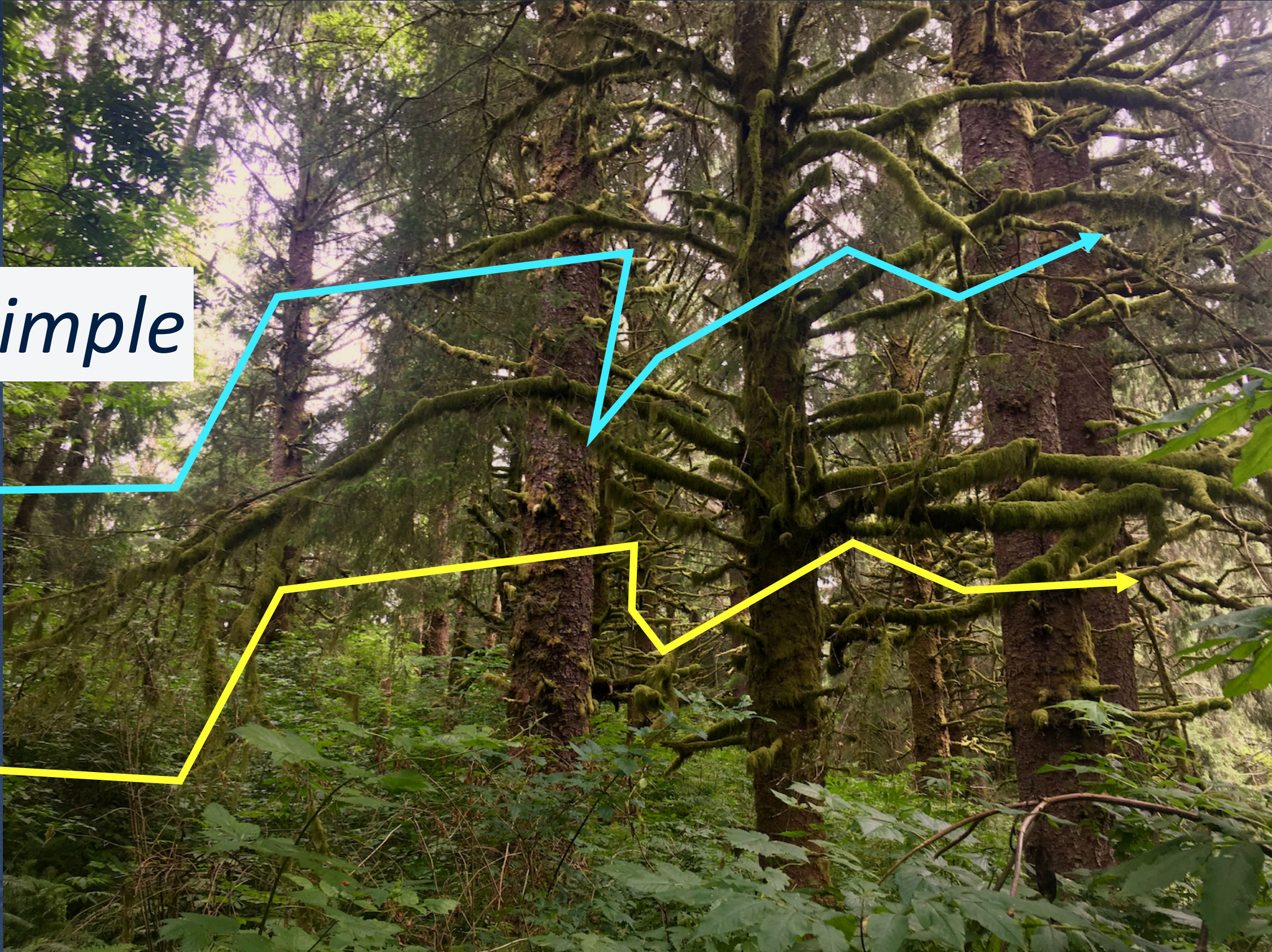




Conservation Easement



Fee Simple

Process of Land Acquisitions

*Ben Pittenger - Lower Nehalem Community Trust
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Comparing two types of acquisitions ...

