



## 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 and donates any remaining value. The landowner may be 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.*

### IMPORTANT NOTES REGARDING PROJECT DEVELOPMENT OF BARGAIN SALES

*Properties that Qualify for Funding:* Various public entities (federal and state agencies and county programs) and private foundations make funding available for conservation projects. Not every property will qualify for funding. Funding sources are limited, and money is directed towards the priorities of the funding entities. Each funding source has different priorities, interests, and restrictions. These funding priorities vary and frequently include specific wildlife habitats, riparian areas, agricultural values, and public access. While the priorities vary, most funders also consider the urgency of a project and threats to the property. CCALT strives to submit projects that will compete well in highly competitive rounds.

*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 may then be eligible to receive 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.

*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) county funding programs where available. Several counties have dedicated funding sources for conservation projects including, Routt, Grand, Chaffee, Pitkin, 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 every landowner to fully understand all the legal ramifications associated with a perpetual conservation easement.

*Landowner Financial Advisor:* Donations of conservation easements may result in significant federal and state tax benefits. CCALT strongly encourages landowners to retain independent financial advice. CCALT wants every landowner to fully understand all the financial aspects associated with donating a conservation easement.

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

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

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 and landowner questionnaire. 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.

### **2. Landowner Project Questionnaire:**

The Landowner Project Questionnaire should be completed by the landowner and submitted to CCALT for review. CCALT will also provide a proforma which provides estimated costs and financial benefits. **NOTE:** Typically, a bargain sale conservation easement will cost between \$89,900 and \$157,150 to complete.

### **3. Site Visit:**

After reviewing the Landowner Project Questionnaire, the CCALT Conservation Team will 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 gather additional information about the property and further assess its consistency with CCALT's project criteria. The site visit is also used to discuss and evaluate possible funding opportunities that may exist.

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

CCALT will be able to discuss the various funding opportunities that may be available, the likelihood of securing funding, the timeline, and what additional restrictions each funding entity will require.

### **5. 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. Upon formal Board approval, CCALT will send the landowner an engagement letter. Following receipt of the signed engagement letter, 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. A \$1,000 non-refundable application fee will be due to CCALT 30 days following receipt of the signed engagement letter. This fee will be applied toward the total required Project Coordination Fee.

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

#### **6. Option Agreement:**

Funders require that an Option Agreement to purchase the conservation easement be in place prior to awarding funding. The Option Agreement will be negotiated between CCALT and the landowner and will outline the basic parameters of the transaction, funding expectations, timing, and 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.

#### **7. Applying for Funding:**

CCALT will begin to work on securing the required funding to purchase a portion of 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. An additional \$1,500 will be due at the time CCALT applies for funding. This fee will be applied toward the total required Project Coordination Fee. **NOTE:** Funding is never guaranteed. Funding opportunities are competitive and funders typically do not have enough money to award all requests.

**8. Due Diligence:** The following five (5) due diligence reports need to be completed prior to conveying a conservation easement that includes public funding: (1) Appraisal Report; (2) Mineral Remoteness Assessment; (3) Baseline Inventory Report; (4) Environmental Assessment; and (5) Title work. 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 to produce the required due diligence reports.

- **Appraisal:** An independent qualified conservation easement appraisal must be prepared to determine the value of the conservation easement. In some instances multiple appraisals may be required to meet funders' standards and the standards for tax purposes. **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 professional 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, but extensive oil and gas activity may preclude qualification.
- **Baseline Inventory Report:** Federal law requires that a Baseline Inventory Report that documents the property's conservation values, natural resources, uses, and current condition be completed. This report 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 to determine if any environmental hazards exist.
- **Title Work:** CCALT will review the property's chain of title and examine all exceptions to title. CCALT will order title for the property from a title company that operates in the area.

### **9. 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 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.

### **10. Funder Review**

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

### **11. Easement Approval from the CCALT Board of Directors:**

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

### **12. Closing and Recording:**

Closing will be handled through a title company which will ensure that the deed of conservation easement is properly signed 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.

