Baselines 101

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Conservation Restriction (CR)

Definition

- Legally binding agreement
- Conservation group and Landowner agree to extinguish development rights
- Responsible for monitoring and enforcing the agreement



PURPOSE

- Record condition of property at time of acquisition and substantiate conservation purposes
- Provides support for tax qualified easements
- Effective monitoring and conservation defense tool





Jun 22, 2017, 1:03 PM. By Nick Rossi

photo by Inspection Photo© App

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DIRECTION 295 deg(T) 42.13292°N 071.15960°W ACCURACY 10 m DATUM WGS84

1.10

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Baseline Documentation Reports: The Basics BASELINES AS BUSINESS RECORDS

- Hearsay rule restricts use of materials in litigation where creator is not present to attest to accuracy
- Business records is an exception to hearsay rule
 - Preparing as an ordinary course of day-to-day business
 - Include sworn attestations with land trust and landowner signatures

Land Trust Alliance Standards 11.B.1-2

- Must be signed and completed prior to closing OR
- Parties must sign a schedule for finalizing baseline if "seasonal conditions" prevent fieldwork from being done
- Baselines Must Document
 - Conservation values protected by the easement
 - Relevant conditions of property necessary to monitor and enforce easement

LTA Standards "Conservation Values"

Look at the Purposes Section of the CR

- A. The Premises contributes to the protection of the scenic and natural character of Cuttyhunk Island and enhances the open-space value of these and nearby lands, including additional conservation land owned by the Grantee on Cuttyhunk Island, both abutting the Premises and elsewhere on the Island.
- B. The Premises provides scenic and panoramic views of Vineyard Sound and Buzzard's Bay for the benefit of residents and the general public. The Premises is located within the 1992 Massachusetts Landscape Inventory Report of significant scenic and cultural landscapes, and is listed as being important for its natural, scenic, and historic features.
- C. The protection of the Premises will help to preserve the largely undeveloped and intact coastal ecosystem on Cuttyhunk Island, which serves as a refuge and reserve for wildlife and fisheries.
- D. The Premises contains a large undisturbed area of native island vegetation, including grasses, bayberry and alder trees in a natural and undisturbed state.
- E. The entire Premises falls within an area designated as "Priority Habitat for State-Protected Rare Species" and "BioMap2 Core Habitat" by the Massachusetts Natural Heritage and Endangered Species Program.



LTA Standards "Current Conditions Necessary to Enforce CR"

- Look at Reserved Rights
- Boundaries
- Man Made Features
 - Structures
 - Trails
 - Current uses like agriculture

Timing Your Baseline

Completing Baseline Prior to Closing

- Before you start:
 - Know what the boundaries are
 - > Have the negotiated CR be mostly final
- Work closely with the person negotiating the CR
- Resolve any serious issues before you close!
 - > Always do an initial site assessment early in the process



Initial Site Assessment

- Ideally do the visit with the landowner
- Spot check
 - > Boundaries in danger of encroachments
 - > Structures
 - > Other potentially problematic areas (farm dumps, major trails, etc.)
- Ask landowner about current use and major plans
 - > Forestry?
 - > Agriculture?
 - > Trespassing issues?
 - > Plans for new structures?

Check Potential Problem Spots

Pitoniak Property Aerial 2014



42°7'33", -72°49'24", 72.0m, 340° Nov 23, 2016 11:01:59 AM

If Timing of Your Baseline Goes Wrong

Mass Audubon's Policy

- Baselines fieldwork ideally done ~2-4 months before closing
 - Longer than 6 months and few changes?
 - Do an update to confirm no major changes
 - > 1+ year delay and/or lots of changes?
 - Redo the fieldwork



Baseline Documentation Reports: The Basics MASS AUDUBON TEMPLATE

Gosnold-02 Example

Regular Course of Business statement - TTOR

Introduction and Purpose of the Baseline Documentation Report (BDR) update:

The Trustees of Reservations ('The Trustees') is committed to upholding the purposes and conservation values protected by conservation easements, or conservation restrictions (CRs), as they are uniquely known in Massachusetts, which the organization holds on over 20,000 acres and over 400 properties across the Commonwealth. The Baseline Documentation Report (BDR) is a collection of maps, photographs, and narrative descriptions of the property subject to the CR, intended to serve as an objective baseline for comparison of property conditions when The Trustees conducts annual monitoring visits or assesses apparent violations of the CR terms for potential enforcement actions. It is a policy of The Trustees to maintain a BDR for every CR it holds, and to update it periodically, as part of our regularly conducted business in conservation transactions. Furthermore, it is The Trustees' policy and regular business practice to require prior to recording the grant of a new CR that a BDR be prepared. Once complete, an acknowledgment of the <u>BDR</u> is signed by both The Trustees and the CR landowner, indicating mutual agreement that the contents of the report are an accurate representation of the property subject to the CR. By Massachusetts law, a CR becomes effective only upon recording.

