



## PROCESS FOR DEVELOPING BARGAIN SALE PURCHASE CONSERVATION EASEMENT PROJECTS

*This document outlines the general process of conveying a bargain sale conservation easement to CCALT. A bargain sale is a conservation easement transaction where the landowner sells a portion of the value of the conservation easement to CCALT (typically less than 50%) and donates any remaining value. The landowner is compensated for the donated component through tax benefits. CCALT raises money from various public and private sources to pay for the purchase component of a bargain sale. Although the CCALT Project Manager that specializes in your specific area of the State will guide you through this process, CCALT recognizes the importance of landowners becoming familiar with CCALT's easement development process.*

### IMPORTANT NOTES REGARDING PROJECT DEVELOPMENT OF BARGAIN SALES

*Properties that Qualify for Funding:* Not every property will qualify for funding. Funding sources are limited and money is directed towards the priorities of the funding entities. Typically, CCALT only raises money for properties in defined priority areas. Priority areas are established annually by the CCALT Board of Directors (Board) and are defined based on several variables including compatibility with funding entity priorities.

*Matching Requirements:* Most funding sources require that their funding be leveraged with both other sources of cash and a landowner donation. Typically, a conservation easement funder will fund approximately 25% of a bargain sale transaction. That 25% will be matched with cash from another funding entity bringing the total purchase component of the transaction somewhere close to 50% of the total value of the conservation easement. The remaining 50% of the value of the conservation easement is typically donated by the landowner who is compensated with federal and state tax incentives (i.e. federal tax deductions, estate tax incentives, and Colorado state tax credits).

*Additional Restrictions:* Funding almost always comes with strings attached. Most funding sources will require additional restrictions be placed in the deed of conservation easement. These restrictions can vary from management plans to additional limitations on the use of the property beyond what is minimally required by federal and state law to create a qualified conservation easement. **NOTE:** Public access is not required to secure funding from most funding entities.

*Typical Funding Sources:* CCALT works with a variety of funders including, but not limited to, (1) Natural Resources Conservation Service (NRCS); (2) Great Outdoors Colorado (GOCO); (3) Colorado Division of Parks and Wildlife (CPW); (4) several private foundations; and, (5) several county funding programs. Several counties have dedicated funding sources for conservation projects including, Routt, San Miguel and many Front Range counties.

*Timeline Associated with the Completion of a Bargain Sale Conservation Easement:* It typically takes a minimum of three (3) to five (5) years to go through the entire process of developing and completing a bargain sale conservation easement. This process includes, (1) fundraising; (2) due diligence production and review; (3) deed of conservation easement drafting and negotiations; and, (4) closing.

*Landowner Legal Counsel:* CCALT strongly encourages landowners to retain independent legal representation to assist in negotiating and reviewing the conservation easement on the landowners' behalf. CCALT wants the assurance that every landowner fully understands all the legal ramifications associated with a perpetual conservation easement.

## **STEPS TO COMPLETING A DONATED CONSERVATION EASEMENT TRANSACTION**

### **1. Contact CCALT and Request and Information Packet:**

CCALT is prohibited from soliciting conservation projects. Therefore, interested landowners must make the initial contact to notify CCALT of their interest in conservation and to request an information packet.

### **2. Landowner Information Packet:**

The landowner information packet includes detailed information about CCALT, the uses and benefits of agricultural conservation easements, tax benefits associated with conservation easements, and many resources to continue learning about conservation easements. If after reviewing the packet, a landowner is interested in having further conversations with CCALT about a potential conservation easement, the landowner must contact CCALT and ask to speak with the Project Manager that covers the area of the State where the property is located.

### **3. Landowner Project Application and Transaction Cost Memo:**

The Landowner Project Application should be completed by the landowner and submitted to CCALT for review. CCALT will also provide a Transaction Cost Memo that outlines all costs associated with the conveyance of the conservation easement and provides a range of total costs to the landowner. **NOTE:** Typically a bargain sale conservation easement will cost between \$50,000 and \$80,000 to complete.

### **4. Site Visit:**

After reviewing the Landowner Project Application, the CCALT Project Staff will meet to determine if the project meets CCALT's project criteria. If the project is determined to meet the project criteria, the CCALT Project Manager will establish a time to visit the property and further evaluate the conservation values. The site visit is used to verify the accuracy of the information provided in the Landowner Project Application and the property's consistency with CCALT's project criteria. The site visit is also used to discuss possible funding opportunities that may exist.

