updates to the baseline report.

Baseline Documentation Report, Vermont Land Trust (*page 295*)

This baseline documentation report template is used by project staff at the land trust to ensure consistency and thoroughness in creating the land trust's baseline reports. The checklist that follows assists the staff in ensuring that all field visits are performed and attachments and photos created that document all important land features.

_____ *LAND TRUST*

GUIDANCE ON PREPARING A CONSERVATION EASEMENT BASELINE DOCUMENTATION REPORT

If a donor is considering claiming a federal income tax deduction for the gift of a conservation easement, the donor should be aware that IRS regulations require an easement donor to provide the donee with documentation of the property's condition at the time of the gift [Treasury Regulation 1.170A-14 (g)(5) (i)]. Even if tax considerations are not part of the donor's plans, it is a good idea – and the policy of the _____ Land Trust (“Land Trust”) – to compile baseline data.

A baseline documentation report documents the conservation values of the property to be conserved, and describes the existing conditions of all the property's features that are relevant to the conservation easement. The Land Trust's policy requires that a baseline documentation report must:

- meet IRS requirements for documentation
- be specific, but include no more detail than necessary
- be objective and easy to understand

A baseline documentation report can be prepared by a consulting professional, by the easement donor, or by staff of the Land Trust, depending on the nature of the easement agreement and the type of conservation values being protected. Regardless of who prepares the report, both the donor and the donee organization must agree that the baseline study report is accurate and complete before a conservation easement is signed.

Elements of a good baseline study are listed in the attached checklist. Not all categories will apply in every case. The matters that must be documented in a baseline report depend upon the conservation values to be protected by the conservation easement. Items marked with ✓ must be included in all cases; other items are necessary in only some circumstances. Please consult the staff of the Land Trust for further information and helpful publications on baseline reports for conservation easements.

It is the policy of the Land Trust to require that all baseline documentation reports be presented to the Land Trust prior to their finalization for review and approval by Land Trust staff. The Land Trust will not accept the donation of a conservation easement without a baseline documentation report that meets Land Trust's approval.

____ *Land Trust*

Checklist: baseline study, conservation easements

- ✓ **Cover Page**, showing signatures of donor, donee, and study preparer and acknowledgement and notary blocks for the donor and donee
- ✓ **Table of Contents** listing all attachments, maps and lists
- ✓ **Owner Acknowledgement of condition.** This is an IRS requirement if the property or easement is a gift for which a deduction will be claimed and is required as a part of the Land Trust's policy as well.

Background Information

- ✓ Owner(s) and LT's contact information: name, address, phone
- ✓ Historical information regarding the donation/acquisition
- Summary of easement provisions
- ✓ Purpose of easement
- ✓ Evidence of the significance of the protected property; summary of conservation values
- ✓ Directions to property from closest public road
- ✓ Description of easements, leases and other encumbrances on the Property
- ✓ Proximity to other conserved properties

Physical and Ecological Features

Maps (all maps must be in type large enough to be legible)

- ✓ Regional map showing easement location
- ✓ Survey of property
- Section of local road map showing easement location
- ✓ Section of USGS 7.5 minute topographic map showing easement location
- ✓ Map(s) or surveys of property showing all relevant physical and ecological features, including man-made improvements (roads, buildings, fences, etc.), irrigated lands, water ways, wetlands and riparian areas
- ✓ **Man-made features:** Improvements including buildings, roads, trails, power lines, water conveyances, fences, ponds and other relevant features must be identified in maps and photos and described in the text
- Agricultural features (if applicable):** Products, methods, grazing intensity, water rights, and any agricultural plans in place such as NRCS soil plans must be described and the location of any prime or unique soils or soils of statewide interest
- Ecological features:** Flora, fauna, extent and nature of natural communities, threatened or endangered or sensitive species, identify critical or significant habitat or migration corridors, regional significance of biotic resources, attach data from

Guidance on Preparing a Conservation Easement Baseline Documentation Report

qualified sources indicating significance of features (such as Division of Wildlife maps or biologist report)

- Scenic features (if applicable):** Nature of scenic qualities, from where does general public see the scenic features, identify whether the property is visible from a public road, scenic byway, public lands, water ways
- Recreational features (if applicable):** Nature of recreation, any existing or proposed public access
- Local Governmental Policies:** The easement as furtherance of current and adopted local government land use policies; copies of master plans or other existing government policies must be attached
- Archaeological or Historical features (if applicable):** Document significance of historical structures or uses; document archaeological features

Photographs

- Aerial photos of the entire property
- Onsite photos, documenting all important natural and man-made features as well as conservation attributes, from easy-to-find photo points recorded on a map

References

- List of sources, books, maps, names of persons interviewed and other technical or scientific materials used to complete Baseline Study

The Land Trust strongly advises that landowners who decide to prepare their own baseline documentation have a draft of such documentation reviewed by a party familiar with the preparation of such instruments prior to submitting the document to LT for review and approval. Please contact LT for a list of qualified baseline preparers.

Sample Conservation Easement Map

EXHIBIT B

Columbia Land Conservancy
100 Ave. of the Woodlands
Chatham, New York 12024
Tel: 518.385.2500
Fax: 518.385.2505

Summary of Conservation Easement

Total Number of:

Existing Residences (within ADA)	1
Existing Dwellings for Farm-Support Housing	2
Existing Accessory Structures (i.e. sheds, barns)	10
Acceptable Development Areas (ADAs) Permitted - existing	1
Additional Acceptable Development Areas Permitted	0
Acres Protected	-180.62

Notes:

The following notes should in no way be substituted for the detailed language of the Conservation Easement. Please refer to Sections 7 and 9 of the Conservation Easement and contact the Columbia Land Conservancy with any questions.

Residential Dwellings: Without prior written permission from Grantee, Grantor may construct, maintain, repair, remove, enlarge or replace any or all existing principal single-family residences and its accessory buildings and improvements, within the area shown on the Easement Map, located in, as the Acceptable Development Area (ADA). Such dwellings, buildings and improvements shall be located completely within the ADA.

Farm-Support and Guest Housing: Without prior written permission from Grantee, Grantor may construct, maintain, repair, remove, enlarge or replace any or all dwellings or structures used for farm-support housing and/or guest housing.

Existing non-habitable structures may be adaptively reused to create farm-support housing, subject to applicable laws. Farm-support housing must be located completely within the ADA, except as provided in Section 7.1.E, and may not be subdivided from the ADA as further described in Section 9 of this Conservation Easement.

Subdivision: The Property may not be further divided, partitioned, or otherwise converted into separate parcels except as follows: no subdivided parcel may result in less than 50 acres. The ADA may not be internally subdivided. Farm-support housing can not be subdivided from the ADA. In addition, the farm-support housing area permitted in Section 7.1.E, can not be internally subdivided.

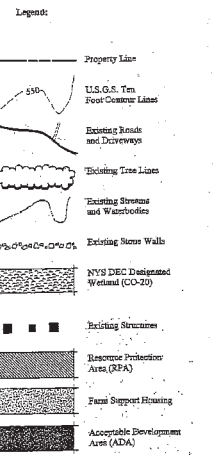
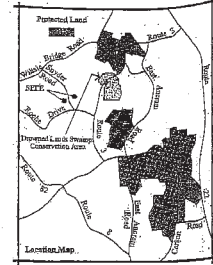
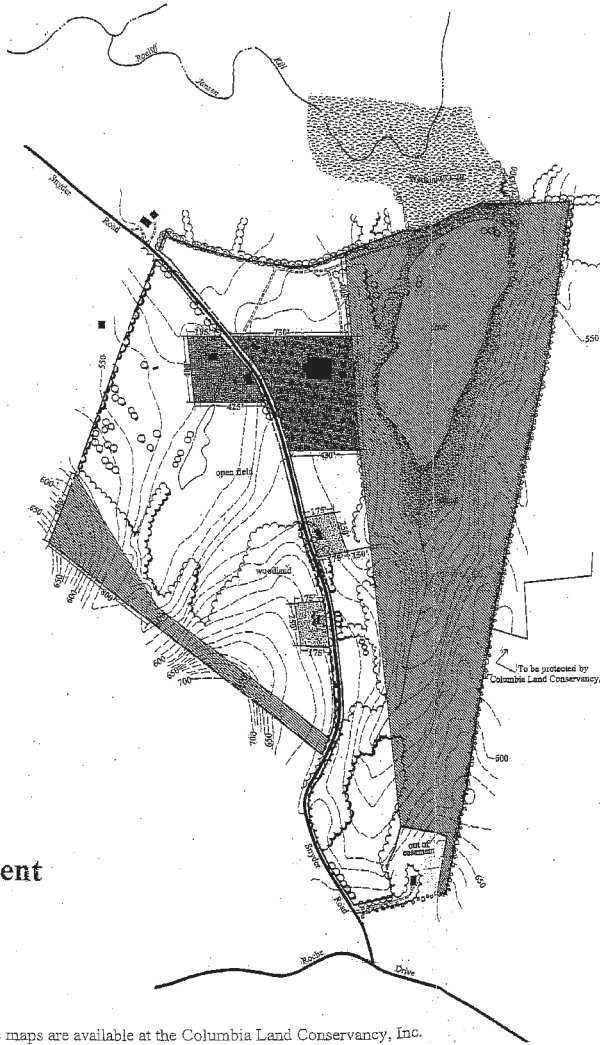
This restriction shall not preclude lot line adjustments that do not create additional residential building lots, and shall not preclude the subdivision of farming and open space areas in which no residential building is allowed provided an subdivided parcel shall be less than a minimum of 50 acres.

Construction Notice: In order to determine that any of the new non-residential structures and improvements permitted under Section 7 of this Conservation Easement are located within the ADA and/or Farm Area marked on Exhibit B, the Grantor or owner proposing such construction shall give Grantee written notice thereof not less than forty-five (45) days prior to the anticipated commencement of site preparation and/or construction.

Character of the Property:

The Property is comprised of pastures and rolling fields containing prime farmland soils or soils of statewide importance, as defined by the U.S. Department of Agriculture ("USDA"). Deciduous woodlands ridges are located along the eastern and southern portions of the Property.

In addition, the Property contains several water features, including a large pond surrounded by a NYS designated Class 1 wetland. The wetland is part of the Thruway Lands Swamp watershed and drains off the Property into the Rockville Reservoir, a Class C Trout Stream. There are also smaller ponds and intermittent streams located on the Property.



Bassin Conservation Easement Ancram, New York

Grantors: Arthur J. and Susan B. Bassin
Ancramdale, New York

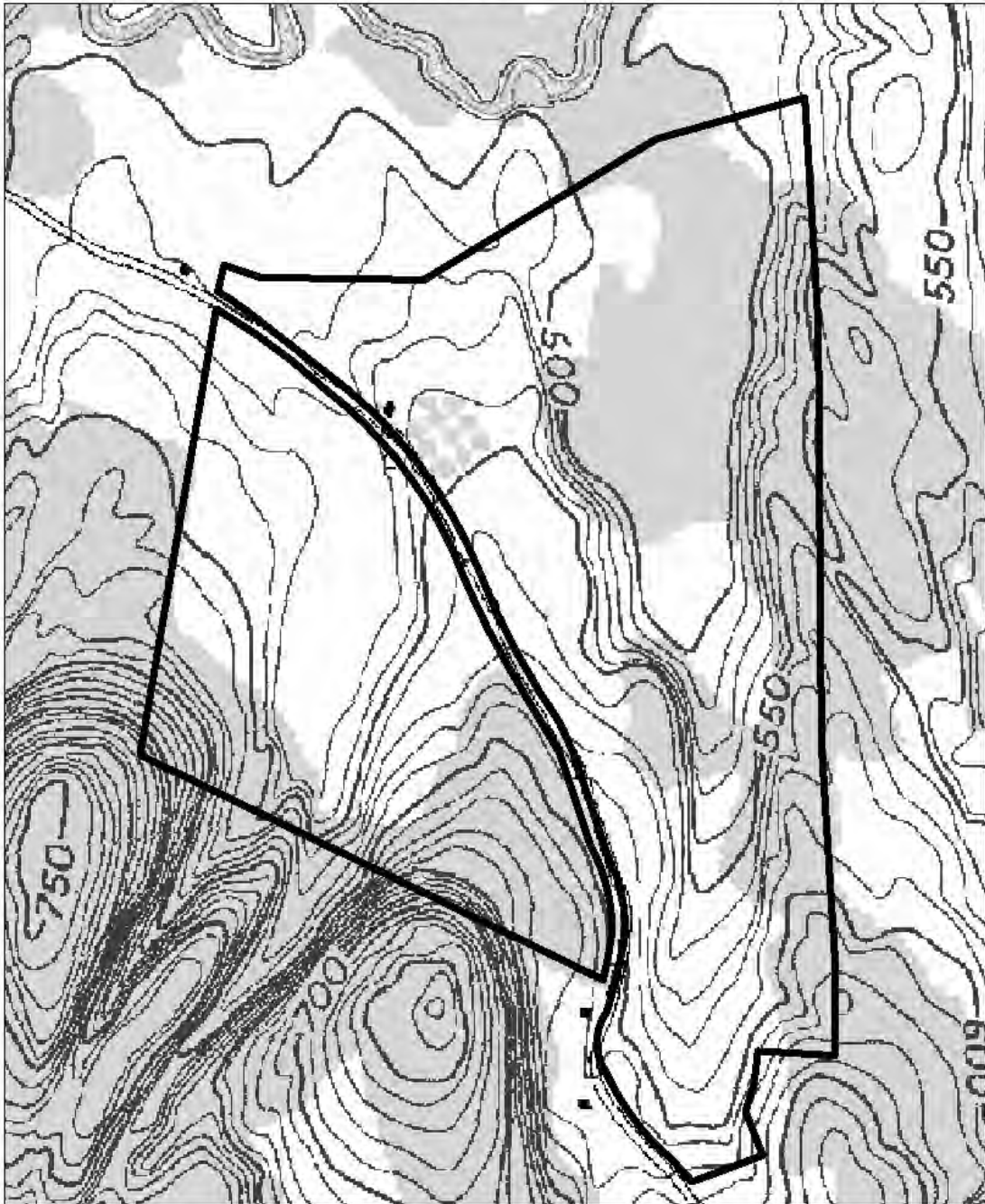
Grantee: Columbia Land Conservancy, Inc.
Chatham, New York
December 2001
Reduced Map: Full-scale maps are available at the Columbia Land Conservancy, Inc.
Please use full-scale maps for land planning.

