

E: MANAGING CONSERVATION EASEMENTS

Preparing a Baseline Report

Managing lands that you own versus those where you hold a conservation easement require separate management approaches. Baseline reports are fundamental for conservation easements as they are the tool from which a land trust will monitor the property, assess change over time and ensure the easement agreement is being withheld.

A baseline report records the condition of the property (in words and pictures) at the time of the easement registration or shortly thereafter. An individual with an ecology or biology background should prepare the baseline report. (*OLTA Baseline Documentation Checklist for Conservation Easements, Appendix L and OLTA Baseline Inventory and Determination of Landowner Conservation Goals, Appendix M*)

The baseline report outlines the specific features of the property that are being protected, why they are being protected and their current condition. It then becomes the benchmark for monitoring purposes and if necessary becomes the enforcement tool should violations occur on the easement property.

An individual with an ecology or biology background should prepare the baseline report.

The baseline report should be prepared at the same time the conservation easement agreement is prepared or shortly thereafter. You want to make sure that conditions of the property do not change between the time the easement agreement is signed and the baseline report is signed. However, baseline information should be collected when the ecological features central to the easement agreement can be observed and recorded. Both the landowner and the land trust should sign the document acknowledging that both are in agreement regarding the features of the property and the restrictions that the easement agreement places on them. It is important to use plain language so it is comprehensible by both the landowner and the person undertaking the monitoring.

The following information has been taken directly from the Ontario Heritage Foundation's document "Baseline Reporting for Natural Heritage Easements in Ontario" and includes the sections that should be included in a baseline document.

- Reference statement
- Executive Summary
- Property Location
- Landowner Information
- Easement Summary
- Property Information
- Acknowledgement of Condition Statement

Reference Statement – The baseline report should begin with a statement referencing the easement agreement and reinforcing that agreement as the overriding document in the cases of inconsistencies. A sample statement would be:

"This Baseline Report is ancillary to the easement agreement between John and Linda Bright and the Ontario Conservation Organization dated October 5, 1996 and registered as No. 12345678 at the Registry Division of Smallville. In cases where there is a difference between this baseline report and that easement document, the easement will take precedence.

Executive Summary – This section gives the reader a good overview of the site and the easement agreement in just one or two pages. This summary should include the name of the landowner and the location of the property as well as a brief overview of the natural features on the property and the particulars of the easement agreement.

Property Location – This section should give the address of the landowner along with the lot and concession numbers on the property and directions to the site. You may also want to include one or two maps showing the regional and provincial setting of the property.

Landowner Information – This includes the name and contact information of the current landowner. It should also indicate whether the landowner lives on the site.

Easement Summary – A summary of the easement agreement will help to tie the baseline report to the agreement and ensure that the two documents support one another. The summary will also act as an important reminder to the landowner of what is expected of him or her. It should refer to where full copies of all legal documents can be found.

Property Information – This section will describe the natural features of the property, why they are important and their current condition. All the physical data is recorded here: descriptions, measurements, and sketches of all pertinent ecological, agricultural, scenic and human-made features on the property. Do not to use technical language in this section, describe the important natural features in a straight forward, easy to understand format.

- **Aerial Photos** – From an enforcement standpoint, aerial photos, topographical maps, and base maps are only accurate as of the date they were produced. Any changes, which have taken place on the property since that time, must be noted if they are to be of any use in proving violations
- **Natural Features Maps** – These maps locate various natural features on the property. There are several different methods for preparing natural features maps. You may prefer to trace the natural features directly onto a hand-drawn sketch, an NTS map, an OMB, and aerial photo or some other sketch of the property or you may prefer to trace them onto a Mylar overlay, which is placed on top of one of these maps. When preparing these maps, it is important to remember that the information should be somewhat quantifiable. For example, when indicating location of a significant woodlot, you should also indicate its dimensions and distance from any potential threats. The distance between the forest and the road is measured and recorded so that, if the landowner encroaches on the forest by expanding his/her backyard, you will be able to prove it using the map.
- **Significant Area Boundaries** – These are widely recognized categories of significant natural areas include Areas of Natural and Scientific Interest (ANSIs), Class 1-3 wetlands and Environmentally Sensitive Areas (ESAs). Show the natural features on the map and describe them in the text of the baseline report.