### **5. Discussion of Funding Opportunities:**

Various public entities (federal and state agencies and county programs) and private foundations make funding available for conservation projects. Each funding source has different priorities, interests and restrictions. Priorities can vary from geography to the protection of specific natural resources. The CCALT Project Manager will be able to discuss the various funding opportunities that may be available, the likelihood of successfully securing funding, the timeline and what additional restrictions each funding entity will require.

## **6. Project Approval from the Board of Directors:**

Following the site visit, the project will be presented to the CCALT Board of Directors (Board) for formal project approval at the Board's next regularly scheduled meeting. Upon formal Board approval, the CCALT Project Manager and landowner will begin the process of ordering the required due diligence reports and negotiating the terms of the conservation easement.

**NOTE:** CCALT recommends that the landowner hire independent legal counsel to assist in negotiating and reviewing the conservation easement immediately following formal Board approval.

## **7. Option Agreement:**

Funders require that an Option Agreement to purchase the conservation easement be in place prior to awarding any funding for a particular conservation project. The Option Agreement will be negotiated between CCALT and the landowner and will outline the basic parameters of the conservation easement transaction, the funding expectations, and certain project management expectations. **NOTE:** Unlike standard Option Agreements, CCALT is not able to pay consideration to secure the Option on the property. The Option Agreement will prohibit the landowner from selling the property or making significant alterations to the property during the Option Period.

## **8. Applying for Funding:**

Once the project has been approved and the Option has been secured, the CCALT Project Manager will begin to work on securing the required funding to purchase the conservation easement. Funding applications are time consuming and complicated documents to prepare. Completing the funding applications requires significant time and investment from both the landowner and the CCALT Project Manager. **NOTE:** Funding is never guaranteed. Funding opportunities are competitive and funders typically do not have enough money to award all requests.

**9. Required Documentation:** The following four (4) due diligence reports need to be completed prior to conveying a conservation easement that includes public funding, (1) the Appraisal Report; (2) the Mineral Remoteness Assessment; (3) the Baseline Inventory Report; and (4) the Environmental Assessment. CCALT will provide a resource list of qualified professionals who specialize in the development of the required due diligence reports. It is the landowner's responsibility to contact, hire and pay for the production of the required due diligence reports.

- **Appraisal:** An independent qualified conservation easement appraisal must be prepared to determine the value of the conservation easement. **NOTE:** a standard land appraisal will not qualify for a conveyance of a conservation easement. The value of the conservation easement is what determines both state and federal tax benefits and the purchase price.
- **Mineral Remoteness Assessment:** Federal law requires a Mineral Remoteness Assessment be completed in all instances where the mineral estate has been severed and is owned separate from the surface estate. The mineral report must be completed by a certified geologist and must conclude that the likelihood of surface mining is "so remote as to be negligible". **NOTE:** Oil and gas development is not considered to be surface mining.
- **Baseline Inventory Report:** Federal law requires that a Baseline Inventory Report that documents the property's natural resources, historic and present uses be completed. This document is used by CCALT to carry out its perpetual stewardship obligations.

- **Environmental Assessment:** Funders will typically require an environmental assessment of the property to be completed. These reports are used to determine if any environmental hazards exist on the property.

**10. Title Work:** CCALT is required to review the property's chain of title. CCALT will work with the landowner to order title for the property from a title company that operates within the area where the property is located.

#### **11. Negotiating the Deed of Conservation Easement**

CCALT, CCALT's legal counsel, the funding entities, the landowner, and the landowner's legal counsel will draft and negotiate the terms of the deed of conservation easement. The initial drafting will be based off of CCALT's model deed of conservation easement. The deed of conservation easement will be tailored to the specific characteristics and conservation values of the property, as well as the needs of the landowner and the requirements of the funding entities. Negotiating the terms of the deed of conservation easement can be complex and time consuming. It is essential that CCALT, the funding entities and the landowner fully agree on all of the terms of the deed of conservation easement at the end of the negotiation.

#### **12. Funder Review**

Funding entities are required to review and approve all due diligence reports, title, and the deed of conservation easement. Funder review can often delay completion of the project and cause frustration for the landowner and CCALT. However, the funder review process is essential to completing the project and obtaining the funding.