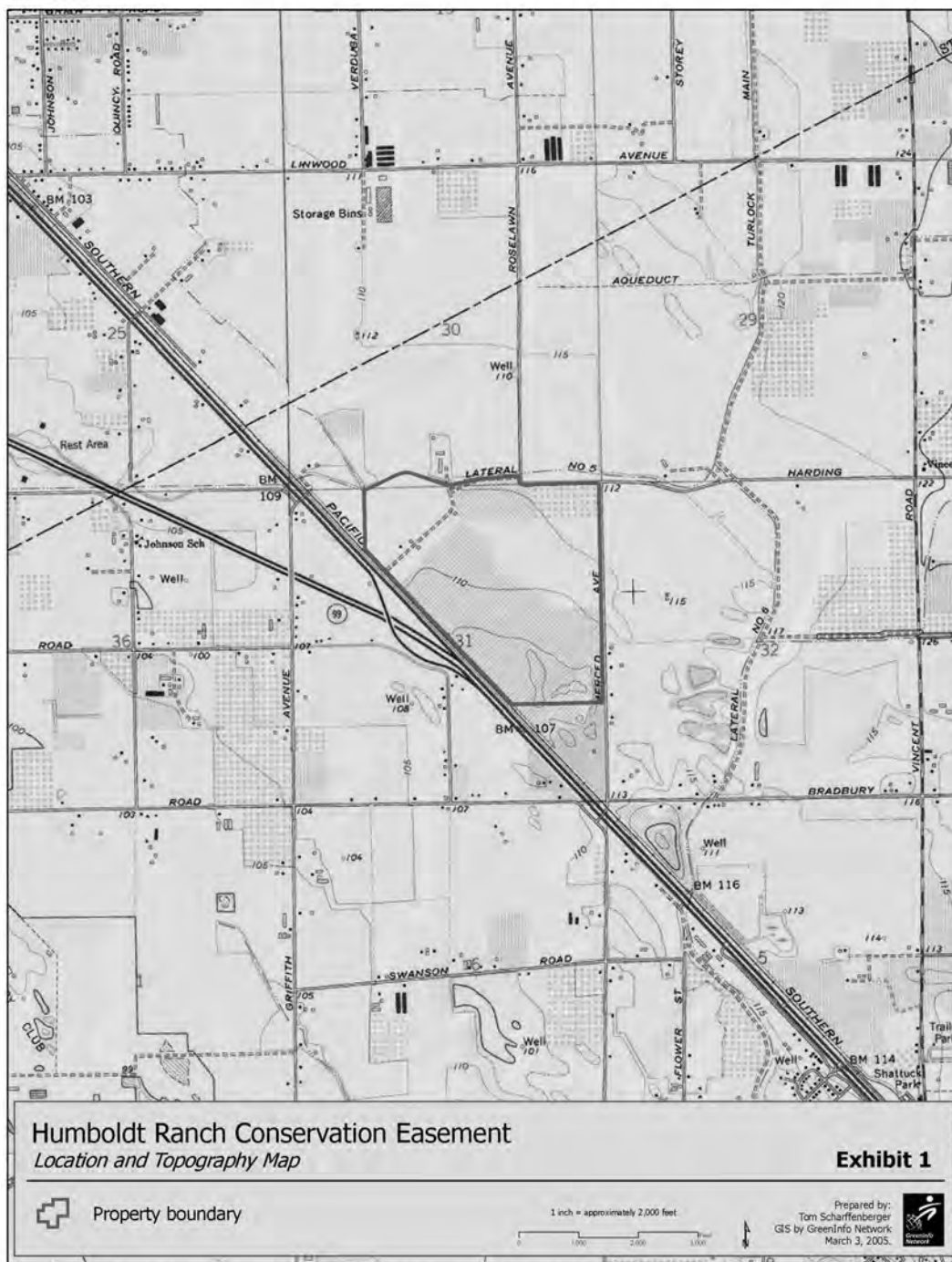
Sources:
• Survey Map by Lynden T. Chas 649643, October 4, 2001
• U.S.G.S. Topographic Map, Capital Quadrangle
• NYS Freshwater Wetlands Map, Capital Quadrangle
• U.S.D.A. National Aerial Photography, December 1983, 25000





Sample Topographic Easement Map





Sample GIS Maps



Columbia Land Conservancy
Preparing a Conservation Easement Baseline Documentation Packet

1. Why prepare baseline documentation?

- a. If donated easement, IRS requires it
- b. If perpetual (or term) easement, the easement holder (i.e. municipality, conservation organization) needs to be able to enforce easement and understand changes occurring on the landscape over time. Baseline will assist in monitoring visits.
- c. Communication tool with landowners, both original donor and subsequent purchasers of the protected property.
- d. Educational material for municipality, land trust staff or volunteer stewarding easements. Helps gain an understanding of what the property looks like, you can then identify it when you fly over, or drive by it.
- e. Helps you locate easement property, keep track of easement and donor(s).

2. How do you know what should be in your easement baseline documentation?

- a. Read the easement. What is restricted? What is protected? Where are the likely violations going to occur? Create baseline to identify the important resources.
- b. Ask yourself: Could a layperson understand the terms of the easement—how can the baseline documentation support the easement? Will an aerial photograph help? Can they understand the maps as they relate to the easement’s clauses or special use areas? Can they understand the baseline documentation text?
- c. How can you identify where the photographs were taken? Can you be sure that someone unfamiliar with the property can find the location and direction of the photograph?
 - i. Consider GPS (global positioning system) or compass bearings to identify the location and direction of photograph taken. If you use compass or GPS points, include the bearings in the baseline packet.
- d. Is there material documenting the assumptions in the easement document?
 - i. Ownership (deed), boundaries (survey)
 - ii. Clear title (title search)
 - iii. Whereas clauses (materials documenting where those assumptions came from)
 - iv. Open and built characteristics of the property.
 - v. Excluded areas of the property, or views of boundaries
 - vi. Appraisal of easement value or Form 8283 (helpful if you ever need to work with a condemnation proceeding for a portion of the easement).

Examples of what information could be included in easement documentation (check your easement to see if it is referenced or what is deemed important).

- a. An easement map that combines:
 - USGS topography, property boundaries (from survey)
 - Tree lines (from aerial photography)
 - Designated wetlands (from USGS Wetland maps)
 - Main structures, driveways, roads, ranch/farm/access roads (from aerials and survey maps); trails
 - Areas (or zones) reflected in the easement (building areas, no-build areas, restricted areas, cut-out areas, etc.); public access areas, if any
- b. Deeds, photographs, aerial photographs, soils maps, topo maps, survey maps, etc.
- c. An easement photograph location map(s)
- d. Biological/ecological inventories (check with appropriate state agencies, US Fish and Wildlife Service, etc.); rare or threatened species and/or habitat for rare or threatened species; distinct natural features; timber resources
- e. Project history summary; land use history
- f. Previous or on-going management plans (stewardship, forest, agricultural conservation plans, etc.)
- g. Pre-historic sites/information (check with appropriate local and state archives)

Who creates the baseline package?

- a. Land trust staff/Municipality employee
- b. Consultant
- c. Volunteers
- d. If more than once person is responsible, assign tasks, deadlines.
- e. Make sure you establish clear standards and procedures for your baseline. If you update your standards, strive to update all past baseline files as well to meet this format.
- f. If you are working on a number of projects, consider creating a spreadsheet to keep track of what has been done, by what date.

Make sure you document who created the baseline packet in case there are questions later on, or the person is needed for testimony.

When does the baseline packet need to be completed?

- a. If the easement is donated, at or just before easement closing. Signed at easement closing. You may find that you have to take photographs after closing if there is a time-crunch or bad weather (i.e. flooding, deep snow). If this is the case, make sure that you have ordered aerials as part of the baseline packet, and that your easement maps reflect the properties current conditions. Supply baseline photographs as supplemental baseline documentation, if not completed prior to easement closing.
- b. If the easement is purchased, usually required at or before closing (depends on program). Usually signed at easement closing.

6. How do we manage time (and/or costs) and make sure that we don't create baseline for projects that won't close, or won't close in the foreseeable future?

- a. Request a deposit “start work order” before beginning work on a particular easement (i.e. the land planning, easement drafting or baseline documentation). Start work order would be applied towards the overall costs of completing an easement. Make the amount both affordable (approx. 1/3 of estimated cost of easement), yet significant enough to cover initial staff time involved in preparing easement map(s). This will help “shake out” grantors who are serious about protecting their land. Number of baseline packets needed will affect cost of creating baseline report.
- b. Understand what is in your basic baseline documentation package; prepare this material after you have scheduled an easement closing (i.e. in the two weeks prior to the scheduled easement closing).
- c. Order aerial photographs and incorporate into the easement map—as recent as possible. If significant changes have occurred after most recent photograph has been taken, you may have to take photographs yourself.
- d. Develop an organizational/departmental policy as to when you will take the “on the ground” photographs.
 - i. If it's a purchased easement, and the landowner is under contract, you know they are very likely to complete the process—go take photographs after you have completed the easement map.
 - ii. If donated easement, identify a timeframe to take the photographs. Establish a letter of agreement with the landowner to cooperate in reviewing and signing photographs.

7. Are there any pointers regarding baseline documentation photographs?

- a. Try and shoot the photographs when the property and its topography is most visible.
- b. Use archival quality film. Black and white film is not created equal—discuss with photography experts. Consider Ilford Delta 100 film. Color photographs are less stable. Discussion is still on going regarding the legal and archival ramifications of digital photographs.
- c. Take photographs when the air is clear (not hazy, humid, completely overcast).
- d. Make sure the entire baseline package, including photographs and supporting text, are stored using archival procedures (archival plastic photo-sheets, acid-free paper for text, etc.) ideally off-site, with an archival facility.

8. How important are easement maps and baseline photographic maps?

- a. VERY.
- b. Helps identify areas of importance (as reflected in your easement)
- c. Helps identify how the baseline photographs relate to your easement, and easement land planning.
- d. Helps orient future monitors and landowners as to where the easement restrictions apply to what portion of the property.
- e. Can illuminate areas of note (wetlands, structures, ponds, etc.).
- f. Make sure your easement map is cited in, and if possible, filed with, your easement.

9. Working with landowners to complete baseline package:

- a. Call the landowners before going out to the property to take photographs.
- b. Allow them adequate time to review the photographs, map and supporting text.
- c. Offer to sit down with them and go over the baseline photographs, map and supporting text.
- d. Consider having the landowner sign a letter at the easement closing agreeing to cooperate with the photographic portion of the baseline documentation.
- e. If your organizational/governmental representative is NOT going to sign the baseline documentation at the same time that the easement landowner will, write a letter clearly noting where they should sign. Use “sign here” tabs to help orient the landowner.

Note: Need to set the standard and then stick to it for every easement. Be consistent.



Marin Agricultural Land Trust

**Baseline Documentation and Monitoring
Program Guidelines**

July 21, 2004
Revised October 31, 2007

Table of Contents

- I. INTRODUCTION
 - A. Purpose 1
 - B. Background 1
 - 1. Soil Erosion..... 2
 - 2. Residual Dry Matter..... 2
 - 3. Invasive Plants 3
 - 4. Water Quality..... 4
- II. BASELINE DOCUMENTATION REPORTS
 - A. Content 6
 - B. Background Information 7
 - 1. Easement Provisions 7
 - 2. Appraisals 7
 - 3. Aerial Photographs..... 8
 - 4. Maps 9
 - C. Site Visits 9
 - 1. Landowner Contact..... 9
 - 2. Improvements 10
 - 3. Easement-proscribed Activities 10
 - 4. Vegetation Descriptions..... 10
 - 5. Erosion 11
 - 6. Water Pollution 11
 - 7. Photographic Documentation..... 11
 - D. Final Report, Signatures, and Distribution..... 12
- III. MONITORING PROCEDURES
 - A. Frequency 13
 - B. Landowner Contact 13
 - C. Monitoring 13
 - 1. Reviewing Historic Documents 13
 - 2. Recording Data 13
 - a. Photographs..... 14
 - b. Residual Dry Matter..... 14
 - i. Overview..... 14
 - ii. Visual Estimates 15
 - iii. Double Sampling Method..... 15
 - D. Final Report, Assessment, and Landowner Communication 16
- IV. APPENDICES
 - A. Sample Standard Agricultural Conservation Easement
 - B. Aerial Photograph Sources
 - C. Baseline Field Observation form
 - D. Baseline Documentation Photograph Record
 - E. Baseline Documentation Procedures Checklist

MALT Baseline Documentation and Monitoring Program Guidelines

10-31-2007

- F. Easement Monitoring Report form
- G. UCCE Residual Dry Matter Guidelines
- H. Example Double Sampling Method (Dry-Weight Rank)
- I. Monitoring Procedures Checklist

I. INTRODUCTION

A. Purpose

Permanently preserving agricultural land in Marin County depends largely on MALT's ability to assure that provisions in its conservation easements are upheld. Easement "stewardship" is a process of ensuring the integrity of conservation easements through time, and has as its foundation a thorough knowledge of the condition of the property. These Guidelines provide a consistent process to assess and document all easement properties.

The two primary tools used in easement stewardship are baseline documentation and annual monitoring. Baseline Documentation Reports characterize the infrastructure and resource conditions of each property at the time an easement is conveyed. Annual monitoring subsequently evaluates changes in property condition over time in relation to the baseline condition and easement provisions. It is anticipated that these Guidelines will adapt as easement terms evolve and as understanding of agricultural practices and monitoring technologies develop.

B. Background

Portions of MALT easements that provide basic direction for baseline and monitoring guidelines are Paragraph 1, *Purpose*; Paragraph 2, *Affirmative Rights and Interest Conveyed*; Exhibit B, *Permitted Uses and Practices*; and Exhibit C, *Prohibited Uses and Practices* (Appendix A). Many of the restrictions contained in MALT easements are unambiguous. Non-agricultural commercial and industrial uses, construction of non-agricultural improvements, division or subdivision of property, and the dumping of trash on site are specifically prohibited and monitoring their presence is quite straightforward.

Other restrictions, primarily those related to condition of land resources, are expressed more broadly, but nevertheless are also fundamental to the purpose of the easements. That purpose is "...to enable the Property to remain in agricultural use for the production of food and fiber by preserving and protecting in perpetuity its agricultural values, character, use and utility, and to prevent any use of the Property that would significantly impair or interfere with its agricultural values, character, use or utility. To the extent that the preservation of the open space and scenic values of the Property is consistent with such use, it is within the purpose of this Easement to protect those values." Further, the easements state that allowable agricultural uses may be engaged in provided that they "... shall not result in significant soil degradation, or significant pollution or degradation of any surface or subsurface waters." Determining when a particular agricultural value is impaired is a more difficult task than determining whether a new non-agricultural building has been constructed, yet both may be violations of the easement.

On rangelands, maintaining forage productivity is the best way to preserve agricultural values. Productivity of rangelands is a function of a complex set of interacting forces including weather, soil type and condition, hydrologic and nutrient cycling, and plant species composition. Some of these factors are obviously beyond human control, but others are impacted directly or indirectly by management practices and fall within MALT's scope of concern. Soil quality is a cornerstone determinant of plant composition and productivity and profoundly influences

10-31-2007

potential for erosion, water quality and yield, and development potential for wildlife habitats. Some of the physical, chemical, and biological properties of soil change in response to how soil and water are managed.