**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.

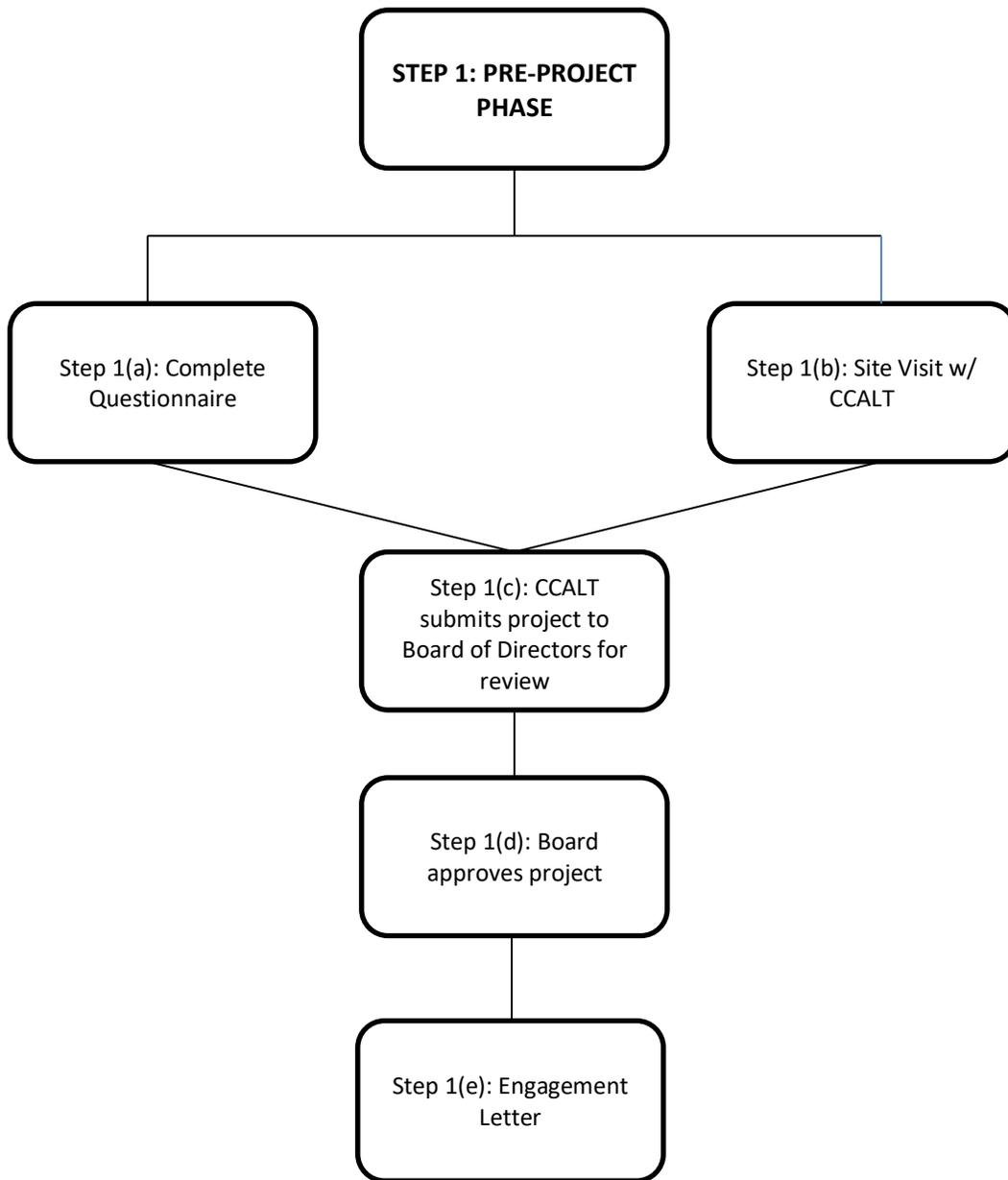
### **14. Working with the Broker to sell your Tax Credits:**

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. Once the Division of Conservation receives a completed tax credit application, it has 120 days to review all of the documents and issue the credits or request additional information.

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.

