



PROCESS FOR DEVELOPING BARGAIN SALE PURCHASE CONSERVATION EASEMENT PROJECTS

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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 federal and state tax incentives. CCALT raises money from various public and private sources to pay for the purchase component of a bargain sale conservation easement transaction.

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 funding proposals that will compete well in highly competitive funding rounds but cannot guarantee funding.

Matching Requirements: Most funding sources require that their funding be leveraged with other sources of cash and a landowner donation. Typically, a conservation easement funder will fund approximately 25% of a bargain sale transaction. That 25% can 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. Some funders can fund 50% or even 75% of a bargain sale transaction depending on proposed conservation easement's alignment with those funding programs. The remaining value of the conservation easement that is not purchased is donated by the landowner who may then be eligible to receive federal and state tax incentives on the donated amount (i.e. federal tax deductions, estate tax incentives, and Colorado state tax credits).

Additional Restrictions: Funding almost always comes with strings attached. Most funders will require additional restrictions in the deed of conservation easement. These restrictions can vary from management plans to additional limitations on the use of the property beyond CCALT's standard conservation easement template.

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 Parks and Wildlife (CPW); (4) several private foundations; and, (5) county funding programs where available. Routt, Grand, Chaffee, Pitkin, Park, and many Front Range counties have dedicated funding sources for conservation projects.

Timeline Associated with the Completion of a Bargain Sale Conservation Easement: After formal CCALT Board approval of the conservation easement project, it typically takes a minimum of 2 and sometimes up to 3 years (and occasionally longer than that), 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; (4) funder review period(s); and, (5) 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: The donated portion of bargain sale conservation easements may qualify landowners for federal and state tax incentives. CCALT strongly encourages landowners to retain independent financial advice. CCALT wants every landowner to fully understand all the financial aspects associated with their conservation easement transaction.

STEPS TO COMPLETING A BARGAIN SALE CONSERVATION EASEMENT TRANSACTION

1. Contact CCALT and Request an Information Packet and Landowner Questionnaire:

Interested landowners are encouraged to contact CCALT 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.

2. Landowner Project Questionnaire:

The Landowner Project Questionnaire should be completed by the landowner and submitted to CCALT for review. CCALT may also be able to provide a proforma which provides estimated costs and financial benefits. **NOTE:** Typically, a bargain sale conservation easement will cost between \$104,250-\$179,750 to complete.

3. Site Visit:

After reviewing the Landowner Project Questionnaire, the CCALT Conservation Team will determine if the project fits into 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 evaluate its alignment 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 \$2,500 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 due at closing.

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. 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.

8. Due Diligence: The following 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 Hazards Assessment (if needed); and (5) Title work and Title Policy. Additionally, if water rights are being conveyed, a separate water report will be needed. CCALT will provide a resource list of qualified professionals who specialize in the development of the required due diligence reports. CCALT can help identify contractors and coordinate initial contact, but ***it is the landowner's responsibility to hire and pay contractors 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. Field work must be completed to document current conditions and can only be completed when there is no snow cover. This report is used by CCALT to carry out its perpetual stewardship obligations.
- **Environmental Hazards Assessment:** Funders will typically require an environmental hazards assessment of the property to be completed to determine if any environmental hazards exist.
- **Title Work and Title Policy:** 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. If the property is subject to any deeds of trust and the landowner does not plan to pay those off prior to closing, the landowner and CCALT will work with the lender to have the lender subordinate the deed of trust to the conservation easement. It is important to determine how any deeds of trust will be addressed as early in the process as possible as lenders often require a significant amount of time to review subordination requests. The consent and subordination agreement will be attached to the deed of conservation easement.
- **Water Report:** If irrigation water rights will be conveyed in the easement, a water report documenting water rights, use, and history of rights must be completed. CCALT typically writes these reports but may require that an independent contractor be hired to complete the report depending on the water rights’ complexity.

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 completed by CCALT and will be based off CCALT’s model deed of conservation easement that includes any additional restrictions required by the funder(s). 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. 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. Funders might also require additional paperwork specific to their reporting entity. 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. 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. Obtain and Sell Tax Credits (if applicable): A conservation easement donor (“Donor”) is eligible to receive tax credits under Colorado law if they file a Colorado income tax return or if they otherwise qualify as a taxpayer pursuant to CRS 39-22-522(1)(b). Conservation easement tax credits may be used by the donor over a 20-year period beginning in the first year of the tax credit certificate’s eligibility. The tax credits may also be sold to other Colorado taxpayers.

14. 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. CCALT also has capacity to facilitate tax credit transactions on a limited basis and may be able to work with you to sell your credits. If you are interested in working with CCALT to sell your tax credits, inquire with your CCALT Project Manager as your project progresses.