Some issues facing the agriculture community transcend property boundaries. Water quality has become a major focus of regulatory agencies nationwide, and is of special concern in the watersheds surrounding Tomales Bay and Marin County drinking water reservoirs. Sediment load in streams and rivers, fecal matter and associated bacteria, and pesticide and herbicide content have the potential to leave one property and severely impact downstream properties, agricultural/aquacultural operations, wildlife and fish, and human health. Ranches, especially dairies where animals are routinely confined, have been identified as contributors of non-point source pollution and are under increasing scrutiny. The regulatory pressure that results has the potential to impact profitability and, indirectly, land uses and agricultural viability.

Many of the factors influencing agricultural values, character, and use are beyond MALT's ability or desire to monitor, either because they are too complex or cumbersome, or because they would be time and resource prohibitive. We require monitoring protocols that can be applied relatively quickly and consistently while on private property. Additionally, it would benefit both MALT and landowners if our monitoring focused on issues that can be realistically addressed through changes in management practices or restoration projects. Specific conditions that fit our need and capacity to monitor agricultural values include soil erosion, residual dry matter, invasive plants, and factors or practices that may adversely impact water quality.

1. Soil Erosion

Soil is the foundation upon which farming and ranching relies. Loss of soil – erosion – diminishes the productivity of a property, and is therefore considered a prime threat to “agricultural value” and a focus of MALT's monitoring program. Erosion is a natural process of soil movement that can be accelerated, sometimes drastically, by human activities. Much of the sediment, nutrients, and chemicals suspended through erosive events enter waterways where they impact water quality, aquatic wildlife, and human health. Any management activity that influences the relationships between water or wind and the soil will have a positive or negative impact on erosion rates. Direction of planted rows, amount of plant cover left in pastures, amount and type of vegetation in riparian areas, extent and timing of mechanical disturbances, affects of debris on water flow in drainages and creeks are examples of issues that must be addressed when making land management decisions.

It can be difficult to distinguish between “natural” erosion and that which is caused by man, particularly when considering the implications of both current and past land uses. Nearly every ranch in Marin has erosion problems that are caused by, or exacerbated by, ranching practices. The relative contribution of land management to specific erosion problems varies with intensity and type of use and inherent site characteristics. Tracking erosion over time will allow MALT to gain understanding on the relative contribution of different management techniques, suggest alternative practices, address problems before they become critical, and, regardless of cause, to work cooperatively with landowners to implement erosion control projects.

2. Residual Dry Matter

The amount of plant biomass on the surface of the ground strongly influences rangeland productivity. It directly affects processes such as water infiltration and runoff and, in California's annual-dominated grasslands, the amount of residual biomass can affect plant species composition in subsequent growing seasons. Livestock grazing, in turn, affects these processes and subsequent productivity by removing plant biomass. Higher levels of grazing on a given piece of ground can result in soil erosion and compaction, the spread of noxious weeds, and mortality of deep-rooted perennial grasses. Lack of grazing pressure, on the other hand, can lead to decadent growth resulting in inadequate light penetration and space for new growth and decreased forage quality. Estimating the amount of plant biomass remaining at the end of the grazing season, the residual dry matter (RDM), on an annual basis is often used as an index of livestock utilization, range productivity, and soil erosion potential. Maintaining adequate RDM will aid in providing forage for livestock, assuring cover and biomass to protect soil from erosion, and decreasing opportunities for invasion by noxious weeds. Repeated, excessively low RDM levels indicate management practices that expose soil to erosion, encourage establishment of noxious weeds, and contribute to water quality degradation. By monitoring RDM, MALT can encourage good practices and work with landowners to prevent erosion and increase productivity.

Though generally recognized as a useful indicator of range management practices and range condition within California, rangeland managers also recognize that RDM sampling cannot provide a complete picture of erosion potential, soil or water quality degradation, or likely plant species composition. For example, animal confinement areas (corrals, lots, shade spots) are integral to many livestock operations and are usually not managed for forage. As a result, confinement areas often have substandard RDM levels (often zero) resulting in degraded soil and can be significant sources of water pollution. Riparian areas and stream banks are not typically managed for forage production and if denuded can contribute significant sediment into streams and facilitate temperature increases that harm fish. RDM sampling, then, is not an appropriate method to determine the state of agricultural values in these areas. But while these areas generally make up a small percentage of the total acreage on a given ranch, they may be significant contributors toward soil and water degradation. Protection of agricultural values in these areas can be addressed through direct observation (soil loss, gullying, etc.) and through water quality monitoring.

Forage utilization is often uneven due to factors such as slope variation, livestock forage preferences, water and mineral distribution, and fence location. Rigorous measurements of RDM under these conditions require large sample sizes and careful attention to sampling design (randomization, stratification, plot size, observer bias, etc). In establishing a RDM sampling protocol, MALT considered these factors in conjunction with its available resources and staff time, and the needs and concerns of landowners.

3. Invasive Plants

Defined broadly, an invasive plant is any plant that, because of reproductive strategy, phenology, growth habit, or other characteristics, has the potential to dramatically alter the

10-31-2007

structure and function of a plant community. On rangelands, invasive plants often are unpalatable to livestock and can dramatically reduce forage quality. Significant cover of invasive plants can severely impede pasture productivity and can, in some circumstances, affect land values. In most cases, invasive plants in Marin County rangelands thrive in disturbed areas such as road cuts, drainage ditches, and over-utilized fields. The presence of invasive plants is therefore not only an indication of reduced productivity, but possibly also of inappropriate land management practices that can exacerbate soil degradation and erosion and water quality problems.

Invasive plants are well established on many Marin County ranches, and it is impractical to expect that they will be entirely eliminated from MALT easement properties. However, managing existing infestations will help minimize their spread, prevent new infestations, and increase forage quality and productivity. When invasive plants appear to be a problem, MALT will encourage landowners to control weeds by providing information and, when requested, assistance.

4. Water Quality

The quality of water leaving agricultural lands has important implications to human health, other agricultural and aquacultural operations, and fish and wildlife habitat and health. Water quality factors associated with ranching operations may include sedimentation, decreased dissolved oxygen, increased ammonia, increased pathogens, increased water temperature, and the presence of agri-chemicals and petroleum products. It is not practical for MALT to monitor water quality directly, a role more appropriate for landowners and regulatory agencies. In evaluating whether activities result in "significant pollution or degradation of surface or subsurface waters," MALT focuses on monitoring potential sources of water pollution on ranches, primarily soil erosion from roads, denuded or cut stream banks, confinement areas, and bared slopes; animal waste exposed to rain and runoff; lack of water-shading vegetation in suitable riparian zones; and inappropriately located or stored equipment and fuel.

Water quality is a very high-profile public issue because of its broad implications and regulatory requirements are expected to become more stringent with time. As the dominant land users in West Marin, agricultural operators are under great pressure to reduce pollution sources. But regulatory burden and the costs of erosion and pollution control can be significant for landowners that are already on the economic edge. In order to help easement landowners meet these rising challenges and safeguard agricultural viability in Marin, MALT must participate with regional water quality initiatives (such as the Tomales Bay Watershed Council) and help our landowners to identify compliance problems and provide technical resources to make improvements.

MALT will discuss potential water quality problems identified through baseline documentation or annual monitoring with the landowner and can provide technical advice or assistance in a variety of ways. Preparation of a ranch management plan will be suggested as an excellent vehicle for addressing water quality issues. Although there are private consultants that provide specific components of ranch plans (such as dairy waste facilities evaluation) for a fee, there is no organization that provides free comprehensive assistance with ranch planning. The

MALT Baseline Documentation and Monitoring Program Guidelines

10-31-2007

NRCS will visit sites when requested and provide technical and design assistance. The University of California Cooperative Extension (UCCE) Range and Livestock Advisor provides advice and will supply water quality test kits for ongoing monitoring. Other sources of technical or financial assistance, such as EQIP (Environmental Quality Incentives Program) and grant-funded watershed programs through the Marin County Resource Conservation District, will also be suggested as appropriate.

10-31-2007

II. BASELINE DOCUMENTATION REPORTS

A. Content

The baseline document should contain at least the following elements:

- Table of Contents
- Summary Information
 - Owners name, address, phone number
 - Property address (if different)
 - Name, address, phone number(s) of contact person (if different)
 - Date of easement acquisition
 - Assessors parcel number(s) and acreage(s)
 - Zoning
 - Watershed
 - Type of land use
- Introduction
 - Purpose of the report
 - Date of site visit(s)
 - Sources of background information
 - Any important details specific to the property
- Physical Description
 - Location, regional uses
 - Topography
 - Major drainage patterns (watersheds)
- Improvements
 - Buildings
 - Fences
 - Roads
 - Ponds and other water sources
 - Dairy waste facilities
 - Any other significant improvements
- Vegetation and soils
 - Major vegetation types with approximate acreages/coverages, significant species
 - Cultivated crops with acreages
 - Agricultural weeds present and location
 - Soil descriptions
 - Soil erosion
- Land use
 - Current, historic, and surrounding land uses
 - Conservation practices
 - Quarries, dumps, timber harvesting
 - 3rd party leases, easements
- Signature page

- Appendices

Assessors parcel map

USGS 7.5 minute topographic map

Recent aerial photograph enlargement to approximately 1"=500' scale, with property boundary, photograph locations, and pertinent field notes

Oblique aerial photograph showing facilities (if needed)

Soil map and soil type descriptions

Photograph Record and photographs - color copies

Copy of easement document protecting the property

B. Background Information

1. Easement Provisions

The baseline document is intended to record the condition of the property in relation to easement provisions. It is important to read the draft easement, if possible, or discuss the likely easement provisions with other staff before embarking on baseline preparation. In most cases, MALT's standard easement language will be used. Some easements, however, include specific provisions to safeguard extraordinary features, such as significant wetlands or riparian areas. Understanding the provisions of the easement will inform the selection of features to document and the level of descriptive and photographic detail needed to capture potential conflicts with easement provisions.

* NOTE The baseline document must be a subjective record of the condition of the property at the time it is prepared. As such, it should document all conditions and uses that exist in relation to easement provisions. However, it is important to avoid making any conclusions that violations occur. This is the case for monitoring reports as well.

2. Appraisals

Property appraisals are very helpful in preparing for baseline documentation, and should be reviewed before initial site visits. They provide useful confirmation of Assessor's parcel numbers and acreages, property addresses, structure descriptions, and to some extent property uses. Additionally, they include copies of AP maps, topographic maps, and sometimes soil maps that can be used to draw initial features on field maps.

3. Aerial Photographs

MALT has nearly full coverage of Marin agricultural lands in color aerial photographs (DOQ's) with its GIS system. GIS provides a high degree of versatility in editing and printing

MALT Baseline Documentation and Monitoring Program Guidelines

10-31-2007

visual media and has the benefit of allowing data layers to be presented and analyzed together. In a simple example, parcel boundaries can be displayed on top of DOQ's. This allows fairly rapid production of maps needed for the baseline without the need for hand-drawing or writing features. The DOQ's currently on hand were photographed in March 1997, and were made available to MALT by Marin County. Various sources conduct periodic over-flights to create DOQ's and MALT will acquire new sets as they become available.

Alternatively, color or grayscale aerial photographs printed on high quality photographic paper can be ordered prior to the baseline site visit. The following sources have aerial photographs of Marin County (see also Appendix B):

WAC, Corporation
520 Conger Street
Eugene, OR 97402
www.waccorp.com

Last Marin flight in March 2000.
Contact: Margie Cooney (800) 845-8088

GeoEye, Inc.
Dulles, Virginia
www.geoeye.com

Various flight dates and resolutions
Order online

It is best to consult contacts for up-to-date availability and prices when ordering. Baseline aerial photographs should be ordered at a scale of 1" = 500'. This scale is adequate for most field notes, though structure detail is not discernible, and quality is sacrificed if enlarged more. Original photos on photographic paper retain good detail and should be archived without marks, except a label indicating property name, source of the photo, date the photo was taken, and scale. Copies of the photo should be made for use in the field and for inclusion into the baseline documents.

A full coverage aerial map of the property, either from GIS or a copy of the ordered photo, should be created for marking field notes during baseline visits. Photograph locations, structures, roads, fence lines and other pertinent information should be drawn onto the field aerial in ink for reference. These notes will be redrawn in detail, with a legend, on a new aerial to be included in the final baseline documents. Final copies should also include the source and date of the aerial, the date of field notes, approximate scale, and cardinal direction.

Facilities on properties that have large numbers of structures can best be documented with a low elevation, color oblique aerial photograph. Inclusion of an oblique aerial photograph reduces the time and expense of photographing buildings from the ground and does a better job of showing their placement and size. Obliques can be ordered from David Bentley of Air Flair in San Rafael by calling (415) 499-1024.

4. Maps

As with aerial photographs, topographic, soil, and parcel maps can be created from MALT's GIS system. Each should be in hand and reviewed prior to field visits. Final, site checked copies will be included in the Baseline Documentation Report. Generally, field notes are

MALT Baseline Documentation and Monitoring Program Guidelines

10-31-2007

not drawn on the final baseline copies of these maps, but each should indicate property name, boundaries, cardinal direction, and scale. Soil maps are also to include a legend of soil unit number and name. Information drawn on these maps will be approximate due to map distortion and user estimation, but reasonable accuracy can be obtained by using fence lines and other landmarks (roads, creeks, ridges) that are plainly visible. Records of survey may be available for some properties.

A complete Soil Survey of Marin County California (by Soil Conservation Service), including full map coverage and soil unit descriptions and characteristics, is on file in MALT's office. Additional paper copies of soil maps can be obtained free of charge from the Natural Resources Conservation Service office in Petaluma. Digital versions of NRCS soil surveys are available online at <http://websoilsurvey.nrcs.usda.gov>.

USGS 7.5 minute quadrangle topographic maps can be obtained from outdoor recreation stores or those that specialize in maps. Digital versions of scanned 7.5 minute USGS quads are available from the State of California at <http://drg.casil.ucdavis.edu/>.

Assessors parcel maps can be printed from Parcel Quest – software available in the MALT office. They can also be copied from maps available at the Marin County Assessor/Recorder Office or pulled from GIS versions of the Marin County Assessor's parcel database available on MALT's GIS. AP maps should always be made to fit on 8.5" x 11" paper.

C. Site Visits

1. Landowner Contact

A general evaluation of the suitability of a property for an agricultural conservation easement occurs early in the easement acquisition process. Landowners are usually present at this visit, giving them an opportunity to verify boundaries, fence lines, and roads (preferably on the aerial photo). At this time, MALT also explains the baseline documentation and monitoring programs and identifies, in general terms, potential conflicts with easement provisions and remedial actions.