**13. Secure a Tax Credit Broker:** CCALT strongly encourages landowners who desire to sell their conservation easement tax credits to work with a reputable conservation easement tax credit broker. CCALT will provide a list of names of individuals who specialize in this work.

#### **14. Easement Approval from the Board of Directors:**

Once the deed of conservation easement has been fully negotiated and approved by the funders, the CCALT Project Manager will submit the deed of conservation easement to the CCALT Board of Directors for review and formal approval. Once the Board has formally approved the deed of conservation easement, CCALT and the landowner may proceed to closing and recording.

#### **15. Closing and Recording:**

Closing will be handled through a title company which will ensure that the deed of conservation easement is properly signed and notarized by CCALT and the landowner and consented to by the funders. The title company will also ensure that the funding is properly distributed to the landowner per the requirements of the funders. The signed deed of conservation easement will be recorded in the county records by the title company. The title company will subsequently issue a title policy on the conservation easement interest to CCALT.

#### **16. Working with the Broker to sell your Tax Credits:**

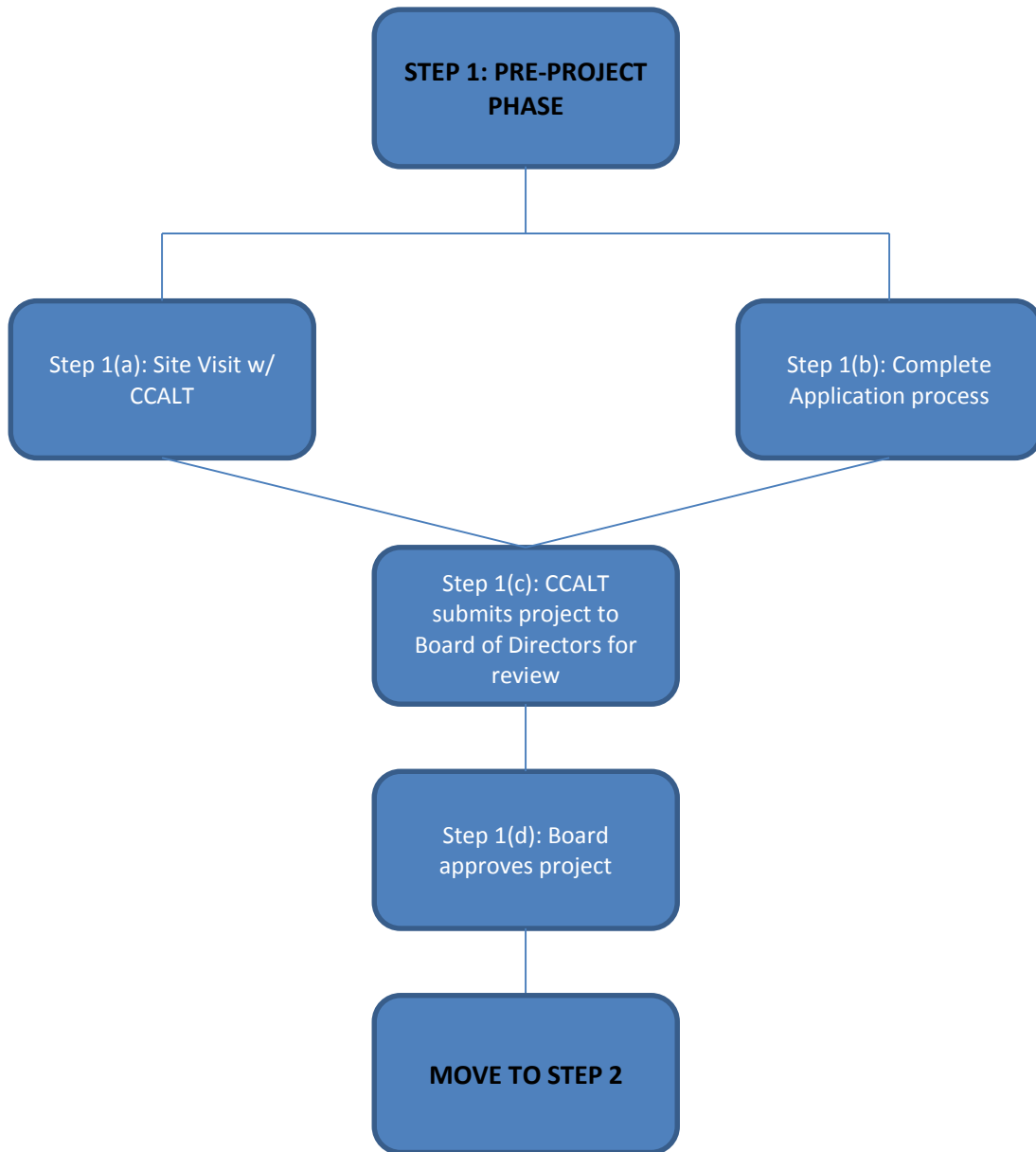
Following closing and recordation, the landowner and CCALT Project Manager will work cooperatively with the tax credit broker to complete all necessary forms and applications related to the issuance and sale of conservation easement tax credits. This process may take up to 3-4 months to complete.