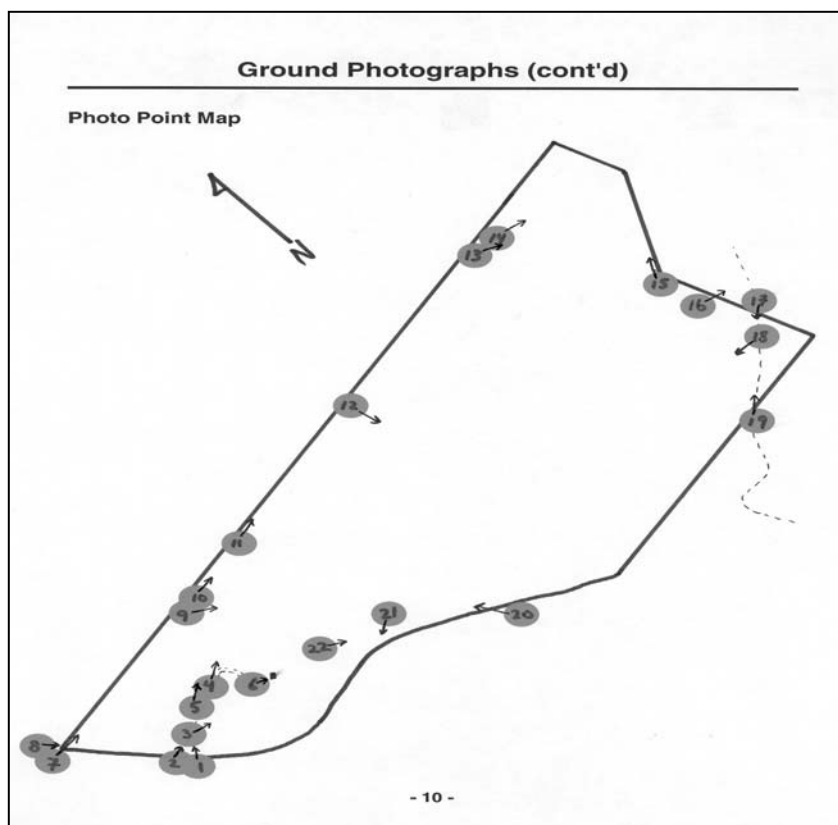
- **Vegetation Communities or Habitat Types** – Show vegetation or habitat types on the natural features map and describe them in the text. The particulars of the easement agreement will dictate how elaborate this information has to be. For example, if the easement simply restricts the cutting of trees, all you will need to show on the map would be the location and extent of any woodlots. However, if the easement restricts the alteration of habitat, you will need to break this down further and show the various vegetation communities that are present.
- **Water: Streams, Rivers, Ponds and Shorelines** – Documenting these features can be important if the feature the easement is meant to protect includes wetlands or important trout streams. Note the direction of the water flow in order to identify where potential impacts may originate. Record the pattern of streams and creeks and the shapes and locations of ponds and wetlands so that dredging and channelization can be monitored.
- **Special Natural Features** – A variety of other “special” natural features may also be shown on the natural features map. Of particular interest is the occurrence of rare or unusual flora and fauna, the significance of these species (i.e. provincially or regionally rare, threatened, or endangered) and their habitat requirements and/or ecosystem functions should be noted. Other types of information that should be noted include rock outcrops, springs and seepage areas, hills and crevices, scenic views and any features considered unusual.
- **Cultural Features** – This includes the location of buildings, roads, trails, fences, access points, wells and other human-made features. Show these on your natural features map and describe them in the text. Any obvious human impacts such as recent logging, brush clearing or cattle watering in creeks should also be recorded.
- **Information Related to Easement Restrictions** – Any information that is necessary to define the restrictions in the easement agreement should be shown on the natural features map and described in the text. This information should be measurable and avoid the use of subjective language.

Ground Photographs – These photos can be used as evidence of violations and to indicate points of interest. The particulars of the easement agreement should also be photographed. For example, most easement agreements prohibit building on the site so all existing built structures such as barns, sheds, roads and wells should be documented with photographs. Those features which contribute to the significance of the property and the easement’s boundaries should be documented with photographs as well. Lastly, make sure that all vulnerable features, such as the edge of a woodlot, are photographed.

Other Information – There may be other information that should be included such as a municipal planning designation or zoning by-law. Some sites may have management plans prepared for them; these should be referenced in the report. Other site information that you may not want to include in the report but instead keep in the baseline file includes: describing neighbouring land uses, nearby subdivisions (as they may pose threats of encroachment), adjacent pasture which may raise the potential for cattle entering a woodlot and destroying vegetation. If a stream runs through the property, upstream land uses might be noted.

Acknowledgement of Condition Statement – This is the final section of the baseline report. This section ensures the landowner has read the report and that there is a common understanding between the land trust and the landowner as to the features on the property and how the easement agreement applies to them. By having both parties sign it, the statement will reinforce the idea that yours is a cooperative one, rather than regulatory.

A critical section of the Baseline Report is the photographs and their reference points. These photos should reflect the significant habitat types or features that are being protected through the easement. A description of what each photo represents should also be provided. It is this information that the individuals monitoring your conservation easements will use as reference points to determine whether violations have occurred. Below is an example provided by the Ontario Heritage Foundation.



Ground Photographs (cont'd)



Photo 7: The NW corner of the property



Photo 8: The old road alignment in the vicinity of the driveway

Ground Photographs

The colour photographs for this baseline report were taken during a site visit on July 7th, 2000 by Simeon Stairs of the Ontario Heritage Foundation. The black and white photographs were taken during a site visit by Foundation staff on December 4th, 1991, and have been used here to show the built features of the property, which have remained essentially unchanged since 1991. All azimuth readings have been corrected for true north (2000 declination ~9°).