When a landowner and MALT accept an appraisal and agree to proceed with an easement transaction, a baseline documentation visit is scheduled with the owner and background information needed for the baseline report is gathered from documents on hand or easily obtained, such as property appraisals, title reports, maps, and the Marin County Soil Survey. The documentation site visit is an essential tool in verifying the information obtained from other sources and in gathering and recording information otherwise not available.

When possible, the initial documentation visit should occur when the landowner will be accessible to discuss matters pertinent to the baseline (i.e., number and type of livestock, past practices) in more detail. Good preparation and review of materials will guide the questions to be asked and minimize the draw on the landowner's time. If additional visits are required, landowners need not be present but sensitivity to the landowners schedule and concerns dictate that verbal or written permission must always be received prior to accessing the property.

9

10-31-2007

2. Improvements

All structures, roads, fences, water sources, fuel storage tanks or other construction should be briefly described, including their condition or utility, in the text of the report (see Appendix B) and their location identified on the ranch aerial photograph or marked with a GPS unit. All structures should be encompassed in either an oblique aerial photograph or in the Baseline Photographic Record (Appendix C). Any other improvement that could be considered a violation or might become one in the near future, such as an eroding road or pond spillway, should be photographed.

3. Easement-Proscribed Activities

Each potential easement property is examined closely for commercial or recreational uses, dumpsites, tree cutting, surface alterations, and other activities specifically limited or prohibited by the easement. Not all instances found will be contrary to the easement and may not be appropriate for the baseline. For example, tree cutting for personal use on the property is allowed, though for commercial enterprises it is not. One or two cut trees would not be included in the baseline, but would be tracked during monitoring to watch over time. A large number of cut trees, even if quite old, could be seen as a violation to future monitors and should be captured in the baseline. Any activity suspected of being a violation of the easement will be described, mapped or recorded with a GPS unit, and photographed for the baseline. As stated previously, the record should be as factual as possible with no suggestion that the activity is a violation. Landowners will be requested to cease the activity and rectify the situation prior to the easement completing escrow.

4. Vegetation Descriptions

Vegetation descriptions included in the baseline report should be detailed enough to portray the character of the property and any special features, but will generally not include detailed species lists or quantitative information. Quantitative vegetation sampling would be useful for evaluating the trends of weed infestations and forage plants over time, but it is prohibitively labor intensive and would likely be viewed as overly intrusive by landowners.

Qualitative observations regarding vegetative cover as it relates to soil erosion, weed problems, and forage production are made. Descriptions of location and approximate acreages/coverage of vegetative community types (as defined by standard classifications-see http://www.dfg.ca.gov/biogeodata/vegcamp/pdfs/NaturalCommunitiesList_Oct07.pdf), including brief information on characteristics such as structure and dominant species should be included to provide for future analysis of condition trend and type conversion (i.e. grassland to shrubland). Cultivated areas should also be described as to location and crops grown. Acreages can be estimated from digitized aerial photographs. Significant weed problems and any special vegetation features should be delineated on the aerial photograph (or mapped with a GPS unit) and briefly described in the text of the report.

5. Erosion

RDM estimates will serve as an indicator of potential topsoil erosion, forage quality, and weed infestation in pastures. However, because forage production in California is highly dependent on rainfall and local site characteristics, in addition to RDM, and therefore highly variable between years and at small spatial scales, there is no reason to document a "baseline" RDM level. General observations and landowner comments regarding vegetative cover should be made, however.

Judgment should guide the determination of which specific erosion problems should be documented in the baseline report. It could be damaging to the MALT-landowner relationship if we were perceived to be hypercritical. Apparently serious problems and those that can become serious should be described and photographed. Minor problems can be addressed through annual monitoring and discussions with the landowner.

6. Water Pollution

Activities or uses that could impact water quality are to be described, drawn onto the field aerial photograph or mapped with a GPS unit, and photographed. Water pollution problems that should be identified and brought to the landowner's attention include:

- Obvious nonpoint pollution sources (such as routine flooding of confinement lots, livestock loafing in waterways, open manure stockpiles adjacent to waterways)
- Any disposal of toxic materials
- Significant erosion sites that may be contributing to stream sedimentation

7. Photographic Documentation

Photographs show property condition and character over time. The number of photographs recorded should be sufficient to document all structures and improvements, the property boundary, the landscape, any special features, and apparent easement conflicts. They will generally be taken at permanent or semi-permanent locations (rock outcrops, fence corners, trees) that can be easily identified and recorded on the aerial photographs or mapped with a GPS unit. Where no landmarks are available, photograph locations will be recorded as accurately as possible on the aerial photograph and on the Baseline Documentation Photograph Record.

On properties that have numerous structures concentrated in a small area, such as dairies, the scale of the aerial photographs can make recording photograph locations difficult. However, it is usually apparent where building photographs were taken, and good location descriptions should allow replication of the photographs during subsequent monitoring.

Photograph locations will be identified on aerial photographs or within GPS attribute tables with numbers that correspond to location numbers on the Baseline Documentation Photograph Record. The Photograph Record will document date, location number, photograph

10-31-2007

number, location description (distance and direction from a landmark), azimuth relative to true north, subject, film type and focal length for each photograph.

Photographs should be developed onto 4x6 prints and should also be scanned onto cd-rom by the developer. The scanned images are useful for routine monitoring or field use and for presentations. If a digital camera is used for collecting baseline photographs, photographs should be printed onto archival-quality photo paper, and digital photograph files (i.e., source jpg or tiff images) should be archived on CD, DVD, or similar media.

All prints are to be labeled with archival quality ink on the back with photographer name, date taken, subject, location number and photograph number. Labeled prints and all negatives are placed in archival quality plastic sleeves and stored with a copy of the Photographic Record (refer to MALT records management policy.)

D. Final Report, Signatures and Distribution

An unbound draft copy of the Report, with three signature pages on archival quality paper, is sent to the landowner for review. The landowner may return the report with suggested changes or additions noted on it. When the landowner and MALT agree that the report accurately represents the conditions and features of their property, they sign all three of the signature pages and return them to MALT along with the draft report.

MALT creates and binds three final copies of the report on archival paper, each with one of the original signature pages. A master copy is bound with a comb binding so that it can be opened flat to make additional copies, and is stored in a fire, water, and mold safe location (refer to MALT records management policy.) Other copies are bound using more permanent and durable means such as Velo. One of the permanently bound copies is returned to the landowner and one is kept for use in the MALT office.

III. MONITORING PROCEDURES

A. Frequency

Each property will be monitored annually between late summer and mid winter so that examinations of RDM can be made before the primary growing season begins. In addition to the annual monitoring, baseline photographs should be retaken and a new aerial photograph ordered, if available, every ten years or when pertinent changes occur. New aerial photographs should be compared with baseline aerial photographs for signs of new buildings and improvements or other pertinent changes.

B. Landowner Contact

MALT contacts landowners one to three weeks in advance of the desired date to monitor. Many of the landowners work away from home and it can be difficult to reach them by phone. In that case, a letter is sent that states a date and time that MALT representatives will visit the property, again one to three weeks ahead. The landowner is requested to provide an alternate date within two weeks if the proposed date is unacceptable. It is important to note that according to the easement, MALT is required to give notice that they will be monitoring a property, but does not require approval. However, every effort should be made to accommodate the desires of the landowners.

C. Monitoring

1. Reviewing Historic Documents

Prior to visiting a property, the baseline document and monitoring reports from previous years are reviewed. The easement should also be reviewed if it is unfamiliar to the monitor or if it is known to contain special provisions. Any specific items or issues identified in these documents, such as an area of low RDM, an active gully, or a riparian setback are listed and attached to the Easement Monitoring Report form to assure close attention. The office copy of the baseline document should be carried during the visit for reference.

If baseline photographs are 10 years old or more, a monitoring route should be planned to facilitate re-taking the photos as listed in the baseline. If the aerial photograph is greater than 10 years old or if previous visits revealed significant changes, a new aerial photograph (if stock is available) should be ordered three to four weeks prior to the site visit.

2. Recording Data

Any monitoring data collected can eventually be used in an evidentiary proceeding. It is important, then, that only objective observations in relation to provisions of the easement be recorded on the Easement Monitoring Report form (Appendix F). Drawing conclusions about violations or appropriateness of practices takes place in the office and are to be avoided on this form.

10-31-2007

In addition to focal issues of management and resource condition, date and monitor name, changes in land ownership or use, status of leases, and conditions related to natural disasters are recorded, if known, on the Easement Monitoring Report form.

During each monitoring visit, current conditions are compared to conditions recorded in the baseline document and in previous monitoring reports. New buildings, changes to existing buildings, new roads or changes in road conditions, expansion of (or erosion from) quarries, tree cutting, or other change in infrastructure, land use, or resource condition should be described carefully. The present status of erosion, weed, or potential water quality problems and RDM levels (see **b.** below) should be described. Significant changes and newly identified issues are to be photographed. Efforts to rectify problems (i.e. weed or erosion control) should also be described.

a. Photographs

Baseline photographs do not need to be re-taken unless pertinent changes are noted or unless they are 10 years old. If significant changes are observed, a sufficient number of photographs should be taken such that the change is clearly recorded. Photographs are developed onto 4X6 prints and in digital format on cd-rom. Photograph Number, Subject, Location Description, Focal length, and Azimuth bearing are recorded on the Easement Monitoring Form for each photograph taken. Locations of photographs and significant changes observed should also be marked on the field aerial photograph or mapped with a GPS unit, which will be filed with the monitoring report.

b. Residual Dry Matter (RDM)

i. Overview

RDM is assessed by MALT as an indicator of the potential for topsoil erosion and grassland productivity. Specifically, if RDM consistently falls below levels that are adequate to protect soil from erosion and maintain productive forage, the “agricultural values” of the property that are protected by the easement may be considered threatened. RDM is considered a pasture-wide indicator on upland grasslands rather than a tool to identify specific problems on the ground. Therefore denuded animal confinement areas, trails along fences, areas around water sources, riparian areas and stream banks, and cultivated fields are explicitly excluded from RDM estimations. Problems observed at these areas are recorded as erosion or water quality issues.

As a guide, MALT refers to RDM levels in relation to standards published by the University of California Cooperative Extension Service (Appendix G). Specific conditions at a given site may warrant greater or lesser RDM levels. As a rule of thumb, if less than these levels are produced in a dry year, half of the year’s growth should be left un-grazed. Higher RDM levels are indicated, though not specified, in riparian areas.

Generally, a visual estimate of RDM will be made for each pasture or appropriate geographic area. Making visual estimates provides an adequate scale of data for MALT’s purposes while being relatively easy and quick, sufficiently accurate with a minimum of training,

14

and less obtrusive to landowners. In the event RDM levels on a given property consistently appear to be below recommended levels and the owner has made no progress toward improving practices, RDM should be evaluated with a more statistically rigorous method in the event an evidentiary proceeding becomes necessary. In this case, the Double Sampling method of estimation will be used. This method requires substantial time and effort to implement and could not be routinely done on every property.

ii. Visual estimates

Ocular estimates of overall RDM levels within a pasture or area of concern are made and recorded as the monitor walks the property (ensuring full coverage). RDM photo-guides that show grasslands at varying RDM levels may be carried for reference during monitoring (see Appendix G for resources).

Photographs of areas with low RDM should be taken using a 35 mm lens. Two photographs, taken at distances of 10 meters and 20 meters from a gauge, will adequately document the condition of the vegetation. The gauge, such as a black and white checkered board or two golf balls with painted stripes, provides a consistent focal point and a visual indicator of RDM levels (see the photo-guide cited above.)

Prior to beginning monitoring each year, the monitor will clip and weigh vegetation in plots with varying biomass until their estimations are reasonably accurate. When clipping plots, all plant matter that can be easily removed from an imaginary column over a one-foot square frame is placed in a paper bag, being careful to exclude soil, rocks, and manure. The bag is placed in a hot, dry location to remove moisture, being periodically weighed in grams until no additional weight is lost. The final weight, minus the weight of the bag, multiplied by 96, will be approximately equivalent to pounds of RDM per acre. Tests have revealed that most monitors can hone their accuracy of estimations through this process in a relatively short time.

iii. Double Sampling Method

Various protocols are in use by agencies and land managers to quantify RDM within a pasture by ranking ocular estimates in small plots according to clipped and weighed “reference plots” of the same size– the Double Sampling method. Each protocol incorporates important assumptions about monitor ability and bias and statistical theory and analysis. It is beyond the scope of this document to discuss these assumptions or the details of various protocols. In addition, research continues to address the need for clarification and refinement of the protocols given the complexities of statistical issues, ecological systems, and grazing behavior.

An example double-sampling method, the Dry-Weight Rank method, is described in Appendix H. This protocol will serve as a starting point should MALT require this type of RDM sampling, but it should be reviewed and adapted in relation to current sampling theory and practice and the circumstances of the particular property before being used. Sources to consult on RDM sampling include the UC Cooperative Extension, the USDA Natural Resources

10-31-2007

Conservation Service, the US Bureau of Land Management, certified range managers, or other projects conducting RDM monitoring.

Additional guidelines not included in the model may be warranted so that realistic estimations of pasture RDM are achieved. For instance, sampled plots should not be located within the high-impact zone around water troughs or on livestock trails. These areas are unavoidable in almost any operation and would skew the RDM estimates for the pasture as a whole. Also, the topography of agricultural lands in Marin County is very complex and requires special attention. It is generally recommended that level and low-laying areas be sampled. Livestock tend to graze more heavily in low areas so sampling on slopes and ridges would overestimate RDM. However, on sites where animals are evenly distributed or overstocked, this grazing pattern may not occur and plots can be located on steeper slopes. Slope sampling might also be more appropriate on pastures supporting sheep and goats, which utilize slopes more readily than cows. It will be important to carefully consider all relevant pasture, operation, livestock behavior, and sampling factors in developing a double sampling protocol.

Photographs should be an integral part of RDM sampling. Each reference plot will be photographed and the general area of sampling will be documented in a ground photograph and on an aerial photograph.

D. Final Report, Assessment, and Landowner Communication

If the Easement Monitoring Report form used in the field is not legible, it is to be transcribed onto a new form. The monitor must sign the final report form. All photographs taken are labeled in archival quality ink with date, property, monitor signature, subject, and photograph number.

The completed report is reviewed by MALT's Executive Director. Any significant changes or new problems are described. To document that the Director was appraised of the report's findings, (s)he initials the report. If the monitor and the Director determine that a possible easement violation has occurred, MALT's Easement Violation Policy will be consulted.

If a potential violation has not occurred, it is important to send the landowner a post-monitoring letter to confirm that the visit took place and to inform them of general findings. The monitor drafts the letter, referring briefly to issues of concern and complimenting good practices as appropriate. *It is important, however, to avoid making conclusions that any violation has or has not occurred.* It will often not be constructive to mention every item documented in the report. Judgment is required to address conditions of particular concern or that can be reasonably impacted by changes in management, such as serious weed infestations or active gullies that are not being controlled by the landowner. Information sheets discussing specific issues and contact information for specialists should be included when available. The Executive Director reviews the letter before posting. A copy is provided to the Chair of the Stewardship Committee of the MALT Board of Directors and another is placed in the property correspondence file.