Maintaining BDRs, conducting annual monitoring visits, and maintaining cordial landowner relationships are the key components of responsible CR Stewardship. They also enable The Trustees to meet its legal obligation as CR grantee to ensure that the terms of the CR are followed and the conservation values of the property are protected in perpetuity. In the rare event that remediation of a violation requires legal action, The Trustees may submit the BDR to the court as evidence. For CRs that were granted as a charitable donation for Federal tax benefit, the contents of the BDR must meet requirements outlined in Treasury regulations \$1.170A-14(g)(5)(i). These regulations inform the contents of the BDR, as do further standards issued by the Land Trust Accreditation Commission.

In order to maintain the accuracy of its records of CRs that it holds, it is The Trustees' regular business practice to update BDRs periodically to reflect natural, evolutionary, and permitted changes in the property which is subject to the CR. Updated BDRs are signed and acknowledged by TTOR and the current landowner as accurately reflecting current property conditions. Updated BDRs supplement the original BDR with photographs, maps, and/or narrative reports as needed to reflect changes in the property since the previous BDR.

Regular Course of Business statement – NEFF's is affidavit

Declaration of Reliance and Certification of Record

I, (NAME), hereby certify that:

I am the Director of Land Stewardship/Executive Director of New England Forestry Foundation, and that New England Forestry Foundation adopts, has relied upon, and will rely upon the information contained in this report to describe the condition of the (NAME) Conservation Easement. Further, I certify that the preparation of this document complies with our general procedures for creating and maintaining business records and specifically with our procedures for the creation of current condition reports. This document was created in the regular course of our business for the purpose of managing our conservation easement portfolio.

(NAME) (TITLE), New England Forestry Foundation

Date

STATE OF MASSACHUSETTS COUNTY OF MIDDLESEX, SS.

On this ______ day of ______ 2016, before me, the undersigned notary public, personally appeared the above-named (<u>NAME</u>) personally known to me to be the person whose name is signed above, and who swore or affirmed to me that the contents of the document are truthful and accurate to the best of his knowledge and belief.

Massachusetts State Template

LAND GRANT

 Reimburses cities and towns with an up-to-date Open Space & Recreation Plan for the acquisition of land in fee or for a Conservation Restriction.

Landscape Partnership Grant

• Local, state, and federal government agencies and non-profit groups can use this grant to work together to protect at least 500 acres of land.

A Baseline Documentation Report and Land Management Plan must be submitted to the state prior to reimbursement.

Massachusetts State Template

Good Features

- Focuses on the CR terms purposes, permitted & non-permitted uses
- Includes a section for describing boundaries
- Landowner asked to spell out plans for addressing any known issues or problems with the property – HOWEVER...

Less-Good Features

- Inclusion of Land Management Plan:
 - > Diverts focus from the specifics of the CR terms
 - > Permitted versus non-permitted public activities
 - Land Management Plans are more subject to revision than baselines

Massachusetts State Template

Recommendations

- Include landowner in filling out Land Management Plan section keep it simple
- Adjust template to suit your needs:
 - > Add or delete items from the checklists
 - > Add as many maps as you feel necessary
 - > Append key information if needed

Maps – the Basics

- Survey (new/recent ideal)
- TIP: Ensure surveyors replace stakes with pins/pipes. Obtain digital boundary data.
- Aerial / Orthophoto
- Topographic / Terrain



Surveys – Online Registry Search

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If No Recent Survey

- Search registry for older surveys of your property, surveys of abutting lands, surveys of subdivided portions
- Consult the deed use the metes and bounds description (might have compass bearings)
- TIP: For CRs, the state now typically requires a clear metes and bounds description, especially if a recent survey is lacking.

Assessors' maps



Also available



Topographic



ArcGIS users: Digitize boundaries for your device (GPS, Phone, Tablet)

- MassGIS' standardized "Level 3" assessors' parcel mapping data – available for download.
- MassGIS data set contains property (land lot) boundaries & database information from each community's assessor.
- Can be inaccurate, but better than nothing.