15. Working with the Broker to sell your Tax Credits:

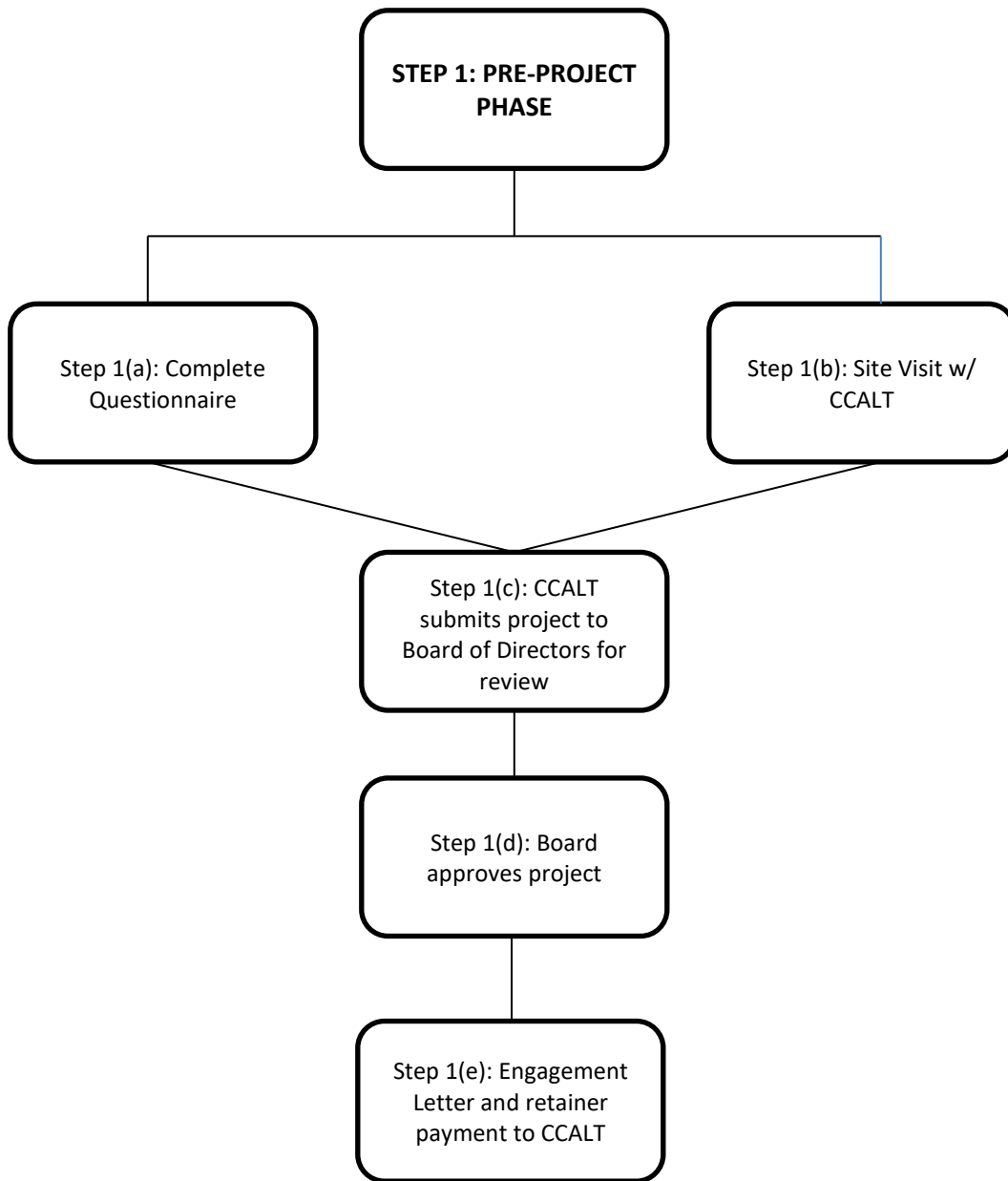
Following closing and recordation, the landowner and CCALT Project Manager will work cooperatively with the tax credit broker to complete all necessary forms and applications related to the issuance and sale of conservation easement tax credits. Once the Division of Conservation receives a completed tax credit application, it has up to 120 days to review all of the documents and issue the credits or request additional information. If the landowner desires to have CCALT facilitate their tax credit sale(s), and if CCALT has the capacity to work with the landowner for this purpose, CCALT will work closely with the landowner and landowner’s independent legal counsel and financial advisor(s) on all aspects of obtaining and selling the tax credits.

For additional information on Conservation Easement Tax Credits, please refer to CCALT’s Frequently Asked Questions document.

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.