MALT Baseline Documentation and Monitoring Program Guidelines

10-31-2007

The completed monitoring report and field aerial with notes are placed in the property's monitoring file in MALT's office. Original photographs and digital media are filed in storage boxes in the office. Photo negatives are archived (refer to MALT records management policy).

**Marin Agricultural Land Trust
Baseline Documentation Procedures Checklist**

Site evaluation completed

Site tour generally done with owner as initial step in easement acquisition process.

Landowner given overview of baseline and monitoring procedures and information handouts as available.

Appraisal done, agreement to proceed reached

Pre-field preparation

1. Order aerial photo if needed.
2. Schedule baseline documentation site visit according to timeline needs and assuring initial owner presence.
3. Review easement provisions, appraisal and other available documents and transfer data to field observation form.
4. Prepare field aerial photo (scale 1"=500'), parcel map, topo map and soils map for field use. Draw boundaries for field verification.
 - Review soils information regarding possible productivity, erosion potential.
 - Plan field visit as much as possible – questions for owner, route, important photo locations.
5. Load field bag with required items:

clipboard	prepared Baseline Field Observations forms
pencil and pens	Baseline Photographic Record forms
camera, extra film	aerial, topo, parcel, and soils maps
dry-erase board/pen	plant identification aids
compass	

Field procedures

6. Tour with owner if not done during evaluation and they are willing. Whether there is a tour or not, spend a brief time talking with the owner to glean information asked for on baseline observation form.
7. Set up camera, prepare forms. Take first photograph of dry-erase or similar board with property name and date clearly legible. (To be done once at start of each role or day.)
8. Traverse property such that full coverage is ensured.
9. Describe improvements in body of baseline documentation form and indicate their location on the aerial and/or oblique photo.

MALT Baseline Documentation Procedures Checklist

10. Describe cultivation practices and natural plant communities and their general location. When not obvious already, the extent of plant communities and cultivated fields should be drawn onto the aerial photograph.
11. Describe presence and extent of noxious weeds and draw extent of significant colonies on the aerial photograph.
12. Describe existing practices that are, or could lead to, easement violations in body of baseline documentation form, including their location of use, and draw their location of use on the field aerial photo. *Everything recorded now need not be included in the final baseline, but will be useful for discussion with owner and as foundation for later monitoring.*
13. A sufficient number of photographs should be taken to document all structures and important improvements (i.e. reservoirs, but not every fence), the character of the property boundary, the landscape and plant communities, any special features, and apparent easement conflicts.
 - Anchor photograph location to a permanent or semi-permanent landmark (rock outcrops, fence corners, trees) that can be easily identified and recorded on the aerial.
 - Describe location on Baseline Photographic Record form clearly and concisely so that the point can be reasonably found again. Be more diligent where no landmarks are available.
 - Remember to mark each photograph location as accurately as possible on the aerial photograph.
14. Thank owner for their time and hospitality, same day if available or call the next. If additional visits will be required, also set up a mutually agreeable time, preferably within a week.
Inform them of likely timeframe for completion of baseline draft and next steps.

Post-visit and completion

15. Develop film to 4X6 prints and onto cd-rom.
16. Label photos according to MALT Records Management Policies.
17. Draft baseline document. Avoid conclusions regarding potential violations.
18. Executive Director reviews draft.
19. Send draft baseline on regular paper to owner for review, with signature pages on archival paper.
20. Bind at least three final copies of the baseline, with original signature pages.
21. Send one final copy to owner; place one on stewardship shelf in office.
22. One final copy (with “comb” binding) must be on archival quality paper. This copy, original, labeled prints, and negatives are to be stored off-site according to MALT Records Management Policy.



MINNESOTA LAND TRUST BASELINE PROPERTY REPORT GUIDELINES August 2007

OVERVIEW:

A baseline property report, also often referred to as a baseline documentation report, is a written and visual report that describes the physical and biological condition of a parcel of land subject to a conservation easement at the time the easement is granted. It is a snapshot of the property at a single point in time.

The Minnesota Land Trust prepares baseline property reports for all lands on which it holds a conservation easement. Each separate easement will have a corresponding baseline property report. The following guidelines apply to all Land Trust property reports.

PURPOSE:

The baseline property report serves several purposes:

IRS Requirements:

Donated conservation easements where the donor intends to take a tax deduction are subject to section 1.170A-14(g) (5) of the IRS regulations. Those regulations state that whenever a landowner reserves rights which, if exercised, might interfere with the conservation interests associated with the property, the donor must make available to the easement holder documentation sufficient to establish the condition of the property at the time of the gift. The regulations further state that such documentation should be 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.

Although only technically required for tax purposes when a landowner "reserves rights which if exercised might interfere with the conservation interests associated with the property," it is Land Trust practice to prepare a property report for all easements to meet other needs.

Reference on the Condition of the Land:

Whether or not a tax-deductible gift is involved, any property subject to a conservation easement needs to be monitored and evaluated over time to determine if there has been a violation of the terms of the easement. The property report provides the essential

Minnesota Land Trust Baseline Property Report Guidelines

baseline data required to establish the initial condition of the property and then provides the background against which to evaluate the property over time.

In the event of a controversy between the landowner and the Land Trust, the property report can be used as a basis for resolving the dispute.

Historical Record:

Easements are perpetual and inevitably there will be numerous landowners and monitors over the years. The property report provides a thorough and easily understood synopsis of the land and the easement that can be used to help educate these new monitors and landowners about the property's natural features and conservation values.

It also provides an historical record of details the transaction itself.

PROCESS:

The following outlines the overall process involved in completing a property report to accompany a conservation easement.

Timing:

The property report must document the condition of the property at the time the easement is completed. Therefore, a property report should be completed as close as possible to the time the easement is completed. Ideally the report would be completed and signed at the same time as the easement. However, in many instances it may take some time to collect the information needed and complete the report. This would typically be not later than 3 months from the time the easement is completed.

Much of the information needed to complete a property report will have been gathered earlier as a basis for determining whether to complete an easement. If not, the information on the property will be collected at the time the property report is put together.

NOTE: Some details of the transaction may not be available at the time the easement itself is completed (e.g. recording information, CE value, etc.) A property report should not be delayed simply to collect this information. It can easily be included as an addendum at a later time.

Copies:

At least two original, signed copies of each property report will be needed – one for the landowner and one for the Minnesota Land Trust. The Minnesota Land Trust copy will stay in the St. Paul office.

If more than one landowner is involved, additional copies of the property report should be prepared for each landowner. A copy of the original property report will also be provided to each subsequent landowner as an educational tool.

Minnesota Land Trust Baseline Property Report Guidelines

An additional copy of the property report will also be for use with the monitoring workbook. See information on monitoring workbooks below.

For remote access and archival purposes, a PDF copy of the property report will be made and kept on the Land Trust's computer network. The Land Trust staff member or volunteer who scans the property report into PDF format will enter their name and the date the property report was scanned on the property report cover page.

Certification Statement:

The property report must be accompanied by a statement signed by at least one landowner and by a representative of the Minnesota Land Trust attesting to the fact that the report accurately reflects the condition of the property at the time the easement was completed. See IRS regulations 1.170A-14(g) (5).

Generally, the conservation staff member responsible for the project will sign the certification on behalf of the Land Trust.

Maintaining Property Reports over Time:

The condition of property protected by an easement will change over time.

However, once completed, the property report cannot be changed. Pictures and maps should NOT be removed. Material should not be added.

Instead, the Land Trust will generally record and track the conditions of the property and any changes on monitoring reports and in the monitoring workbook on the property rather than in the property report. Monitoring workbooks are discussed below.

From time to time, an updated or new property report may be helpful in understanding changes to the property that have occurred over time. This may be the result of the exercise of reserved rights, any amendments to the easement or other factors that reflect major changes to the condition of the property.

Every five years, Land Trust staff will closely examine each property report to make sure that it is adequate and will work with landowners to update property reports as necessary to reflect any changes necessary. The amended or new property report should be clearly identified as such with a comment as to why the report was updated. Whenever possible the Minnesota Land Trust and the then current landowner should also certify this update.

The original property report remains in the files regardless of updates. The updated report becomes the basis for future monitoring.

Personnel:

A property report may be completed by staff or by a volunteer under staff supervision. The report should identify the person completing the report, when the property was visited and by whom, and when photographs were taken and by whom. Only a staff person can sign a property report certification on behalf of the Minnesota Land Trust, so

Minnesota Land Trust Baseline Property Report Guidelines

the conservation staff person responsible for the project must be familiar with the property and the property report.

CONTENT:

The property report should contain any and all information necessary to describe the physical and ecological condition of the property at the time the easement is completed with respect to the conservation values being protected by the easement and the restrictions contained in the easement.

The IRS regulations suggest that the property report might contain:

- The appropriate survey maps for the United States Geological survey, showing the property line and other contiguous or nearby protected areas.
- A map of the area drawn to scale showing all existing man-made improvements or incursions (such as roads, buildings, fences, or gravel pits), vegetation and identification of flora and fauna (including, for example, rare species locations, animal breeding and roosting areas, and migration routes), land use history (including present uses and recent past disturbances), and distinct natural features (such as large trees and aquatic areas).
- An aerial photograph of the property at an appropriate scale taken as close as possible to the date of the donation.
- On-site photographs taken appropriate locations on the property.
- If the terms of the easement contain restrictions with regard to a particular natural resource to be protected such as water quality or air quality, the condition of the resource at or near the time of the completion of the easement must be established.

The property report does not need to contain all of the information contained in the project file. The report is a summary—but a summary with sufficient detail to be understandable on its own.

Typical Minnesota Land Trust projects will include information as set out below.

COMPONENTS OF A PROPERTY REPORT:

All property reports prepared for the Minnesota Land Trust will generally be placed in three ring binders and will have the following introductory components:

- Cover Page
- Certification Statement
- Table of Contents

These are following with the following components, each separated by a divider:

- Overview
- Maps
- Photographs

The Minnesota Land Trust has a standard template for each component. Instructions on the details to be included in each component are set out in the annotated templates.

Additional components may be included if useful or helpful. These should be identified in the table of contents.

MONITORING WORKBOOK:

To assist with monitoring and tracking the history of a project over time, the Minnesota Land Trust will create a monitoring workbook for each parcel of land on which it holds a conservation easement.

Although the monitoring workbook will be based upon the property report, the monitoring workbook – unlike the property report – will be a dynamic document reflecting changes to the ownership and condition of the property. It will also contain information necessary to assist staff and volunteers in monitoring the property.

If useful in monitoring, a single monitoring workbook may cover more than one easement. For example, if a landowner has completed separate easements on adjacent parcels of land, property reports for each easement will be necessary BUT all parcels could be monitored together with a single monitoring plan and workbook.

Similarly, as properties are divided into separate ownerships, it may be appropriate to create separate monitoring workbooks even though the parcels were originally covered by a single property report.

NOTE: One monitoring report will always be prepared for each separate easement and for each separate landowner.

Monitoring workbooks will be updated as necessary. For example, contact information will be changed as land ownership changes. New information will be added each year as the property is monitored.

Monitoring workbooks will be kept by each regional conservation director and sent to monitors each year for use in the field inspection of the property.

All monitoring workbooks will be placed in three ring binders and will have the following introductory components:

- Table of Contents
- Summary of Monitoring Guidelines (inside front pocket)

Minnesota Land Trust Baseline Property Report Guidelines

These are followed by additional components, each separated by a divider:

- Contact Information
- Monitoring Plan and Monitoring Map
- Monitoring Reports
- Property Report (complete copy of the original or updated report)
- Conservation Easement (copy of the original recorded easement with any amendments)
- Approvals and Interpretations (if applicable)
- Management Plan (if applicable)
- Other Appendices or Attachments (as needed)

NOTE: To avoid confusion, dividers are included in the monitoring workbook only if that component exists.

The Minnesota Land Trust has a standard template for each component. Instructions on the details to be included in each component are set out in the annotated templates.

Multiple copies of the monitoring map may be included if appropriate. Monitoring reports for at least the last five years will be included along with any new photographs or maps. In some instances, a summary of the conservation easement may be included rather than the entire easement.

Any other information helpful in monitoring an easement may also be included. For example, updated workbooks will frequently have sections entitled:

- Updated Maps
- Updated photographs

If these sections are needed, dividers should be inserted into the monitoring workbook and the sections added to the table of contents.

Monitoring workbooks are kept in the appropriate regional office. They are distributed to monitors each year along with a new monitoring report form.

TEMPLATES:

There are standard templates for each of the basic components of a baseline property report and a monitoring workbook. There are also annotated versions of these templates with instructions more fully discussing the information to be included in each.

The templates and instructions are accessible on the Land Trust's public computer network.

A complete Baseline Property Report Guide has been created to include the templates, instructions and sample documents.

BASELINE DOCUMENTATION REPORT



Vermont Land Trust

ABC PROPERTY

Town, Vermont

VLT Project No. XXXXXX

Prepared by:
Vermont Land Trust
8 Bailey Ave
Montpelier, VT 05602
(802) 223-5234

Vermont Land Trust ■ Conservation Stewardship

The Conservation Stewardship Program is staffed by a director, stewardship agricultural manager, paralegal, special assistant, conservation and stewardship assistant, two stewardship foresters and conservation field assistants.

The responsibilities of the Conservation Stewardship Program include maintaining land related records, tracking changes in land ownership, monitoring conserved properties at least annually, photo-documenting land uses periodically, answering landowner questions, interpreting or approving permitted activities, and correcting violations through voluntary compliance or, if necessary, legal proceedings.

The Conservation Stewardship Program publishes a quarterly newsletter, *Stewards of the Land*, for all owners of property protected by conservation easements. Stewardship Program staff also support landowners as stewards of their land by offering information and advice on sound and sustainable uses of conserved properties.

This Report Contains the Following Information:

- Introduction and description of the current uses of the property
- Summary of Grantors' and Grantee's rights
- References
- Signature pages
- Conserved property location map
- USGS topographic map
- Orthophoto map
- Agricultural Soils Map (**delete for Forest Projects**)
- Conservation Easement map
- Photopoint map
- Photographic Documentation

Abc Property ♦ Town, Vermont

ABC PROPERTY Town, Vermont

Introduction

The purpose of the enclosed information is to describe the physical features and current land uses of the **Abc Property** on which the development rights, perpetual conservation easement and restrictions are being conveyed to the Vermont Land Trust, Inc. (VLT) and recorded in the ONE OR TWO TOWN Land Records.

This report is based, in part, on a documentation visit by CFA (Conservation Field Assistant) for the Vermont Land Trust on _____, 2008. _____ was/were present during the visit. CFA assembled the report and digital photographs; maps were prepared by CFA and VLT GIS staff.

Description and Current Use

owners - individual/organization, # ac of protected property in bold, show acreage in separate towns if applicable.