ArcGIS users:

- Georeference a survey plan –
 best to get points on the ground first
- TIP: Create a map with the georeferenced survey over an aerial photo for use on your site visit



ArcGIS users: Digitize boundaries for your device (GPS, Phone, Tablet)

 Re-create the survey features using COGO – can be the most accurate method

GIS – COGO Entry of Survey



GIS – COGO Entry of Survey



GIS – COGO Entry of Survey



Plan what you need to document

- Conservation Restriction carefully review conservation values, prohibited and permitted uses, reserved rights, exclusion areas, building envelopes/zones
- Maps of Conservation Values BioMap2, CAPS, TNC Resilience, wetlands, etc.
- Maps of trails include Open Street Map data
- TIP: Download Gaia GPS to phone free will show OSM data, terrain. Load parcel boundary data (.gpx file format).
- Become familiar with the survey plan
- TIP: Write in survey bearings by hand easier to read
- Cool app Avenza Maps

GIS – produce Georeferenced basemap



36
GIS – produce Georeferenced basemap



Avenza app – navigate and take Tracks & wpts on PDF basemap.

FREE!

or \$30/yr to store unlimited maps.

Finding things on the ground

- At minimum, have the basic navigation maps – aerial, topo & survey if possible
- Use everything to navigate: device (GPS, tablet, phone), maps, mapping apps, metes & bounds, compass
- Best: Find a surveyors' marker (often at a corner), use compass bearings from there



On-the-ground indicators

Definitive – if they align with survey, metes & bounds:

- Surveyor stakes, rebar, pipes, drill holes, cement bounds
- Stone piles, stone walls, old barbed wire fencing (often embedded in large, older trees)
- Rivers, streams (tricky)
- Public roads



On-the-ground indicators

Not definitive – but potentially helpful:

- Existing blazing / fencing
- Abrupt land use change (field/forest)
- Change in vegetation type/structure (e.g., tree age structure, species composition, understory).
- Abutting buildings & their surrounds (e.g., residential yard)



Photos

- Be guided by conservation values, permitted & prohibited uses
- Boundaries, building envelopes, exclusion areas
- Good to include something that shows scale (person, backpack)
- Mostly wider view & some close-ups



Photos > Conservation values (scenes, plants, animals)



Photos

Boundary markers & their condition
 (e.g., pipes, stone monuments)



Photos > Conditions along boundary lines



Photos

Existing permitted features/activities
 (e.g., structures, trails, agriculture)





Photos

Existing prohibited activities
 (e.g., evidence of ORV use)





Processing Data – Low Tech

De

- Take thorough notes in the field
- TIP: Developing a standard data sheet helps
- Process your data ASAP after the site visit – don't assume you will remember things!

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Name;						
pher(s):						

Processing Data – Low Tech

Photos

- Make a map showing your photo points first
- Match this up with your notes and photos.
- Make sure you have ID'd photos correctly.
- Discard any unnecessary or bad photos.
- Have a template to drag/drop photos into – e.g., table (OR, use high-tech method!)



Processing Data – Low Tech

Photos

- Best to have date/time displayed on the photo itself.
- ArcGIS users: If taking GPS waypoints, the date/time is embedded in the data – export from attribute table into Excel – make a photo table.
- TIP: GPS waypoints do not NOT give you orientation: N,S,E,W.
 If not using an app, note orientation in the field.











Processing Data – High Tech

LANDSCAPE Mobile App



Processing Data – High Tech

GeoJot+ app



\$296 per year – one device and one desktop software installation

GeoJot app – baseline photo efficiency



GeoJot app – map & photosheets

Overview Map



Current Conditions Reports: When & how to 'update' a BDR LTA Standard 11.B3

 When there are significant changes to the land or the conservation easement (such as a result of an amendment or the exercise of a permitted right), document those changes in an appropriate manner, such as through monitoring reports, a <u>baseline supplement or current conditions</u> report Current Conditions Reports: When & how to 'update' a BDR When you really should update the BDR

- If no original signed baseline, or original is insufficient
- Upon exercise of one-time, extinguished reserved right
 CCR is a chance to have this fact acknowledged
- Ownership Subdivision
 - > Prepare a CCR specific to each ownership
- Amendments (most of them)
 - > Except ones that clarify basic terms

Current Conditions Reports: When & how to 'update' a BDR When to <u>NOT</u> update the BDR

- Upon a violation or exercise of a major reserved right
 - > Except worst-case violations or exercise of major one-time, extinguished rights
- Major natural change

 Thorough monitoring reports are your ongoing record of changes - - don't create a full CCR needlessly – lot of work!

What is a CCR? What does it need to include?