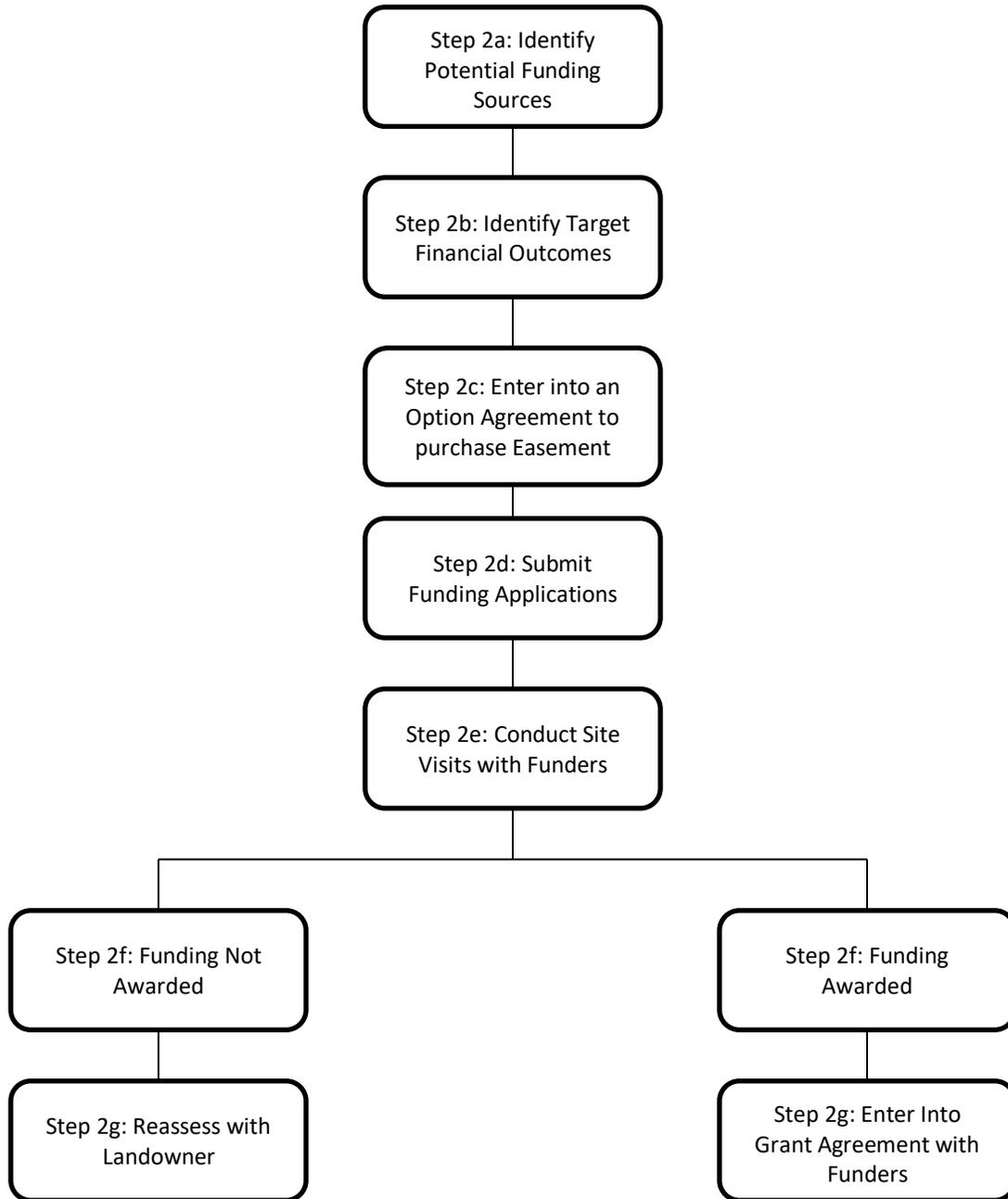
*Please contact CCALT (303.225.8677 or <https://ccalt.org>) with any additional questions that you have related to the process for developing a bargain sale conservation easement project.*