#### **17. Flow Chart**

CCALT has developed a flow chart to assist landowners in learning about the process of conveying a bargain sale conservation easement. The flow chart is presented on the next several pages.

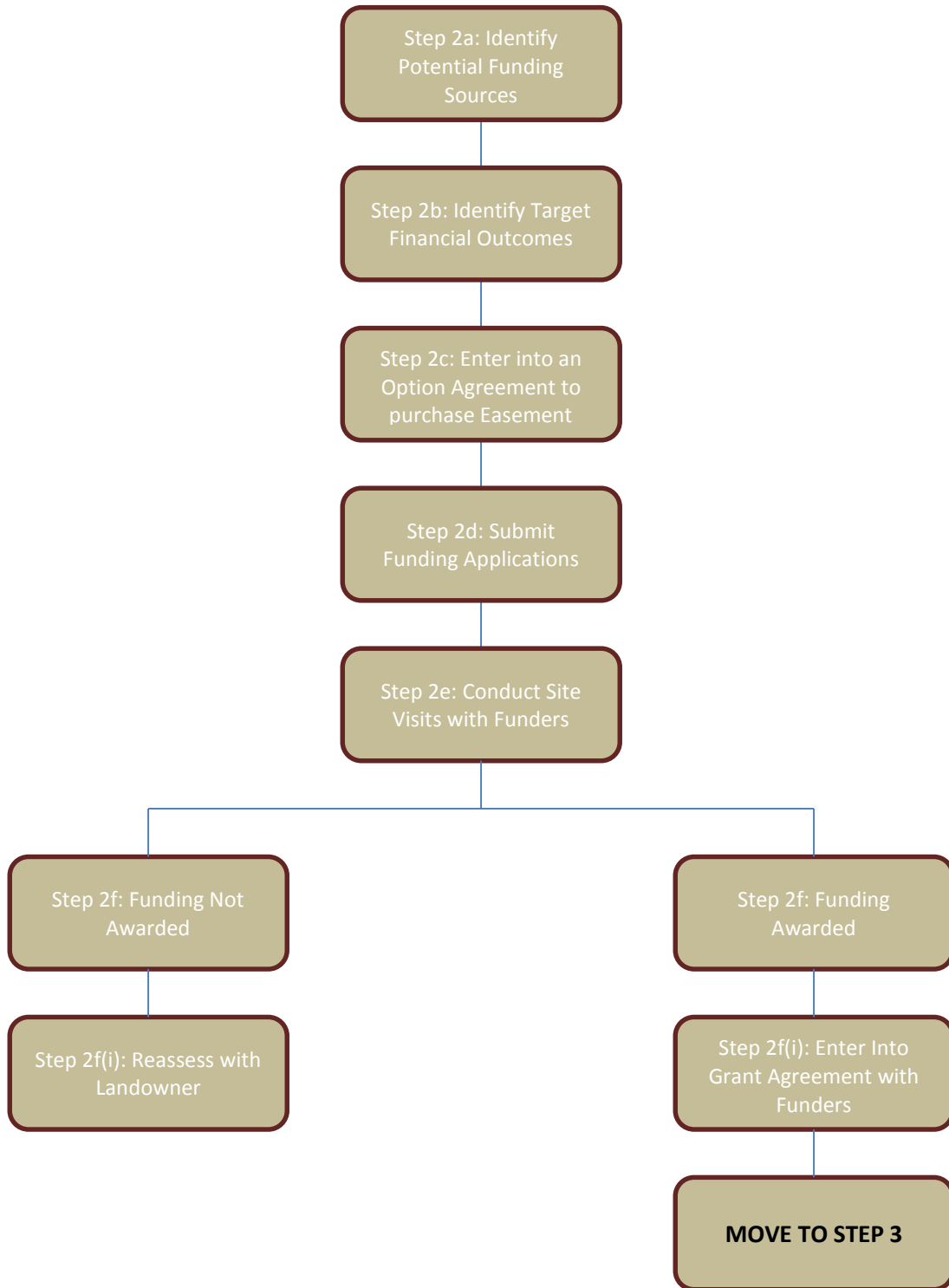
Please contact CCALT (303.225.8677 or [www.ccalt.org](http://www.ccalt.org)) with any additional questions that you have related to the process for developing a bargain sale conservation easement project.