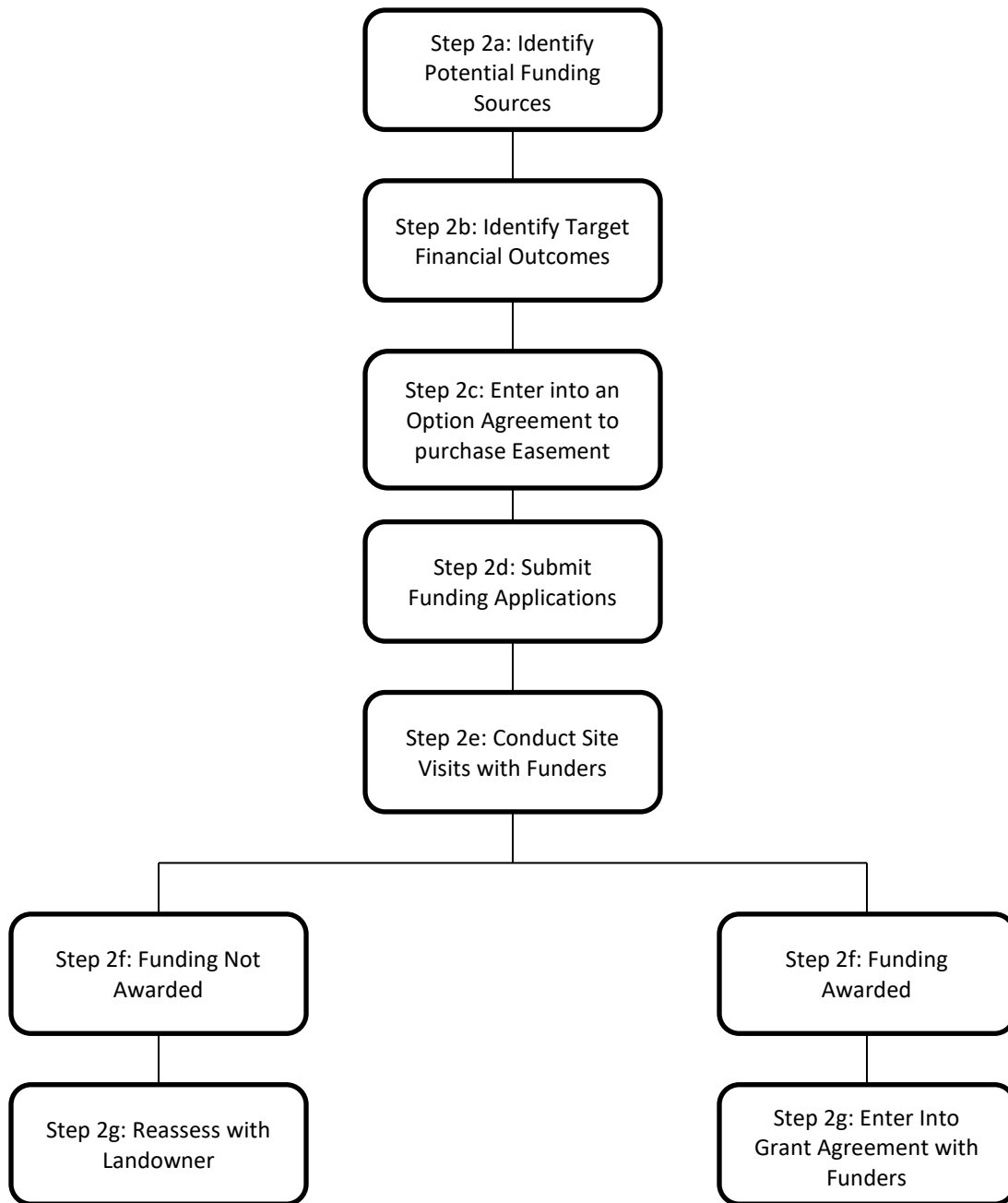
Please contact CCALT (303.225.8677 or www.ccalt.org) with any additional questions that you have related to the process for developing a bargain sale conservation easement project.