**STEP 1 – PRE-PROJECT PHASE**



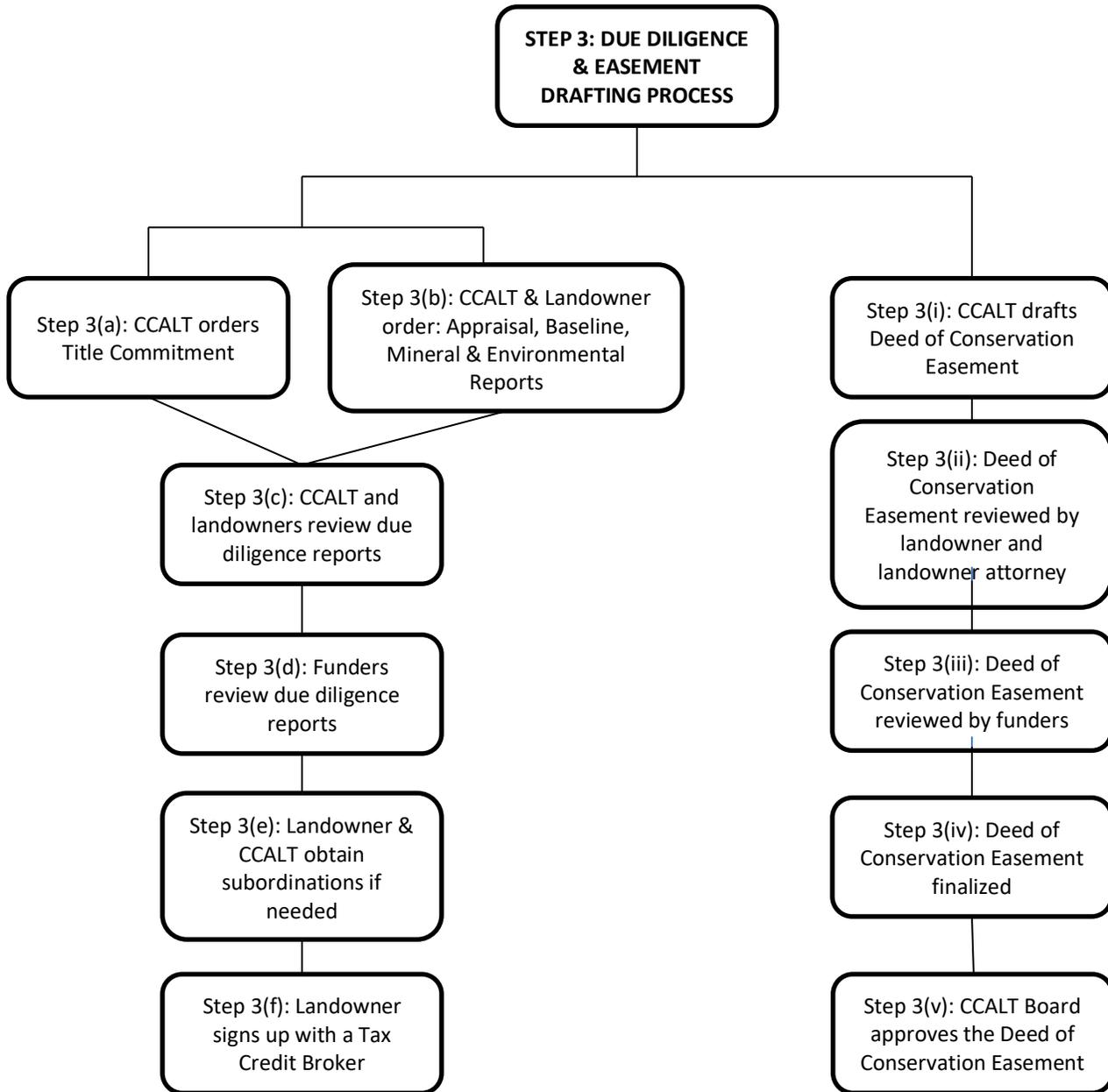
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**STEP 2 – FUNDRAISING PROCESS**



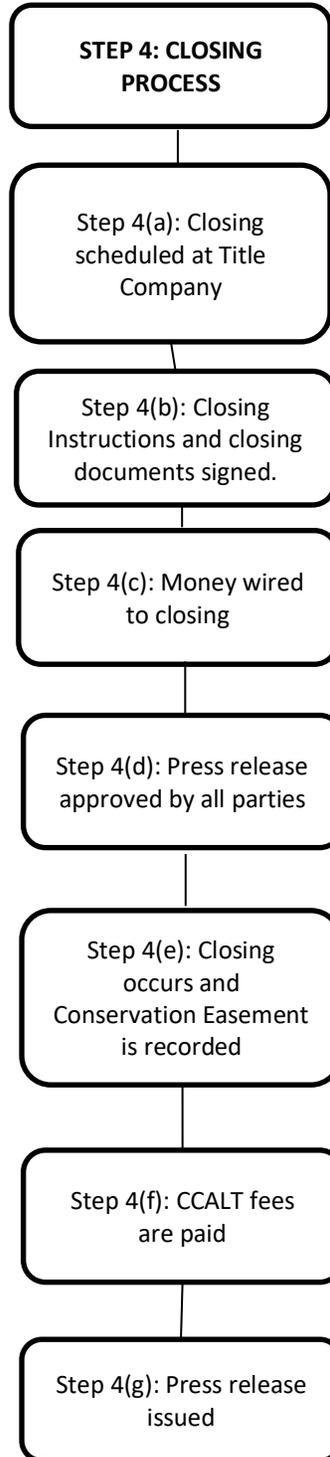
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**STEP 3 – DUE DILIGENCE & EASEMENT DRAFTING PROCESS**



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**STEP 4 – CLOSING PROCESS**



*[STEP 5 CONTINUES ON THE NEXT PAGE]*

**STEP 5 – POST CLOSING PROCESS**