### STEP 1 - PRE-PROJECT PHASE



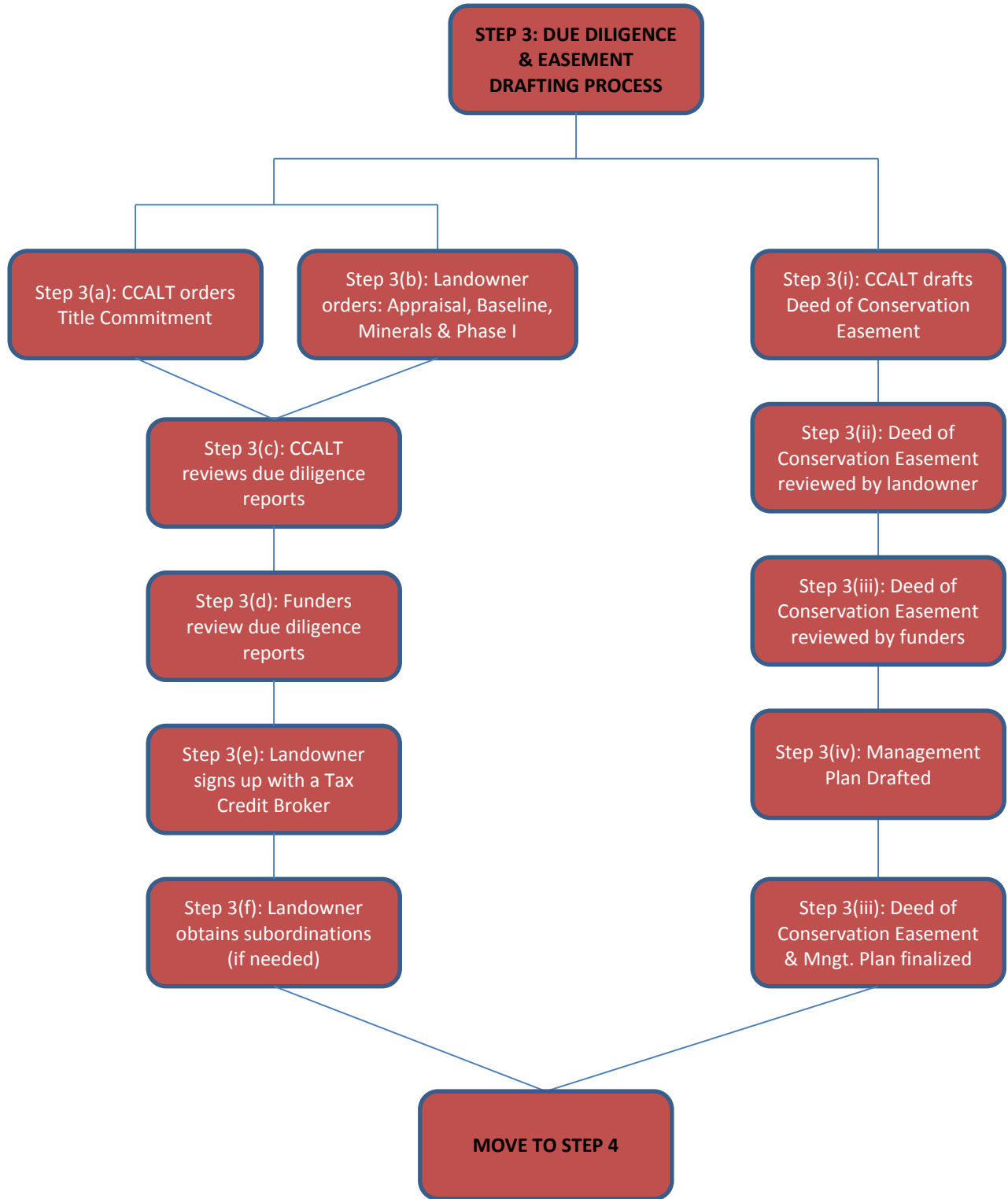
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## STEP 2 – FUNDRAISING PROCESS