Table Describing Ground Photographs

Photo Number	Photographer's Location	Azimuth	Purpose
1	On Road 9, at the end of the driveway.	25°	To show the general conditions along the driveway. Note that the driveway is regularly mowed, but that the surrounding areas are left in an essentially natural condition.
2	On the driveway, approximately 20 m in from the new Road 9 alignment.	48°	To show the general conditions along the driveway. Note the freestanding chimney and garage beyond it.
3	On the driveway, about 70m in from the new Road 9 alignment.	120°	To show the garage and its natural surroundings.
4	On the driveway, about 100m in from the new Road 9 alignment.	50°	To show the relatively undisturbed conditions along the driveway and in the vicinity of the storage shed. There is a small mowed clearing beside the shed, and an old track veers off to the NE from it towards the old scrap pile along the N property line.
5	On the driveway, about 85m in from the new Road 9 alignment.	19°	To show the privy and storage shed, and their relatively undisturbed surroundings.
6	At the end of the driveway by the cottage.	88°	To show the cottage and its relatively undisturbed surroundings. Note the steep rock ridge behind the cottage.
7	On the W side of Road 9.	81°	To show conditions at the NW corner of the property. Note the difference in understory structure between the easement lands to the right of the fence and the neighbour's pasture to the left.

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Courtesy of Ontario Heritage Foundation (OHF)

Ontario Heritage Foundation's document, "Property Information Required for the Baseline Report", taken from Baseline Reporting for Natural Heritage Easements in Ontario, is helpful in identifying the type of information that could be included in the report. (*OHF Property Information Required for the Baseline Report, Appendix N and OHF Baseline Inventory, Appendix O*)

Monitoring Conservation Easements

Training volunteers to monitor conservation easements is somewhat more complex. Not only do the volunteers have to be trained on monitoring a property but they must also be able to understand the contents of the easement agreement including the restrictive covenants. They must be able to refer to the baseline report, which was prepared for the property, and use it to determine if any violations have occurred. If possible, a staff person, dedicated Board member or long-term volunteer should be assigned to monitor easements. Ideally, if a small team of monitors can be assigned to specific easement properties on a long term basis, the resulting continuity will provide more credible records than if monitors change repeatedly. It is also important that the team leader have a strong connection with the Board member who should bring forward any violations to the Board for rectification. Again, as best as possible, it should be the same person or team of people who should monitor the easement at least once a year. Consistency is essential in documenting any changes, either positive or negative, over time.

Prior to monitoring a conservation easement, the owner(s) of the land should be notified of the visit as per the terms of the conservation easement. The landowner(s) should then be notified again, at least 24 hours in advance of the monitoring date and asked whether they want to be present during the site visit. The team should also bring the following to the site visit:

- Base map
- Aerial photo
- Baseline documentation report (photocopy for field)
- Camera and film
- Field guides

It is important that your Conservation Easement Annual Stewardship Monitoring Report include a pre-checklist section. This reminds the monitor to review all previous monitoring forms and discussions with the landowner.

(OLTA Annual Stewardship Monitoring Report for Conservation Easements, Appendix P)

Violations

Reporting and addressing a violation is never an easy task, however, by maintaining good relations with your landowners you can usually avoid violations in the first place. If a violation is noted, the following steps should be taken to deal with the problem before it becomes

more severe. Most importantly, ensure that the violation is properly documented. This can be done through photographs, measurements, and mapping of the location of the violation. The volunteer who found the problem should then prepare a report for the Executive Director or Chairman of the Board. Volunteers should not confront the landowner with the violation.

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The Executive Director or President, in collaboration with other Board members shall determine whether a violation has occurred. Only after it has been determined that a violation has occurred should the landowner be contacted. The Executive Director or Chairman will then forward a letter to the landowner requesting written details of the occurrence. Once this information has been received, the land trust can determine the severity of the violation and what measures will be taken to address the violation. Of importance to note is the fact that the

role of the volunteer is to bring the violation to the attention of the land trust Board, not to enforce the easement provisions.

Permission to Undertake Certain Activities

Sometimes when visiting a conservation easement property with the landowner, the landowner may ask permission to carry out a certain activity. If there is any uncertainty about whether the activity is permitted, a volunteer should not provide a response but rather advise the landowner that a formal letter should be written. For example, the easement may specify that some activities require the prior approval of the land trust. The Board should then make the decision, with assistance from the people monitoring the property, as to whether or not the activity is allowed. For example, a landowner may note that several of his/her trees are dying. Their conservation easement agreement states that cutting of trees is not acceptable unless the trees are felled for safety or disease reasons. Even though their easement agreement allows for cutting of diseased trees, this information should still be reported and both written approval and photographic documentation should be undertaken. You want to ensure that all future people associated with the file and monitoring the property do not accuse the landowner of violating the easement agreement, if in fact, approval was given to undertake a certain activity.

When a property holding a conservation easement is sold, the land trust should notify the new owners of the terms and conditions of the conservation easement agreement. Appendix Q gives an example of a letter prepared by the Land Trust Alliance (LTA). (*LTA New Conserved Property Owner Letter, Appendix Q*)