



Practical Pointers Series

BASELINE DOCUMENTATION REPORTS

Baseline Documentation Reports, or BDRs, serve two major purposes for conservation easement holders—they record both the important conservation values and the current conditions of the property. Documentation of this information can achieve multiple objectives for land trusts, including:

- Serve to support an easement’s qualification for tax benefits, if applicable, by substantiating the easement’s language, describing why the property is being conserved, highlighting public benefits and providing a record of the current conditions
- Operate as evidence in future litigation, if the BDR meets court-specific evidentiary rules for admissibility, and provide a foundation for future monitoring and enforcement activities
- Enable land trust staff to identify worthwhile projects, to retain institutional knowledge and to communicate with landowners about stewardship responsibilities
- Provide the landowners and successor owners with detailed information about their land

Land trusts should prepare a BDR that is signed by the landowner at closing as required by *Land Trust Standards and Practices* Practice 11B. The land trust should also sign the BDR at closing. The Internal Revenue Service (IRS) requires baseline documentation in specific circumstances—see 26 C.F.R. § 1.170A-14(g)(5)(i)—and has asked for such documentation during audits, even when these circumstances are not met.

Given the multiple objectives that BDRs serve, land trusts should identify which objectives they want to satisfy, in addition to the legal requirements; they should also create standards and procedures that ensure consistency in BDR preparation, content and certification, and complete BDRs in a timely fashion. For any conservation easement a land trust currently holds for which a BDR was not originally prepared, the land trust should establish a timeline for completion that documents the *current* conditions of the property.

Preparation and content of BDRs

The content of BDRs should be limited to information that supports the conservation easement’s purposes, restrictions and reserved rights in order to prevent ambiguity. A land trust should select a list of elements to include in BDRs that will meet the land trust’s identified objectives and satisfy relevant legal requirements. Commonly included elements are listed in Chapter 3 of *Conservation Easement Drafting and Documentation* (S. Bates ed., Jane Ellen Hamilton, 2008), also available at <http://www.landtrustalliance.org/resources/publications/pubs-alphabetical-listing#c>. and in the *Land Trust Accreditation Commission Guidance Document for Indicator Practice 11B Documentation*.

BDRs should be prepared by individuals who have the level and type of qualifications necessary to collect and evaluate information documenting the conservation values that relate to the reasons the property is being conserved. What constitutes adequate qualifications may be easement specific and may be challenged in certain circumstances, such as an IRS audit of a grantor’s tax deduction or in court.

Certification of BDRs

Certification of BDRs is important for both a landowner's tax deduction purposes and for proving their authenticity as evidence admissible in court, although the requirements for certification may vary by context. In order to ensure appropriate certification, a land trust should discuss the following issues with experienced legal counsel:

- What statements need to be included in BDRs to satisfy IRS requirements, including 26 C.F.R. § 1.170A-14(g)(5)(i)(D) addressing the accuracy of documentation
- What constitutes authentication under relevant federal and state rules of evidence, including if statements need to be made about the knowledge of the BDR preparer
- In each instance, who should sign on behalf of the land trust—for example, the BDR preparer, an individual who is responsible for storage of BDRs or an authorized representative of the land trust—and how such individual should be authorized to act on behalf of the organization
- In each instance, the process for signatures—for example, whether the signatures need to be notarized, witnessed, completed at the same time or any other relevant legal formality

Storage and update of BDRs

Each BDR should be stored in a condition and location so as to preserve its content and not create doubt about its authenticity. Land trusts should create a recordkeeping policy that ensures an original copy of each BDR is kept secure from damage or loss. Land trusts should also update or supplement BDRs to reflect changes in conditions of the property and store these documents *with* the original, unedited versions.

RESOURCES

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

- Bouplon, R.J. and B. Lind. Land Trust Alliance. 2008. Chapter 3. Using baseline documentation reports. *Conservation Easement Stewardship* (S. Bates ed.). Available at <http://www.landtrustalliance.org/resources/publications/pubs-alphabetical-listing#c>.
- Hamilton, J. E. Land Trust Alliance. 2008. Chapter 3. Baseline documentation reports. *Conservation Easement Drafting and Documentation* (S. Bates ed.). Available at <http://www.landtrustalliance.org/resources/publications/pubs-alphabetical-listing#c>.
- Land Trust Accreditation Commission *Guidance Document for Indicator Practice 11B Documentation*.
- Wroblecka, E. L. Winter 2005. Preparing for future litigation of conservation easements. *Exchange*, 24(1).

DISCLAIMER

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