Current Conditions Report = Baseline Supplement or a substitute baseline if there was not an original one. Must include:

- Photographs
- Written descriptions of property & current conditions
- Relevant maps and surveys
- Notarized certification of accuracy
- Land Trust & current landowner signatures

Preparation Procedures – have them!



Conservation Easement Current Conditions Report: Procedures for Preparation, Storage, and Content Requirements

Carson Hauck, Stewardship Associate November 2016

Preparation Procedures – have them!



Conservation Easement Current Conditions Report: Procedures for Preparation, Storage, and Content Requirements

Carson Hauck, Stewardship Associate November 2016

CCR template - have one!



(EASEMENT NAME) Conservation Easement

Current Conditions Report

STREET

TOWN, COUNTY

STATE

XXX Acres

Property Visit(s) Conducted:

(DAY MONTH YEAR)

Current Conditions Report Completed:

(DAY MONTH YEAR)

New England Forestry Foundation 32 Foster Street, P.O. Box 1346 Littleton, MA 01460 978.952.6856

Current Conditions Reports:

NEFF CCR table of contents – similar to original BDR

Table of Contents

Table of Contents	2
Report Background & Author(s)	3
Property Description & Conservation Values	4
Maps	×
Photolog	×
Photographs	×
Digital Photography Chain of Custody Record	×
Declaration of Report Accuracy (BDR Preparer)	×
Declaration of Report Accuracy & Acceptance (Grantor)	×
Attestation	×
Declaration of Reliance and Certification of Record	×
Appendix 2016 Forest Management Plan	××

CCR Format NEFF – Word format

Property Description

i. Wildlife and habitat type(s)

Together, the Campbell I and II properties form an approximately 292-acre undeveloped forest block that contributes to a larger complex of local conservation lands (Open Space Context Map). A mix of common habitat types supports a variety of wildlife species typical to the region. The Campbell I exclusion area is entirely Laurentian-Acadian pine-hemlock-hardwood forest, while the Campbell II also contains an area of Appalachian (hemlock)-Northern hardwood forest according to the NH Wildlife Action Plan (WAP) data. These forest types also occur across the greater CE areas. Typical wildlife include deer, moose bear, coyote, squirrels and common birds, such as woodpeckers and ruffed grouse that were observed during the June 7, 2018 field visit. Barbara Campbell reports observing bobcats on just a few occasions during the more than five decades that she lived in the area.

The central areas of the CEs are ranked as WAP Tier 2 "Highest Ranked in the Biological Region by Ecological Condition," with the surrounding areas to the east and west ranked Tier 3 "Supporting Landscapes" (Wildlife Habitat and Ranking Map).

There are no known rare, threatened or endangered species on the properties. An online Natural Heritage Database search returned with no known records in the vicinity of the property, according to the 2009 Forest Management Plan (FMP).

ii. Forest type(s)/structure

The properties contain both hardwood and softwood-dominated stands. Hardwoods include red oak, red and sugar maple, beech and various birch species, with some areas of particularly robust birch and beech sapling regeneration. Witch hazel is common in the understory. White pine and hemlock occur, with some particularly dense hemlock stands. The last harvest was completed in 2008, and the forest has been left to develop over the last decade.

iii. Water Features and Wetlands

The CEs are located in the Moose Brook-Contoocook River watershed. The property drains to the south into Eva's Marsh, including various intermittent streams not listed on the state hydrography data. Notably, a small stream flows southward through both CEs and the exclusion areas.

While there are no major wetlands, water bodies, nor state-listed vernal pools on the properties, there are two areas of poorly-draining (Type IIB) soils in Campbell I which can result in wet or swampy conditions.

CCR Format TTOR – fillable PDF format



The Trustees of Reservations

Conservation Restriction Baseline Documentation Report (BDR) Current Conditions Report

Brief Property Description: Please write a 1-2 paragraph narrative generally describing the CR Property's use(s) and natural features:

