Conservation Easements & Mitigation Banking

Eversheds Sutherland is on the leading edge of conservation law, creating strategies and identifying opportunities to optimize the benefits of our clients’ land.

Eversheds Sutherland’s Conservation Easements and Mitigation Banking practice advises clients throughout the country and has the knowledge base and relationships to help clients succeed on a local level.

Eversheds Sutherland has established itself as an innovator in the rapidly growing area of conservation and ecological banking law. Representing clients on a national level in connection with working forest conservation easements, working farmland conservation easements, historic conservation easements, façade easements, open space conservation easements, recreational land restoration and preservation, mitigation banks and permittee-responsible mitigation projects, Eversheds Sutherland attorneys have facilitated the preservation of millions of acres while simultaneously unlocking the lands’ financial and natural resources.

Conservation easements are an opportunity for landowners to monetize their land while preserving a way of life. They are typically used in connection with land that has significant natural, historic or cultural value or to preserve agricultural, forest or recreational uses. For Eversheds Sutherland, a firm deeply rooted in the timber industry and tax law, conservation easements were a natural extension of an already well-established practice. We have negotiated some of the earliest and largest conservation easement transactions in the United States. By fostering connections among a multitude of tax, corporate and real estate clients, and by maintaining strong relationships with the conservation network, including land trusts, state tax credit facilitators and government agencies, Eversheds Sutherland attorneys can pinpoint and avert issues before they become problems.

Eversheds Sutherland is equally adept at handling mitigation banking matters. Whether on behalf of a ground-up wetland bank, habitat conservation bank or a transaction involving an operating mitigation project, Eversheds Sutherland’s team is uniquely suited to assist clients confronting regulatory changes that exist in the wake of the Clean Water Act and the Endangered Species Act. Eversheds Sutherland attorneys understand regulatory risks and respect the business drivers behind mitigation credit transactions. In a hot market, mitigation projects that don’t get permitted in a timely fashion will lose money. Eversheds Sutherland attorneys balance the desires of government regulators and any land trust or land steward with the project sponsor’s or mitigation purchaser’s critical timeline. Eversheds Sutherland, with its team
approach and a network of consultants and advisors, assists and supports clients through every step.

**WHY EVERSHEDS SUTHERLAND**

**In-house experience and training.** We have attorneys with legal, practical and academic backgrounds in forestry, conservation and credit banking, giving us an all-around perspective.

**Business experience.** Having worked in the industry, we see all angles of the project from our client’s perspective.

**Deadline sensitivity.** We understand the time pressures involved in completing transactions, and we will push through a project until it is complete to our client’s satisfaction.

**Tax knowledge.** We are familiar with both state and federal tax implications and benefits surrounding conservation easements and mitigation banking and guide clients through the labyrinth of tax codes and regulations to realize the most benefit from their particular situation.

**Workable solutions.** We take a practical approach to structuring, documenting and permitting transactions.

**National experience applied on a local level.** We apply our experiences across the country and across disciplines on a personally tailored level.

**A team approach.** Establishing a conservation easement or mitigation bank requires the input and participation of many players, including government agencies, land trusts, engineers and consultants. Eversheds Sutherland’s collaborative approach facilitates a seamless transaction.

**Leaders in thought.** Our attorneys often speak and publish on the topics of conservation law, mitigation banking and conservation easements.

**NUTS AND BOLTS**

Eversheds Sutherland attorneys have significant experience with design and implementation, as well as the sale and donation of conservation easements from the perspective of:

- Private landowners
- Developers
- Large timber and agribusiness companies
- Timber Investment Management Organizations (TIMOs)
- Holders
Investors
Prospective purchasers
Other conservation-related parties.

Eversheds Sutherland provides a full range of conservation and mitigation legal services:

- Tax
  - The tax implications around conservation easements are complex and varied, and our attorneys are particularly knowledgeable in this area. State and Internal Revenue Code requirements are dizzyingly complicated. The implications on estate and property taxes can be significant. Our clients comply with relevant regulations to achieve all the benefits they are entitled to. We also advise clients on whether donating, selling or creating a combination of the two approaches will yield the greatest tax advantages.

- Real estate
  - A conservation easement or mitigation banking project can have ramifications on future real estate development, commercial or industrial uses. We counsel clients on these issues.

- Regulatory guidelines
  - We advise clients on the restrictions around any environmental, open space, historical, cultural or educational aspects of property.

- Contract negotiation
  - We help clients achieve the results they want from a conservation easement by ensuring that the language is specific and has no loopholes. We are skilled negotiators and will work with all the stakeholders.

- Environmental
  - Based on decades of experience with timber and agribusiness transactions, we are deeply familiar with environmental issues, regulations and concerns. We help clients with conservation easements in connection with wetland mitigation banking and conservation banking.

In mitigation banking matters, we have:

- Structured landowner/bank sponsor ventures
- Performed due diligence on prospective and operating bank sites
- Documented appropriate agency required financial assurances
- Negotiated the purchase of mitigation credits or values
- Established appropriate site protection instruments
- Prepared trust agreements to protect valuable stewardship endowment funds.
TAKE ACTION
Conservation easements and mitigation projects require coordination of multiple parties’ varied interests. Eversheds Sutherland attorneys help our clients achieve their objectives.

Experience
Closed two of the largest conservation easements in the United States and the largest conservation deal in Michigan.

Counseled one of the four Land Trust Alliance-accredited land trusts in Georgia.

Advised private investment fund on acquisitions.