Add in anything you or the RD has gleaned from LO conversations about their motivations and intentions regarding the size or reasoning of the exclusion, or the omission of the camp and/or minor structure clause. This can be very helpful in understanding intent for future decision making, but it does have to be something meaningful, substantive and related to the explicit CE purposes.

other info such as how long owned the property, how many generations, etc.

type of property and current use

Physical features of the property : Site assessment info? ;% tillable, prime and ag soils; size /typed of woodland, etc. FMP? ;access; stonewalls; trails; water bodies: streams, ponds, wetlands, vernal pools etc..

boundary info;

Natural community types, other significant physical features

Summarize, free-standing trail easements, access easements, etc... and Schedule A covenants or restrictions

NOTE: If copying information from an application, make sure information is relevant at the time of conservation.

Purposes of the Grant

Summarize (in plain English) the primary and/or secondary purposes for conserving property located above attributes section in grant. For example: The primary purpose

VLT Baseline Documentation Report

Abc Property ♦ Town, Vermont

of the easement is to conserve productive agricultural and woodlands, wildlife habitats, and the recreational, natural resource and scenic values of the property. ***Always check the easement as the primary objective varies.***

The purposes of the Grant will be advanced by conserving the protected property because it possesses the following attributes:

Copy most recent easement attributes from the purposes section and paste here:

- SOILS
- ROAD FRONTAGE
- WILDLIFE HABITAT

Inventory of Existing Structures

The following structures are located on the protected property:

The following structures are located on the protected property within the ± __ acre _____ complex:

- Farmhouse (Photo #)
- Etc...

The following structures are located on the protected property outside the _____ complex:

- Hay shed (Photo #)

If there are no structures use the following sentence:

There are no structures on the protected property.

Excluded Parcels

The _____ have been excluded from the terms of the easement. Summarize reason(s) for each exclusion... for example: existing or future residence, retirement home, future children's use, farm stand, etc.... **It would be very helpful to say something here about anticipated future development or subdivision and sale or further housing, etc... if you know that.)** If you use this language from the LSR... unrestricted use of this area and its future development, subdivision and separate conveyance, **add this sentence: By signing this Report, it is acknowledged that VLT is not obligated to increase the size or change the configuration of this(these) excluded parcel(s) in order to comply with zoning, subdivision or other governmental regulation.**

If there are no exclusions in Schedule A of the easement use the following sentence:

There are no excluded parcels.

Camp or Minor Structures

Abc Property ♦ Town, Vermont

The right to construct a seasonal camp and/or minor structures was not included in the easement because... Summarize reason(s) to omit cabin and/or minor structure clause from easement... for example: bear or deer habitat, not wanting future structures, etc...

Delete this section if not applicable

Monitoring Access

The landowner has given VLT an easement for a right-of-way from _____ across the protected property for purposes of monitoring and enforcement.

Delete this section if not applicable

Natural Resources

The VLT Site Assessment process has identified the following: rare species and/or significant natural communities; wetlands; deer wintering areas. SELECT WHAT APPLIES

If there is no natural resources info use the following:

The VLT Site Assessment process has not identified any rare species, significant natural communities, wetlands, or deer wintering areas.

Historic Resources

Delete this section if not applicable-- Copy from BDR Special clauses and tweak as needed to mirror easement clause***

Public Access

Delete this section if not applicable-- Copy from BDR Special clauses and tweak as needed to mirror easement clause***

Special Treatment Area

Delete this section if not applicable-- Copy from BDR Special clauses and tweak as needed to mirror easement clause***

Archeological Resource Protection

Delete this section if not applicable-- Copy from BDR Special clauses and tweak as needed to mirror easement clause***

Summary of Grantors¹ Rights and Restrictions

Conservation rights and restrictions allow the protected property to be used for agricultural, forestry, education, non-commercial recreation, and open space

¹ Grantors are the landowners, **Grantor A and Grantor B**, their heirs, executors, administrators, successors, and assigns.

purposes. The following is a summary of the restricted and permitted uses included in the grant (referred to as the easement throughout this document).

RESTRICTED USES OF THE PROPERTY

The following are limitations on the landowner's use of the conserved property:

1. **General:** The protected property may be used for agricultural, forestry, educational, non-commercial recreational, and open space purposes only. Unless specified in the easement, no residential, commercial, industrial, or mining activities are permitted and no building, structure or appurtenant facility or improvement may be constructed, created, installed, erected, or moved onto the protected property.
2. **Rights of Way and Easements:** Unless specifically permitted in the easement or unless **written approval for new easements is obtained from VLT**, the easement prohibits rights of way and access easements including driveways, roads, and utility lines. Existing rights of way and easements are unaffected.
3. **Signs:** Signs are generally prohibited. However, exceptions include property identification signs, boundary markers, directional signs, signs posting the property against trespass, memorial plaques, and temporary signs indicating the property is for sale or lease. Signs informing the public that farm or timber products are for sale, or are being grown, political or religious signs, and signs informing the public of any rural enterprise are also permitted. VLT, with the permission of the landowner, may erect signs indicating that the property has been conserved by VLT.
4. **Trash:** The storage of trash, human waste, or unsightly material on the property is prohibited unless VLT approves such storage in advance. The storing and spreading of agricultural inputs including, but not limited to, manure, lime, and other fertilizer and pesticides for agricultural purposes is permitted without such approval. No permission is required for the temporary storage of trash which is generated on the protected property.
5. **Excavation:** The easement prohibits filling, excavation, removal of topsoil, sand, gravel, rocks, or minerals, or any change to topography unless the change is necessary to carry out the uses otherwise permitted by the conservation easement. Because one purpose of the easement is to encourage agricultural uses, tiling and drainage improvement are permitted. Surface mining is expressly prohibited.
6. **Subdivision:** Subdivision of the protected property is prohibited unless the landowner first secures **VLT's written approval** which VLT may give or withhold in its sole discretion. Since the intent of the easement is to keep the protected property together as a single unit, except when a right to subdivide is specifically permitted in the easement, approval to subdivide is rarely granted. Even when VLT does approve a subdivision, all the land will usually remain subject to the easement.
7. **General Clause:** The easement includes a general clause, which ensures that no

Abc Property ♦ Town, Vermont

uses will be made of the protected property that are inconsistent with the purposes of the easement. Proposed uses not addressed in the easement, or changes in existing uses, **may be approved by VLT** if they are consistent with the purposes of the easement.

PERMITTED USES OF THE PROPERTY

The following are permitted activities on and uses of the conserved property:

1. **Agriculture:** The landowner may establish, re-establish, maintain, and use fields, orchards, and pastures in accordance with generally accepted agricultural practices and sound husbandry principles. **Written approval** from VLT is needed to clearcut forestland to establish fields, orchards, and pastures. Construction and maintenance of gravel or other permeable surfaced farm roads and fences are also permitted. If a question arises concerning what are "sound agricultural and husbandry practices," VLT will seek the advice of professionals in those fields such as the Natural Resources Conservation Service, UVM Extension System, or the Vermont Agency of Agriculture.
2. **Maple Sugaring and Firewood Cutting:** The landowner may conduct maple sugaring operations and harvest firewood for heating residences and other buildings on the property or on excluded parcels. ****Check for every easement****
3. **Forest Management:** Should the landowner wish to conduct a timber harvest, VLT requires the development of a Forest Management Plan to promote the long-term health and sustainability of forestland. A Forest Management Plan must be **submitted to VLT for written approval** and should be **updated and re-approved every 10 years**. Sustainable forestry practices shall be used to reduce erosion and maintain water quality, while allowing for the production of high quality sawlogs and maple sap. VLT requires 15 days notice prior to harvest, meaning any commercial cut greater than 8,000 board feet, 25 cords, or 10 acres of thinning, which shall be in accordance with the Acceptable Management Practices (AMPs) set forth by the Vermont Department of Forests, Parks, and Recreation. The landowner may harvest timber and construct and maintain logging roads in accordance with the Forest Management Plan. A heavy cut may be permitted if such a treatment is consistent with the forestry and/or agricultural goals of the Project.
4. **Farm Buildings:** The landowner may construct and maintain barns, sugar houses, and similar structures on the protected property (and associated drives and utilities) provided they are used for agricultural or forestry purposes (and located outside of the Meander Belt of the ___ River/Creek/Brook as depicted on the ___ Conservation Plan – **delete if no stream/meander belt**). The landowner **must obtain prior written approval from VLT**, and permission may be granted if the location of new structures is consistent with the purposes of the easement. **VLT may require that the structures be located within any existing complex or designate a complex within which the structures will be located.**
5. **Water Resources:** The landowner may improve and establish sources, courses, and bodies of water for uses permitted under the easement. The easement

requires that the natural course of existing surface water drainage and runoff not be unnecessarily disturbed, except where required to improve the drainage of agricultural lands. **Prior written notice** is required for stream bank stabilization projects or the construction of structures in or along streams or rivers. The construction of ponds and reservoirs may be permitted with the **prior written approval of VLT**. The landowner may also need approval of federal, state, or local agencies.

6. **Trails:** The landowner may clear, construct, and maintain trails for non-motorized, non-commercial recreational activities. Non-commercial snowmobiling is left to the discretion of the landowner.
7. **Rural Enterprises:** The landowner may conduct business activities on the protected property and within buildings located in any designated complex as long as the activity is consistent with the easement's purposes. The landowner may build a new non-residential structure within any designated complex for this business activity. **Prior written approval of VLT** is required before beginning any new business activity or constructing any new structure.
8. **All Terrain Vehicles:** are allowed on the property for agricultural and forestry uses. In addition, the landowner, their families, and their employees may use all terrain vehicles for non-commercial recreational purposes.
9. **Wastewater and Water Systems:** The easement allows for the construction, maintenance, repair, replacement, relocation, improvement, and use of a wastewater system and potable water supply system on the protected property for the single-family residence located on land excluded from the protected property, provided a location in the exclusion does not exist. The location of the system must be consistent with the purposes of the easement and **requires prior written approval of VLT**. The system shall be designed by a qualified designer and must meet state and local ordinances, statutes and regulations. Future replacement or improvements to the system also **requires prior written approval of VLT**. *[Remember: This provision varies from easement to easement.]*
10. **Existing? Camp:** The landowner has the right to construct (delete if existing), maintain, repair, and replace one camp being no more than fifteen feet high and not to exceed 800 square feet in area, including decks and porches. The camp must be used only for non-commercial, periodic camping, hunting, and recreational purposes and not for permanent occupancy. The camp must not have commercial utility services or any improved access road. The landowner must **notify VLT in writing**, prior to commencing construction on (delete if existing), or the relocation or replacement of the camp so that **VLT may review and approve** its location and dimensions. Approval will not be withheld provided that the camp is located and is of size consistent with this Permitted Uses section and the Purposes section of the easement.
11. **Minor structures:** The easement allows for the construction, repair, maintenance, and use of a minimal number of minor structures (lean-tos, gazebos, deer stands, etc.). Any minor structure shall not have access roads, utility service or facilities, waste disposal systems, or plumbing. The minor structures are not to be used for year-round occupancy or commercial use, and should not exceed 300 square

Abc Property ♦ Town, Vermont

feet of floor space and 15 feet in height. **Prior written approval of VLT** is required before construction of a minor structure begins.

12. **Additional Clauses:** Add any pertinent special clauses here. See special clauses form for specific plain BDR language, instead of copying and pasting from easement. Tweak as needed.

This is a summary of the actual legal rights. For a complete description of these rights and restrictions, refer to the Grant of Development Rights and Conservation Restrictions.

Summary of Grantee's ² Rights

The Grantee's primary intent is to conserve and protect productive agricultural and forestry uses, and secondarily to encourage sustainable management of soil resources. Other goals in conserving this property include promoting non-commercial recreational opportunities and activities and other natural resource and scenic values of the protected property for present and future generations. Aside from holding the development rights on the protected property, the Grantee has the right to periodically monitor the property and enforce the Conservation Restrictions.

This is not a description of the actual legal rights. For a complete description of these rights, refer to the Grant of Development Rights and Conservation Restrictions.

References ***delete or add as needed**

- Grant of Development Rights and Conservation Restrictions, _____ Property, YEAR
- Freeman Foundation Application, _____ Property, YEAR
- Forest Management Plan of Abc Property, name of Forester and date completed.
- Vermont Land Trust Site Assessment Process, including data from:
 - Vermont Nongame and Natural Heritage Program, Vermont Department of Fish and Wildlife, 2003. The Biological Land Conservation Data System, Rare Species and Significant Natural Community Digital Data Set, Waterbury, Vermont;
 - U.S. Fish & Wildlife Service, 1983. National Wetlands Inventory data for Vermont;
 - Vermont Agency of Natural Resources, 1997. Deer Wintering Areas in Vermont.
- Appraisal of ABC Property, Name of Appraiser, Date of Appraisal.

² Grantee refers to the **Vermont Land Trust, Inc.**, its successors and assigns.

VLT Baseline Documentation Report

Abc Property ♦ Town, Vermont

We, **GRANTOR A** and **GRANTOR B**, have signed this Baseline Documentation Report with the understanding and agreement that this Report will be used for, but not limited to, monitoring the property depicted and described in this Report for compliance with the Grant of Development Rights and Conservation Restrictions signed by us. We have read this Report and understand it. We agree that this Report, including the maps and photographs, accurately describes and depicts the physical features, relevant site conditions, and current structures and land uses on our property conserved by the Grant. We affirm that there are no activities ongoing on our property that are inconsistent with the Grant.

Witness to both

GRANTOR A

GRANTOR B

Date

STATE OF VERMONT
_____**COUNTY, ss**

At _____, this ____ day of _____, 2008, **GRANTOR A** and **GRANTOR B** personally appeared and they acknowledged this instrument, by them sealed and subscribed, to be their free act and deed.

Before me, _____
Notary Public
My Commission Expires: 2/10/2011

Abc Property ♦ Town, Vermont

I, **CFA**, have signed and prepared this Baseline Documentation Report with the understanding and agreement that this Report will be used for, but not limited to, monitoring the property depicted and described in this Report for compliance with the Grant of Development Rights and Conservation Restrictions, about to be executed. I affirm that I visited this property personally and that this Report including the maps and photographs accurately describes and depicts the physical features, relevant site conditions, and current structures and land uses on the property conserved by the Grant.

VERMONT LAND TRUST, INC.

