

The answers to the question below from the Land Trust Alliance listserv helps sharpen one's understanding of baselines, easement amendments and supplemental or "updated" baselines:

Question:

Our organization is in process of amending a conservation easement. The property was sold by the original grantor, a private landowner, to a municipality. The municipality would like to change the baseline documentation report to remove references to private ownership and address some other issues. The original easement and baseline are from 2002. There have been no significant changes to the property since then. I have not found any information in the new Conservation Easement Handbook or the LTANet site regarding changes to baselines in the event of an easement amendment. Have any other groups out there dealt with this? What recommendations do you have for us?

Thank you,

Leigh Girvin

Continental Divide Land Trust

Frisco, CO

Answer 1:

Hi Everyone.

I don't understand the intent of the Municipality. Having said that, here's my quick response.

1) A baseline is a snapshot in time of the property under easement, documented "at the time of the easement" as per the IRS, 170(h).

2) It is a "living document" in that it may need "updating" in the years to come to show the changes that take place on or to the property. That means that a) the annual monitoring report is intended to supplement the baseline as the annual "check" of the property, its natural resources and other characteristics outlined within the original baseline, and b) the monitoring report will show any changes to the property, whether due to natural or manmade causes, and thus become an "update" to the original baseline, intended to be read in conjunction with the original yearly before inspection.

A separate issue from that usual course of stewardship, is the change in ownership of the land and thus the need to "start afresh" with stewardship responsibilities including the establishment of a relationship with the new landowners. This means that either an estoppel certificate can be used to establish compliance with all terms and conditions of the easement to that point of transfer, and/or the land trust or the original preparer of the baseline can go out, check the property, and issue a statement or certificate stating that the property is essentially the same as depicted in 2002, except for natural growth, blah, blah (I don't mean to be snide here, I just don't have the exact language in front of me). This "update" could be accompanied with new pictures taken at the original photopoints, etc. OF COURSE, this depends on the objectives of the parties (and please remember I don't know these objectives.)

LASTLY, if in fact the CONSERVATION EASEMENT is to be amended, within the rules established in 170(h), avoiding private inurement and benefit, etc., there is no need to do a NEW baseline document, UNLESS acreage is being added to the original conservation easement. This means that a) the Conservation Purpose of the original

easement is the right Purpose for this additional property, b) the natural characteristics and resources of the additional property likewise are in need of the same protections outlined in the original easement, c) the same landowner who granted the original easement is the owner of this additional land and d) the land trust or conservation organization is VERY happy with the terms and conditions of the original easement, as written. THEN, a new baseline must be done outlining the characteristics of this additional property, (thereby "updating" the original baseline with this acreage and its condition), in addition to a new title search and the other usual due diligence practices for easement conveyance. Now, in THIS case, I don't know what the amendment to the conservation easement will be or why it is being contemplated. So, I'm still not sure whether I have answered the question or not. Certainly an annual monitoring form can document change in ownership.

Respectfully, Laurel

Laurel A. Florio, J.D.

P.O. Box 382124

Germantown, TN 38183-2124

Answer 2:

Laurel,

Well said. Thanks. I think your comment on new baseline data being needed for an amendment only if it adds land under the CE is driven by section 170(h), in regard to whether a new tax deduction might be available. I suspect that you would not disagree, however, that new baseline data may be needed for an amendment that addresses changes in conservation provisions of the original CE even if additional land is not being added. Aspects of the property addressed in the amendment may not be covered in the original baseline data. For example, conditions in a certain portion of the protected property may need to be documented in detail as baseline data for the amendment, whereas that portion of the property may have little or no specific documentation in the original baseline data.

Say, for example, an amendment addresses moving the location for a proposed stream crossing to another location that would be more suitable environmentally and more amenable to governmental permitting. Documentation of the need for the changed location and very specific photos, etc. of the old and new sites would be warranted. Another example might be if important flora/fauna/habitat has been discovered on the protected property and is addressed in the amendment. Documentation including photographs of that area would be part of the baseline data of the amendment -- not because the section 170(h) regs would allow an additional income tax deduction, but to document the reasons for the amendment, conditions at the site at the time of the amendment, and the absence of private benefit/inurement involved in the amendment.

Marty

Martin C. Womer, Esq.

Bergen & Parkinson, LLC

62 Portland Road, Suite 25

Kennebunk, ME 04043