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The Challenges of Land Due Diligence in Nature-Based Solution Projects in Brazil

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Topics

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The rapid growth of nature-based solutions (NbS) projects as a strategy for climate change mitigation and environmental protection is fueling Brazil's carbon credit market. Yet the legal certainty of these projects often hinges on a critical—but frequently overlooked—factor: land due diligence.

Law 15.042/2024, which established the Brazilian Emissions Trading System (SBCE), spells out who owns carbon credits generated on different types of land. Credits from federal, state, and municipal public lands and conservation areas belong to the federal government, the states, or the municipalities. Credits from private land are owned by the landowners or usufructuaries—those who hold a legal right to use and benefit from the land, even if they are not the formal owners. Credits generated on Indigenous lands, in traditional communities, or in agrarian reform settlements are owned by the relevant group.

While technologies for measuring carbon capture have become increasingly sophisticated, the legitimacy of carbon credit certificates also depends on the legal status of the land where the carbon is captured. For this reason, a thorough land due diligence is essential to ensure that every property included in a project is in good standing from a legal perspective.

The difficulty is that land due diligence in NbS projects is often complex, whether due to occupation by squatters, boundary disputes, and conflicting claims to possession, or the peculiarities of Brazil's land system. These issues are especially pronounced in rural areas, notably in the Legal Amazon, where weak institutional capacity and slow land titling processes make matters worse.

Common bureaucratic hurdles include overlapping land titles, irregularities in the chain of title, outdated records, and vulnerable cadastral systems that can give a veneer of legality to illegally occupied properties. The lack of integration between the cadastral and land registration systems and the courts further complicates the picture.

In this landscape of legal uncertainty, land due diligence demands a multidisciplinary approach, looking beyond title documents to assess environmental, regulatory, and contractual risks. Best practice means tracing the chain of title back to the original state ownership, reviewing any legal proceedings related to possession and ownership, checking for the presence of protected areas, traditional communities, and settlements on the land, and confirming that the intended land use is compatible with applicable legislation.

While this complexity can increase project costs, it's essential for developers, investors, and certifiers to recognize that land due diligence is more than a box-ticking exercise—it's the foundation of credibility for carbon credits.

Without it, NbS projects may be environmentally promising but legally unsustainable.

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