Witness

By _____
CFA

Date

STATE OF VERMONT
_____ **COUNTY, ss**

At _____, this ___ day of _____, 2008, **CFA**, Duly Authorized Agent of the **VERMONT LAND TRUST, INC.**, personally appeared and he/she acknowledged this instrument, by him/her sealed and subscribed, to be his/her free act and deed and to be the free act and deed of the **VERMONT LAND TRUST, INC.**

Before me, _____
Notary Public
My Commission Expires: 2/10/2011

VLT Baseline Documentation Report Checklists

Vermont Land Trust – Documentation Check List

PRE-FIELD

Background Research

- Determine after consultation with Field Team and mappers if out of sequence field visit is needed to confirm acreage numbers (for VHCB applications in particular). This should be a rare occurrence.
- Review most recent copy of conservation easement: check purposes section for attributes, special clauses for complexes, FLH, camps, public access, STA (i.e. anything that can be documented during field visit)
- Talk with paralegals about any special issues
- Check in with Field Team on any special issues or more information. **If it is a Community Project requiring an Interim Management Plan (IMP), schedule the documentation visit with the Regional Director. RD is responsible for getting the IMP (or draft) and having it reviewed by Stewardship staff and Co-holders.
- Review VHCB or Freeman grant application (if applicable) in financial folder on \\vlmserver\vt projects
- Review VHCB special conditions (if applicable)- available from FT staff or in FT folder on vltmserver/vlt projects.
- Review the LSR and site assessment in the legal folder of VLT projects for relevant property information and landowner contact information.
- Review copy of Forest Management Plan (FMP) from Field Team (if available) or request copy from County Forester
- Call property owner to arrange field visit
- Check with Town Clerk's office about office hours (if field visit allows time to check for abutter surveys)

Prepare Pre-field Maps

- Touch base with mapper about property boundaries (you may need to look through legal files for boundary info, surveys, maps, etc)
- Once preliminary property shapefile (property.shp) has been created by GIS staff, create the following draft field maps using templates: ortho, topo (with wetlands, deer yards, rare communities and species), soils. Save maps to Stewardship project folder.
- Make copies of property survey (if available) or any abutter surveys (if property survey not available) to bring into the field.
- If using Trimble Geo XT GPS unit, create project folder in My computer\Disk\Data, and copy property.shp from Stewardship project folder, orthos from \\Poro\Poro_GIS\comporthos (find ortho numbers by using hot link on ortho map), and blank gpspoints from \\Poro\LandInfo\GIS.

FIELD VISIT

- Bring along on field visit:
 - GPS unit (antenna, extra batteries)
 - Measuring wheel (if needed)
 - Flagging and sharpie
 - Digital camera and extra batteries
 - Lunch, water
 - Appropriate clothing, rubber boots, etc.
 - Copies of pre-field maps, FMP, and surveys
 - Compass
 - Cell phone

last revised March 2008

Vermont Land Trust – Documentation Check List

Snowshoes (if needed)

- Visit Town office to check for abutter surveys (if necessary and/or if time allows)
- Meet with property owner (if possible) to go over property boundaries, complexes, structures, exclusions, construction plans, etc. Give them a card and explain future stewardship visits and where/who to call with questions (they're used to working with legal and FT).
- For Community Projects: The Project Director will introduce the property contact and all will review the IMP. Explain CFA's role and that of Stewardship.
- For the **Project Tracking DB**, ask landowner (if not available from FT) about the following:
 - Is there a Forest Management Plan for the property;
 - Is the property enrolled in the Current Use program (agricultural and/or forest);
 - If an ag project, what are the primary and secondary agricultural types, or other type;
 - Is the property certified organic.
- Walk property boundaries, GPS identifiable boundary markers (survey pins, fence lines, stone walls) and annotate pre-field map
- Identify and document any encroachments of buildings and/or driveways over property boundaries
- Take photos (see documentation photo checklist), mark photopoints on pre-field map and/or GPS photopoints

At a minimum take photos of the purposes for conservation outlined in the Grant. Photograph all structures on protected property, complexes, ponds, FLH sites, dumps, mineral extraction sites, public access locations, buffer easement locations, exclusion/easement boundary, STAs, road frontage
If there is an historic easement for structures, make sure to include photos for each side that is covered by easement

POST-FIELD

- Copy blank gpspoints from GPS unit to Stewardship project folder
- Create post-field ortho map including gps points, annotations (ID survey pins, stone walls, fences)- note changes in property boundary from pre-field map, and if necessary make corrections (or notify GIS staff to amend property shapefile), export .pdf copy of map to poro.
- Create post-field report (in \\Vltmserver\users\LEGAL\BDR templates) and email with .pdf post-field map to paralegal, mappers, project counsel, field team (or refer to location of map on Poro and report in VLT Projects/Legal). Flag any issues and bring to next CCC check-in.
- Open Project Tracking DB (in \\Vltmserver\Data\Prospecting DB), go to project and open CFA tab and enter information gathered during field visit.
- Download photos to \\Poro\imagelibrary\ProjectPhotos or if this takes too long, download to local computer and then transfer to \\Poro\imagelibrary\ProjectPhotos. Re-label photos ProjectNamepp01, Project Name, pp02, ProjectNamepp03 . . .
- Copy photos to BDR photo template (in \\Vltmserver\users\LEGAL\BDR templates), indicate direction and short description of each photo, label header, compress photos to reduce size of document, and save to \\Poro\imagelibrary\ProjectPhotos

To compress photos, double click on one of the photos in the template, hit the **Compress** button in lower left hand corner. In Compress Pictures window, select **All Pictures in Document**. Set resolution to **Print-200 dpi**, hit OK, OK again and save to poro.

last revised March 2008

VLT Baseline Documentation Report Checklists

Vermont Land Trust – Documentation Check List

- Create photopoint map from template and save to Stewardship project folder.

BDR Assembly Guidelines:

Order of Documents:

BDR Text
Locator Map
Topographic map
Small ortho map
Soils map (if applicable)
CE map
Photopoint map
Photos in numeric order.

VLT Baseline Documentation Report Checklists

BDR Final Review Checklist

- Correct BDR form used?
- Is the name of the easement correct?
- Do sections correspond to easement? (Maple sugaring and firewood cutting and the wastewater clause are often inconsistent.)
- Check attributes
- Acreage correct and highlighted?
- ROFR or Ag Option?
- Are special provisions in Schedule A included or free-standing easements mentioned?
- Numbering, font and page numbers; eliminate excessive spacing and keep text with headers.
- VHCB # and VLT # correct?
- Town(s) correct?
- Header correct?
- Footer correct? (individuals or entity)
- Signature page correct? – individual or entity – be sure to check the notary clause – mirror what the easement has.
- Have you included a justification for any excluded parcels and/or lack of camp or minor structures clause?
- If there are buildings in a complex, have you also described buildings outside the complex or stated that there are no buildings outside the complex?
- Are all clauses written in plain English and not cut and pasted from the easement?**
- Are pictures of dumps, encroachments, trailers, etc... mentioned in the BDR and have they been followed up on?
- Refer the text, maps and photos to Suzanne for review before shipping to the paralegals, RD, mappers and legal counsel

For sections you find you have to cut and paste to save time:

- Are references to "Grant" changed to "easement" except where the title of the Grant is cited?
 - Are references to "Grantor" changed to "landowner"?
 - Are references to "this Section" referring to a section of the easement deleted?
- ***BDR special clauses should be in the Special Clauses document. If they are not, notify the keeper of the BDR special clauses. If time does not allow, tweak the CE clause to use plain English, but always clear it with paralegal or legal counsel prior to using***

BDR MAP PRODUCTION GUIDELINES:

LOCATOR MAP:

- Scale: 1: 100,000.
- Use a bright red color for protected property.
- Set property transparency to 20%
- Drag the property shapefile down below the 100' Contour Layer in the Table of Contents for proper draw order.
- Query out any excluded parcels.
- In the Layout View, add the project name to the existing label, and make sure the "tail" of the label points to the property.
- Double click on the <insert directions here> text and type in thorough directions to the property.

TOPOGRAPHICAL MAP

- Scale 1:24,000
- Give the property a red outline with a width of 1.5.
- Drag the property shapefile to the top of the Table of Contents for property draw order.
- Turn off the topindex layer.
- Query out any excluded parcels
- Add quad name(s) and date(s)

ORTHO MAP

- Generally set scale to 1:5000 if possible.
- Use 2003 FSA imagery, unless 2004 FSA imagery captures recent changes.
- If FSA imagery has significant cloud cover, use the black & white orthos.
- Give the property a yellow outline with a width of 1.25 and assign fill patterns to exclusions, complexes, STAs, zones, etc.
- Update legend to incorporate exclusions, complexes, STAs, zones, etc. if present.
- Add roads layer if desired.

SOIL MAP

- Scale: 1:12000
- Query out excluded parcels.
- Make sure that property shapefile is on top of soil layer in the Table of Contents to ensure proper draw order.
- Eliminate Soil map in BDR, and remove it from the table of contents, on forested parcels or on parcels without agriculturally rated soils.

PHOTOPOINT MAP

- Scale-whatever works best for viewing photo points.
- Generally use B&W ortho layer unless significant changes have occurred that make using a FSA map more relevant.
- Give the property a yellow outline with a width of 1.25.
- Drag the property shapefile below the photopoints in the Table of Contents to ensure proper draw order.

VLT Baseline Documentation Report Checklists

- Query out exclusions.
- Use inset map for areas with too many photopoints to view at chosen map scale.
 - To create an inset map, first do all the above steps, then while in the layout view, right click anywhere on the map, and select copy.
 - Under the Edit menu select Paste.
 - Resize the new inset map frame so that it is big enough to show the area of detail, but small enough to fit somewhere on the map. Zoom in the area of detail.
 - Round the scale of this new inset map frame to the nearest 500 or 1000.
 - Under the Insert menu, select Scale Text, then select the Absolute Scale style.
 - Place the new scale on the new inset map frame, change the font color and size to be similar to the scale on the main map frame.

In all cases, make sure margins are visible in map layout and that the map fits neatly within the margins.

BDR Photo Checklist

What to photograph during a documentation visit:

- All structures in or out of the farmstead complex/ FLH complex/barn complex, Future FLH sites etc. Multiple angles always helpful.
- Complex boundaries
- Extraction sites
- For buffer easements – photograph streambanks
- Special treatment areas
- Anything listed in the purposes section (road frontage, rivers, wetlands)
- Dumps
- Property boundary corners, lines
- ROW, future ROW
- Development zones, or any type of zone
- Access areas (especially for wooded parcels)
- Trails
- VAST trails
- Ponds
- Log landings
- Any large clearings in completely forested parcels
- Encroachments
- Manure pits
- Bunker silos

Additional Resources

The Conservation Easement Handbook, by Elizabeth Byers and Karen Marchetti Ponte (The Trust for Public Land and the Land Trust Alliance, 2005).

The Conservation Easement Stewardship Guide, by Brenda Lind (Land Trust Alliance and the Trust for New Hampshire Lands, 1991).

Erler's LandSteward is a browser-interfaced database program that allows land conservation organizations to better manage the complex information needed to ensure effective stewardship and permanent protection of conserved land. Available from the Land Trust Alliance at www.lta.org.

Natural Resources Conservation Service Soil Survey soils maps at <http://soils.usda.gov/survey>.

US Geological Survey topographical maps at www.usgs.gov.

Check Your Progress

Before finishing this chapter, check that you are able to:

- Explain the legal importance, value and uses of a baseline documentation report and who should prepare one
- Describe, in a general way, the baseline documentation required to enable a landowner to claim a federal income or estate tax deduction for the donation of a conservation easement
- Explain to a landowner why he or she must sign the baseline documentation report
- Explain the importance of creating the baseline documentation report before the closing of the conservation easement
- Draft a baseline documentation report policy or procedure for the organization that includes:
 - Timelines for the completion of the baseline documentation report
 - The process for ensuring landowner review of the document before it is finalized
 - Required, and optional, contents of the report
 - Qualifications of baseline documentation report preparers
 - Required signatories to the baseline documentation report
- Create, or work with a qualified professional to create, a baseline documentation report that:
 - Includes a baseline map
 - Documents the condition of the conservation values identified in the easement
 - Documents other important natural and cultural features described in the easement, as necessary to monitor and enforce the easement
 - Documents all man-made structures and improvements
 - Has background information on the property, as necessary to monitor and enforce the easement
 - Describes current status of reserved rights and prohibited uses
 - References or summarizes the easement, and contains language that the baseline subordinates to the easement
 - Includes photos (either digital or film) that document the conservation values and other features necessary to monitor and enforce the easement and have appropriate identifying information and signatures

- Create, or work with a qualified professional to create, a baseline map that:
 - Clearly shows property boundaries
 - Clearly shows any special use areas and/or protection zones
 - Clearly shows any building envelopes
 - Indicates any reserved rights
 - Indicates photo point locations
 - Has a north arrow
 - Shows extent, location and, where possible, current condition of all roads, structures and other man-made improvements
 - Has a signature block for the preparer
 - Has a date
- Develop a strategy for completing baseline documentation reports for conservation easements currently held that do not have complete baseline documentation reports
- Understand why and how to update baseline documentation reports to reflect natural and man-made changes upon the protected property

Action Plan

As a result of studying the material in this course, there are many things that you will want to share with the rest of your land trust. The following list of next steps and the To Do Sheet will help you plan your strategy.

Next Steps

We recommend that you undertake the next steps to apply what you've learned from this training to improve the operation of your land trust.

Consider creating a template easement at your organization, or at the least, a conservation easement fact sheet that can be distributed to landowners. A template easement will save your organization time and money and provide many stewardship benefits.

Working through the Putting It into Practice exercise of chapter 2 will help your organization understand what types of restrictions and reserved rights it has the capacity to monitor and defend in perpetuity.

Formalize a procedure for creating a project plan that translates into an enforceable conservation easement.

Using the Sample Documents from chapter 2, create a procedure or policy for gathering and analyzing the information necessary to produce a conservation easement that meets your land trust's mission and goals and is enforceable.

Create a baseline documentation report policy or procedure for how your land trust prepares or reviews baselines for the easements it accepts.

Create a written baseline documentation report template form or checklist, or consider re-visiting and refining your existing form based upon the materials contained in chapter 3.

See the baseline documentation report checklist in chapter 3 for a sample to use to create your own baseline form.

To Do Sheet

Use this sheet to record any “to dos” that occur to you during the course. Be specific with the action item and date by which you hope to accomplish this task.

Chapter One

To Do	Who Is Involved	By When

Chapter Two

To Do	Who Is Involved	By When

Chapter Three

To Do	Who Is Involved	By When

Glossary

Affirmative rights or obligations: (1) Easement provisions that require the property owner to maintain the resources protected by the easement (e.g., mow a field to keep open a view) or that require the holder to maintain if the owner does not; (2) rights granted to the easement holder to perform physical acts on the property (e.g., build a trail or access the property for monitoring).

Bargain sale: The sale of an easement to a land trust for an amount less than the appraised fair market value.

Baseline documentation report: A record of the conservation values identified in the easement and the relevant conditions of the property used to monitor and enforce the easement. Contains maps, photographs and text, and is signed by the landowner and land trust at or before closing.

Biological baseline inventory: A thorough scientific evaluation and listing of the flora, fauna and sometimes other natural and geographic features of a piece of land.