STEP 1 – PRE-PROJECT PHASE



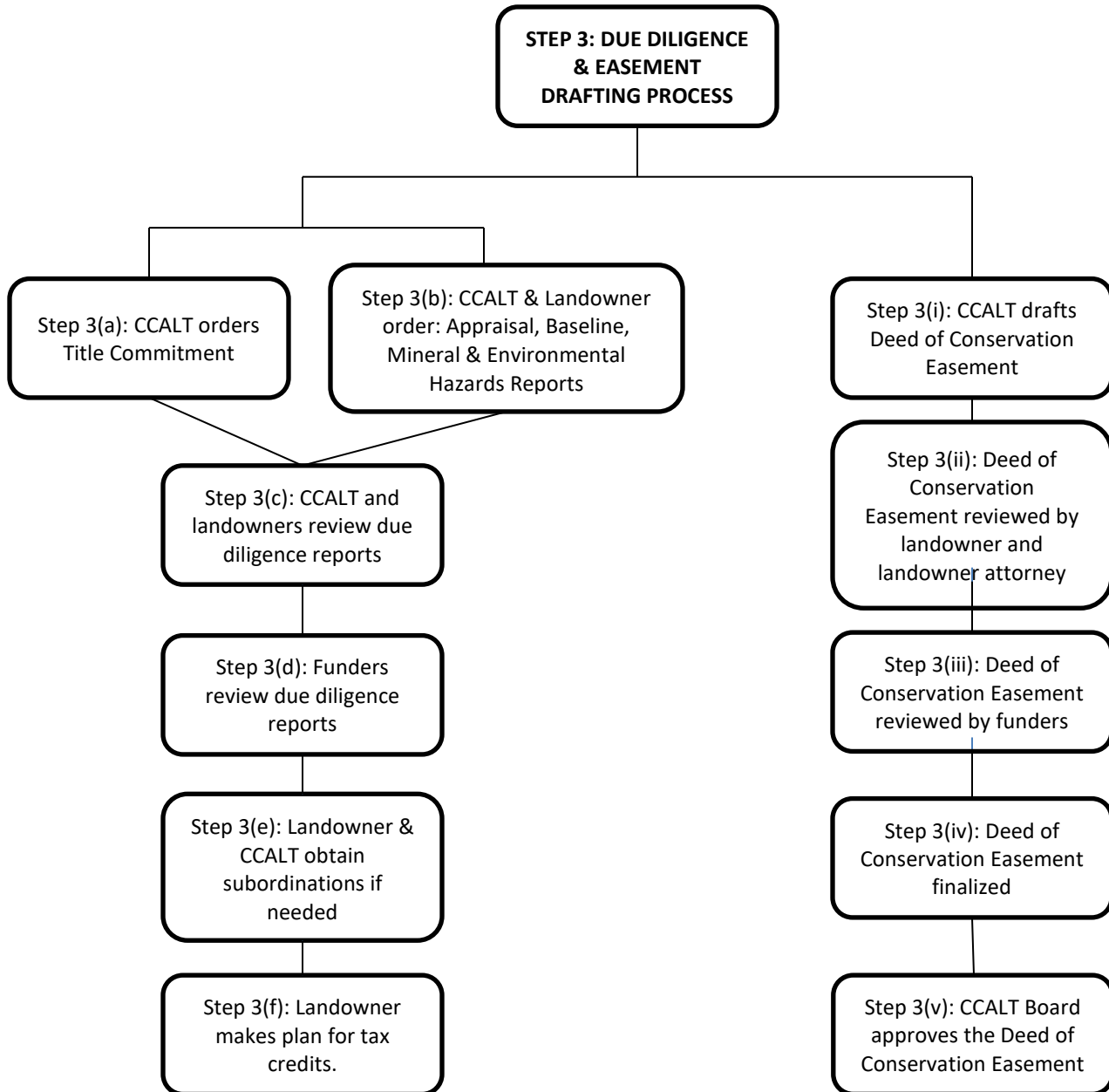
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STEP 2 – FUNDRAISING PROCESS



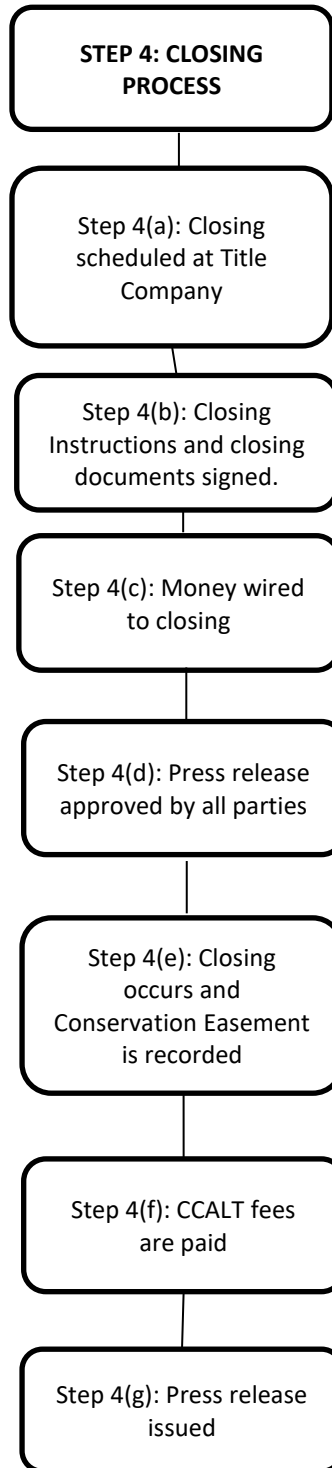
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STEP 3 – DUE DILIGENCE & EASEMENT DRAFTING PROCESS



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STEP 4 – CLOSING PROCESS



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STEP 5 – POST CLOSING PROCESS