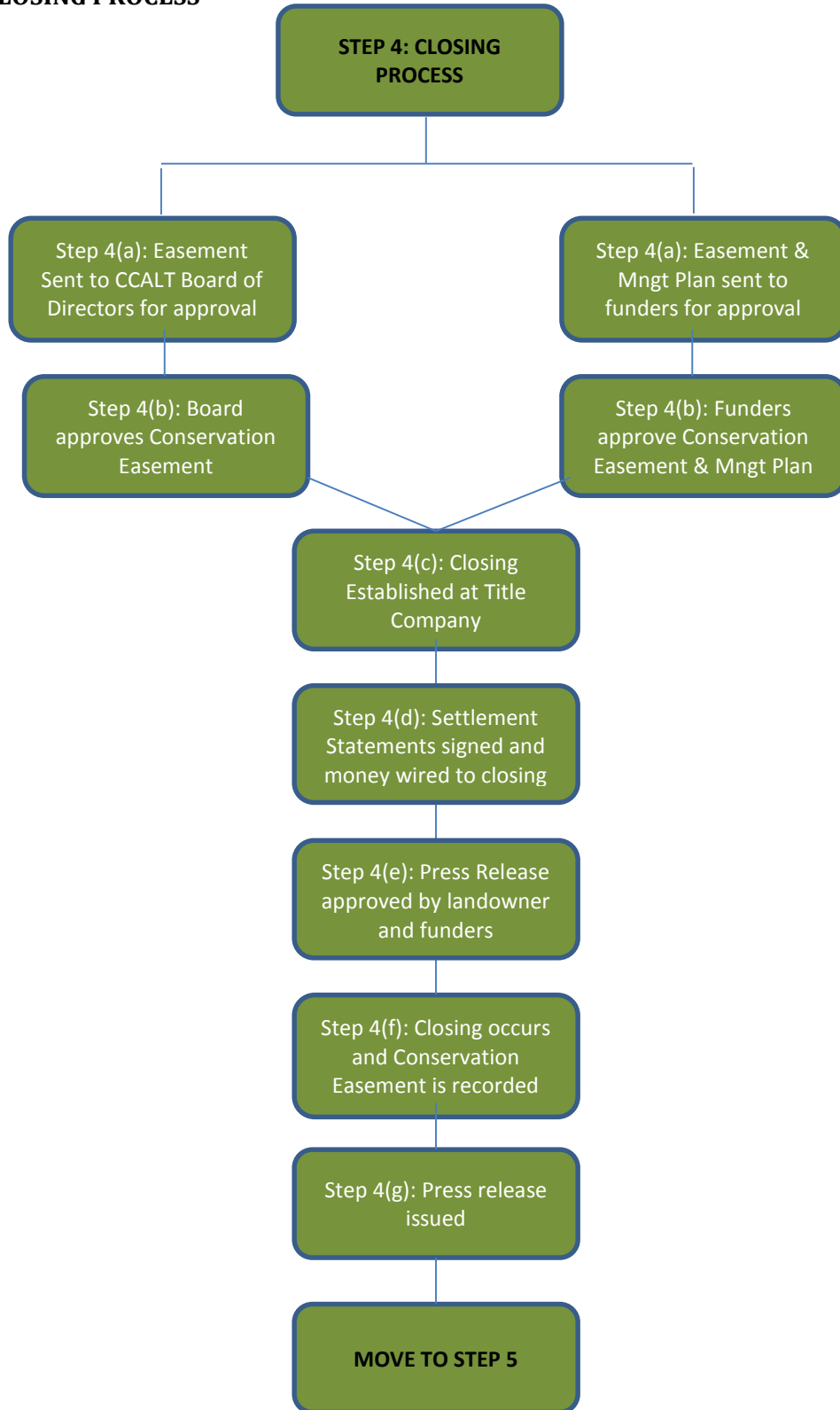
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### STEP 3 – DUE DILIGENCE & EASEMENT DRAFTING PROCESS



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## STEP 4 - CLOSING PROCESS



*[STEP 5 CONTINUES ON THE NEXT PAGE]*



## STEP 5 - POST CLOSING PROCESS