Conservation easement: A legal agreement between a landowner and a qualified organization that restricts future activities on the land to protect its conservation values. A conservation easement may be known as a conservation servitude or conservation restriction, depending on state law.

Conservation purposes: The purposes a conservation easement must serve to be a tax-deductible donation, as defined by Internal Revenue Code (IRC) §170(h) and the associated Treasury Regulations.

Deed: A legal document by which ownership to land and interests in land are transferred.

Due diligence: The steps a party contemplating the acquisition of an interest in real property takes to understand matters of record that may affect a piece of property, or other matters that may affect the decision to acquire the real property interest. Due diligence is a broad term and refers to the examination of the title to the property and any exceptions to title (such as easements granting rights to third parties to use the land or the lack of access to a public road), the examination of the

land for hazardous materials, research into the availability of utilities, research into the nature of water or mineral rights ownership, research into land use or other laws that may affect the use of the property, etc.

Easement appurtenant: An easement that attaches to the ownership of one parcel and allows the owner the use of the neighbor's land (such as a driveway easement that provides access to the easement holder's land).

Easement in gross: An easement that is not created for the benefit of any *land* owned by the owner of the easement but that attaches *personally to the easement owner*. For example, a right granted by Jane Smith to John Doe to use a portion of her property for the rest of his life would be an easement in gross.

Estoppel certificate: A statement prepared by the land trust for a landowner who is selling easement property or securing a loan with the easement property as collateral. The certificate reviews the condition of the property as of the land trust's most recent inspection. Such a certificate may also be called a "statement of compliance" or "compliance certificate."

Habendum clause: "To have and to hold . . ." (*habendum et tenendum*, in Latin) is traditional, though not universally required, language for concluding a grant of the easement, defining the extent of ownership the grantor is conveying.

Indenture: Similar to a contract, a legal agreement affecting land and its uses.

Local comprehensive or master plan: A land use plan adopted by a community in order to help guide growth and development to protect important physical, natural or human resources.

Real property: The interests, benefits and rights inherent in real estate ownership.

Remoteness letter: In cases where all the mineral rights are not owned by the landowner, the IRS requires that the probability of extraction or removal of minerals by any surface mining method is "so remote as to be negligible." The mineral report or "remoteness letter," prepared by a qualified geologist, documents this remoteness test.

Reserved rights: All of the rights to use a protected property that the landowner retains after conveying a conservation easement on his or her land.

Stewardship: Those steps necessary to preserve a conservation easement in perpetuity, including the creation of baseline documentation, regular monitoring, landowner relations including successor generation landowners, addressing amendments and enforcing easements.

Subordination: A consent obtained from the lender when a conservation easement is acquired on a mortgaged property. The consent ensures that the lender cannot extinguish the easement in the event of foreclosure.

Successor generation landowner: An owner of protected land who acquires protected property and was not the original grantor of the conservation easement on the land.

Index

A

access, public 28, 30, 32, 101–2, 120, 186, 246
acknowledgment 140, 197, 222, 227, 244, 245
aerial photographs 99, 141, 201, 202, 222
affirmative obligations 128, 230
affirmative rights 22, 23, 101, 122, 128, 129, 153, 319
amendments 43, 119, 127, 132, 136, 193, 224, 321
attorney's role 18, 21, 24–5, 40–3, 46–50, 59, 61–4,
84, 87, 121–2, 140, 182

B

backup holders 130
bargain sale 26, 55, 122, 182, 207, 226, 319
baseline documentation 11–3, 15, 33, 36, 44, 49, 93,
116, 124, 132, 141–2, 207–33, 237–41, 247–54,
315–7, 321
biological baseline inventory 212, 319
boilerplate provisions 42–3, 48, 90, 109, 131, 137
building envelopes 58, 102, 118, 141, 150, 178, 188,
200, 209, 224, 252, 316

C

charitable gift laws 33, 37
charitable trusts 25, 136
co-holding 134, 135
compliance certificate 138, 320
conservation easement appurtenant 22, 320
conservation easement enabling statute 23, 24, 65,
110, 112, 115, 128, 131, 182
conservation easement in gross 17, 22, 84, 320
conservation purposes 19, 26–30, 32–33, 36, 38–40, 52,
60, 65, 90, 106, 115–120, 131, 133, 178, 212, 222,
246, 248–251, 319
conservation values 12, 15, 17, 21, 28, 34–6, 44–7,
51–2, 54, 59–60, 62–3, 66, 87–92, 101–9, 112,
114–8, 120–9, 133, 150, 152–3, 178, 182, 187–8,
190, 193, 204, 207–9, 212, 214–5, 217, 220–2,
226–7, 236–7, 239, 243, 245, 251, 315, 319
consideration 98, 111, 112, 114, 182, 242

D

deed 24–5, 34, 110, 178, 319
de minimis 21, 39, 122
development zone 118–9
discretionary consent 120–1
due diligence 34, 48, 66, 152, 319

E

easement map 106, 111, 118, 124, 141, 178, 188, 200,
211, 223, 238, 251–3, 258–62
easement template 15, 17, 19, 20, 39, 41–2, 46, 48, 54,
65, 84, 155

enabling statutes, state 11, 22–4
enforcement 54, 88, 110, 122, 129, 135, 137, 153, 193,
204, 207, 212, 226, 229, 245, 251
environmental assessment 48–9, 109, 155
estate tax 18–9, 21, 26, 38, 39, 65, 84, 90, 122, 208, 315
estoppel certificate 138, 320
exclusion zones 118, 141, 224
exhibit 107, 110, 111, 132, 141–2, 178, 199, 220–1,
223, 225, 228, 248, 250

F

federal law 18, 26, 40, 43, 47, 62, 64–5, 110, 116, 122,
128, 131, 134, 178, 210, 216, 252

G

Geographic Information Systems (GIS) 97, 201, 203,
223–4, 252–3, 261–2
Global Positioning System (GPS) 99, 124, 222, 242
Great Northern Nekoosa Corp v. U.S. 37

H

habendum 140, 197, 320
hazardous materials 109, 129, 152, 155, 201, 320
historic preservation 29, 126, 203, 214

I

income tax 18, 26, 37, 39, 58, 84
indenture 24, 110, 178, 320
Internal Revenue Code (IRC) 19–24, 26, 27, 32–3, 37,
38–40, 90, 109, 112, 115, 120, 122, 178, 182, 187,
201, 207, 212, 246, 248, 250–1, 319

L

Land Trust Alliance 13–4, 20, 23–4, 27, 29, 33, 44–5,
55, 62, 83, 90–1, 96, 125, 137, 154, 193, 201, 210–1,
213, 229, 314
Land Trust Standards and Practices 12–4, 17, 23, 41, 47,
65, 87–8, 132, 136, 207, 220, 239
legal description, property 35, 48, 88, 111, 116, 118,
141, 178, 199, 204, 226
liability 25, 38, 102, 129, 131, 195, 201
liens 33, 34–5, 90, 107, 133, 142, 152
limited development 102, 106, 125–7, 235
local comprehensive/master plan 97, 203, 246, 320

M

management plan 55, 58, 63, 101, 127, 190, 209, 221,
246–7
maps 36, 87, 93–5, 97–8, 124, 132, 141–2, 202–3,
209–17, 220–4, 229–30, 242, 243, 244, 246–7,
250–3, 258–62, 314, 315–6, 319
mineral rights 36, 44, 107–8, 115, 152, 190, 320

- mission, land trust 11, 14, 21, 23, 31, 42, 45, 46-48, 52-53, 56, 63, 87, 89, 90-92, 95-96, 99, 103, 107, 115, 121, 125, 127, 132, 149, 150-151, 154-55, 222, 239, 252, 317
- mortgage 33-34, 49, 83, 90, 107, 132, 321
- mortgage subordination 48-9, 83, 107, 132, 141-2
- N**
- Natural Resources Conservation Service 123, 125, 214, 221, 252, 314
- negotiation 6, 18, 19, 38, 43-52, 55, 56-60, 61, 63, 83, 92, 103, 108, 118, 121, 131, 215
- notarization 140, 245
- notice provisions 110
- O**
- organizational capacity 52-5, 65, 91, 95-6
- P**
- performance standards 124, 190
- photographs 36, 98-100, 132, 142, 201-2, 209-12, 214-5, 217, 220, 222, 226-7, 230, 237, 241, 243-4, 247, 250-1, 319
- policy, baseline 213, 217, 240-3, 247, 251, 253
- prescriptive standards 124
- project letter 44, 222, 228
- project planning 12, 15, 17, 87-9, 91-4, 96, 98, 101-2, 154, 201, 204
- public access 28, 30, 32, 101-2, 120, 186, 246
- public benefit 11-2, 17-8, 20, 23, 27-33, 84, 87-90, 91, 106, 112, 115, 131, 138, 152, 178, 182, 204, 210, 212, 222, 238, 246, 250
- purposes clause 33, 90, 109, 112-13, 131, 152-3, 182
- Q**
- qualified organization 21, 27, 319
- qualified real property interest 26, 38
- R**
- recitals 33, 43, 90, 104, 111-6, 131, 141, 153, 178, 233, 237, 250
- recording 25, 33, 35, 44, 66, 107, 132, 141-2, 178
- recreation 20, 27, 29, 30, 246
- remoteness letter 44, 108, 190, 320
- reserved rights 17, 20, 40, 42, 47, 52, 54, 62, 87-8, 97, 116-7, 125, 130, 149, 186, 200, 204, 208-10, 215, 220, 224, 230, 315-7, 321
- restrictions 11, 17, 19-21, 23, 27, 29, 40-56, 60, 63, 65, 87-9, 96, 101-5, 116, 119-28, 136, 149-54, 178, 186, 188, 200, 204, 210, 213, 215, 220-4, 228, 233, 235-6, 238, 243, 252, 317
- rights of enforcement, third party 110
- S**
- scenic easement 20, 27-9, 31-2, 40, 46, 52, 56, 61, 112, 114, 117, 124, 127, 141, 147-8, 151, 203, 212, 214, 220, 233, 234-5, 237, 241, 246
- signatures 110, 140, 197, 208, 213, 218-219, 232, 245, 315
- significant public benefit 20, 27-32
- state laws, landowners 18-19, 22-6, 41, 65, 84, 110-1, 128, 131, 137, 140
- stewardship 19-20, 36, 41, 44, 47-8, 52-5, 61-3, 87, 101, 103, 110, 125, 127, 133, 135, 143, 147, 149, 150, 154, 211, 220-26, 229-32, 239, 253, 314, 317, 321
- subdivision 22, 37, 54, 98, 125, 126, 127, 137, 186, 230
- subordination agreement 34-5, 48, 83, 90, 107-8, 140, 142, 226
- successor generation landowner 121, 129, 215, 321
- T**
- tax benefits 18-21, 23, 26, 28-9, 31, 33-4, 36-8, 58-60, 65, 84, 89, 108-9, 115-6, 122-3, 128-33, 153, 182, 190, 210, 213-4, 218, 221, 251
- tax-deductible conservation easements 19, 90, 196, 239, 244, 251, 319
- third-party interest 134-6
- title work 34, 44, 49, 90, 107-8, 110-1, 140, 152, 178, 225, 247
- Treasury Regulations 19-24, 26, 33, 40, 90, 109, 122, 129, 133, 201, 207, 213, 216, 218, 221, 239, 244, 248, 319
- U**
- updating/supplementing baseline documentation 8, 142, 209, 212-13, 219, 223, 228, 230-231, 240, 251, 253, 316
- W**
- whereas clauses 114, 178, 182
- working lands easements 126-7, 201
- Z**
- zoning 97, 98, 224-5, 234, 247

Land Trust Standards and Practices Courses

Governance

MISSION, PLANNING AND CAPACITY
NONPROFIT LAW AND RECORDKEEPING
FOR LAND TRUSTS
LAND TRUST BOARDS: PREPARING FOR
PERPETUITY
AVOIDING CONFLICTS OF INTEREST
AND RUNNING AN ETHICAL LAND TRUST

Stewardship

CARING FOR LAND TRUST PROPERTIES
CONSERVATION EASEMENT STEWARDSHIP
MANAGING CONSERVATION EASEMENTS IN
PERPETUITY

Land Protection

EVALUATING AND SELECTING
CONSERVATION PROJECTS
ACQUIRING LAND AND
CONSERVATION EASEMENTS
SELLING AND TRANSFERRING LAND
AND CONSERVATION EASEMENTS
STRATEGIC CONSERVATION PLANNING
TAX BENEFITS AND APPRAISALS OF
CONSERVATION PROJECTS
CONSERVATION EASEMENT
DRAFTING AND DOCUMENTATION

Strong Organizations

BUILDING THE FOUNDATION FOR
FUNDRAISING SUCCESS
FINANCIAL MANAGEMENT OF LAND TRUSTS
DETERMINING STEWARDSHIP COSTS AND
RAISING AND MANAGING DEDICATED FUNDS

Jane Ellen Hamilton is an attorney and consultant for numerous land conservation organizations across the United States, negotiating conservation easements and assisting with the establishment and enhancement of conservation easement and easement stewardship programs. She is a senior faculty member for the Land Trust Alliance, presenting courses on all aspects of land conservation transactions at Rally: The National Land Conservation Conference and Alliance regional conferences. She also teaches at numerous other conservation conferences hosted by individual land trusts, the Texas Land Trust Council, the State of Florida and The Leading Edge—Canada. In addition, she presents continuing legal education seminars for attorneys across the country. Jane Ellen is the lead author for the Land Trust Alliance Standards and Practices Curriculum course “Evaluating and Selecting Conservation Projects.”

Karin Marchetti Ponte is general counsel to Maine Coast Heritage Trust, a position she has held since 1985, and is principal of Land Conservation Legal Services, consulting and advising land trusts and government on conservation easement design, drafting and stewardship nationally. She is a long-time instructor for the Land Trust Alliance, teaching on issues regarding conservation easements. She is also a co-author of *The Conservation Easement Handbook*.

Kevin McGorty is Director of the Tall Timbers Land Conservancy (TTLC), a division of Tall Timbers Research Station & Land Conservancy in Florida. Founded in 1958, the mission of Tall Timbers is to foster exemplary land stewardship through research, conservation and education. Created in 1990, the TTLC works with landowners in securing conservation easements and developing sustainable land management plans. TTLC also works with municipal and county governments to promote quality growth and discourage urban sprawl. To date, more than 108,000 acres in the Red Hills region of southwest Georgia and north Florida, and greater Albany area are protected by conservation easements held by Tall Timbers.

Prior to joining TTLC in 1994, Kevin was director of the Historic Tallahassee Preservation Board of the Florida Department of State and has more than 30 years experience in historic preservation, land conservation and community planning.

 **Land Trust Alliance**
Together, conserving the places you love
1660 L Street NW, Suite 1100
Washington, DC 20036
202-638-4725

www.landtrustalliance.org



Cover photo courtesy Rick Van de Poll, Northeast Wilderness Trust