This series of buffer lands to the northern edges of Harvard University's Estabrook Woods is an almost entirely forested area adjacent to residential developments in southern Carlisle and stretches to the south as the boundary line with Concord. CR #153 (Davis Corridor) protects contiguous parcels of land running from the north end at Bedford Road to the Concord town line at its southern edge. CR 230 protects land contiguous to the west side of the Davis Corridor along Stearns Street, and along historic Two Rod Road, now a foot trail, the Sachs Trail corridor leading out to Baldwin Road, as well as parcels with frontage on Baldwin Road, Woodridge Road, and south of School Street, while a final wooded parcel, completely non-contiguous with the rest of the CR #230 land, is located around the edges of the Buttrick Lane residential subdivision The land is owned by the Town of Carlisle and open for public recreation on a large network of trails that pass through the property and connect hikers to trails on the Harvard University Estabrook Woods property and eventually out to Monument Street via Punkatasset Hill or the Middlesex School in Concord. Areas of wooded wetland are interspersed throughout the property, typically red maple swamps, and an old cranberry marsh is located east of Two Rod Road on the southern portion of the Davis Corridor land. Trail access points onto the protected land are located at Bedford Rd via the Davis Trail, Stearns Street at the Malcolm Preserve onto Two Rod Road, the Sachs Trail on Baldwin Road, the Rockstrom Trail off School Street and there are also trail access points to the Blood Farms Trail via spurs leading from Long Ridge Rd, Nowell Farms Rd, and Prospect Street.

CR Conservation Values - see purposes paragraph of CR document and check all that apply:

Historic Features	Scenic Value	Agricultural	Forestry			
Public Access & Recreation	🖾 Gov't Policy	🔀 General Habitat	Rare Species Habitat			
Open Space network	Public Water Supply	Water Quality	Ecological Value			
Wetland Protection	Old CR - no list of conservation values: e.g. "natural scenic & open condition;" "for conservation purposes;" "protection of natural systems", etc.					
Other Conservation Value	CR 153 purpose statement lists proximity to Harvard Land, the area being one of the largest undeveloped woodlands in the Boston area, Harvard's use of the land for scientific research, the Estabrook Woods recognition by MA Division of Fisheries & Wildlife and in Concord & Carlisle Open Spece Plans, the purpose of the CR to assist in creating 400 acres of buffer land to Estabrook Woods, and Harvard's assurance that protecting this land will preserve the research use of the Harvard land and therefore assure that they will not develop the land. CR 230 lists protection of Two Rod Road, protection of a wildlife corridor and trail link between other conservation lands in Concord & Carlisle, proximity to the Malcolm Preserve (owned by TTOR & Carlisle Conservation Foundation) and Poole Swamp (Carlisle Conservation Foundation), proximity to the Sachs CR held by The Trustees of Reservations, immediate proximity to the Davis Corridor lands, proximity to the Bartlett CR property (held by Town of Carlisle), proximity to Great					

CCR Format TTOR – fillable PDF

Brief forest Character Description - list dominant tree species & describe age characteristics. Describe areas of forest on property, if they differ in type. Describe any active forestry management activities. Describe tree health / pest issues, if any identified.

Relevant BDR Photos:							
Native Plants: List representati native plant species observed du		ed on property, to best of abili	ity - list dominant, cha	acteristic, or notable			
Relevant BDR Photos:							
Invasive Plants: Did you observ	e any invasive plants on the C	R?	🔵 Yes	No			
Agriculture: Are agricultural us	ses permitted under the terms o	of the CR?	Yes	○ No			
If YES, check or indicate active u	uses and/or uses protected in C	R document.					
Field Crops	Orchard	Hay field(s)	Tree farm				
General ag / Inorticultural uses	Retail or other farm business on premises.	Horse Farm	Livestock of	her than horses			
Prime Agricultural Soils	Other Use/Mgmt. Activity:						
Describe more specifically what	agricultural uses are allowed t	by the CR, and what agricultu	ral uses are currently p	resent on the property:			
Relevant BDR Photos:							
Wildlife Habitat: Is wildlife ha	bitat protection a CR purpose,	or does suitable habitat seem	present? (Yes	[™] No			
If YES, indicate what habitat feat	tures / ecological values are pro	esent on the property.					
Wetlands	Woodlands	Edge Habitat	Habitat Variety	Large Habitat Block			
NHESP Priority Habitat of Rare Species	NHESP BioMap Core Habitat	Vernal Pools	Specific Species named in CR	Coastal Shoreline			
Salt Marsh	Pond / Lake	Wildlife corridor	Rare Ecosystem	River / Stream			
Other - Explain:							
Describe in further detail if needed. (e.g what type of habitat variety / ecological values? Priority Habitat for what specific species, etc?)							

Current Conditions Reports: Strategizing Photography – to retake or not to retake? Original BDR:



Current Conditions Reports: Strategizing Photography – to retake or not to retake? BDR update visit:



Current Conditions Reports: Strategizing Photography – to retake or not to retake? Original BDR:



Current Conditions Reports:

Strategizing Photography – to retake or not to retake? Baseline Update visit:



Questions?

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