Define the terms

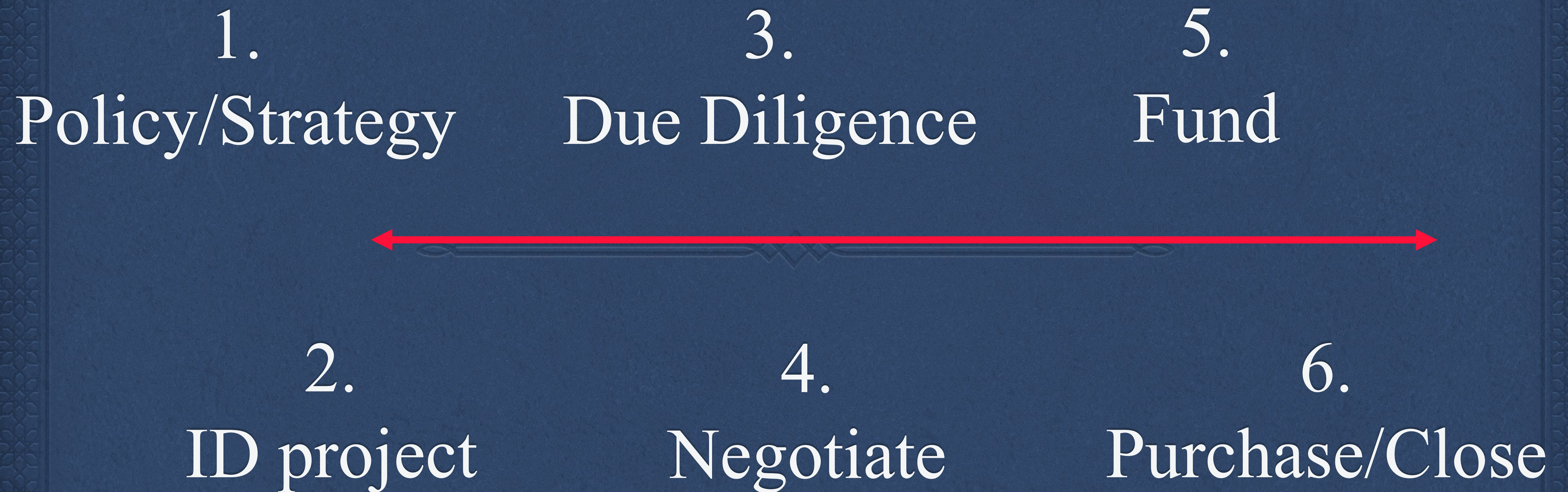
Fee Simple - Acquire full title - become full owner/manager

Conservation Easement

Negotiated, binding (legally enforceable) agreement:

- Transfers some rights in land - not full title
- Places limits or conditions on certain uses of the land
- Includes duty to enforce/defend conservation purpose
- *In perpetuity* (Fed. Tax Code) (... rule against)
- To fulfill conservation purposes of the easement
 - habitat, water, open space, farm, housing, historical, etc.

General Order of Process



What is the overall purpose of acquisition procedures ... ?

(remember, I'm also an attorney)

1. Protect your agency/employer
2. Protect your backside
3. And, of course, close the deal with desired outcomes

1. Policy/Strategy

Why do you want to acquire this land?

Organization needs to define policy.

Guide employees/acquisition committee.

Efficiency - avoid false starts

Justify / explain process and choice to:

Board

Funders

LTA or other accrediting body

Example ...

One procedure is to conduct a basic, initial screening

- *Quick*
- *Yes/No*
- *Identify ecol. values*
- *Should we invest more time and \$ to continue to investigate?*

Several tabs →

Lower Nehalem Community Trust

Due Diligence

Project Name	0	
		DATE AND NOTES (where applicable)
Meetings/Conversations with owner - notes	<input type="checkbox"/>	
Owner's conditions/criteria	<input type="checkbox"/>	
Meetings/Discussions with partners	<input type="checkbox"/>	
Site visit	<input type="checkbox"/>	
Improvements (note their conditions)	<input type="checkbox"/>	
Obvious 3d party uses	<input type="checkbox"/>	
Vegetation - Invasives	<input type="checkbox"/>	
Vegetation - Native	<input type="checkbox"/>	
Water resources & condition	<input type="checkbox"/>	
Waste, refuse, debris, junk	<input type="checkbox"/>	
Indications of possible contamination	<input type="checkbox"/>	
Intrusions/Encroachments	<input type="checkbox"/>	
	<input type="checkbox"/>	
Inspections and Reports	<input type="checkbox"/>	
Legal description and boundary survey	<input type="checkbox"/>	
Landowner Concerns	<input type="checkbox"/>	
Encumbrances (easements, ROWs, adverse interests, restrictions, etc.)	<input type="checkbox"/>	
Title status and searches	<input type="checkbox"/>	
Background Research:		
Water Rights	<input type="checkbox"/>	
Mineral Rights	<input type="checkbox"/>	
Natural resources	<input type="checkbox"/>	
Cultural resources	<input type="checkbox"/>	
Contracts	<input type="checkbox"/>	
Prior uses	<input type="checkbox"/>	
	<input type="checkbox"/>	

MORE IN-DEPTH

1. Policy/Strategy

What differences - fee simple vs. CE?

Fee Simple	CE
1. All ownership benefits/burdens	1. Only concerns outlined in CE
2. As long as agency/ngo holds title	2. In perpetuity (or defined period)
3. More expensive	3. Less expensive
4. Self-management	4. Shared mgmt - multi-generational

2.

ID project

What interests do you want to acquire?

What land will meet your needs?

What does your Agency's or Trust's policy say?

What need are you trying to meet?

Where, and what type of land will meet policy and need?

Do you have the capacity?

How might a project be ID'd?

- Unsolicited offer (walked through the door)
- To meet specific need, due to location or resource
- ID'd through strategic process
- Linked to other transaction

2. ID project

What differences - fee simple vs. CE?

Fee Simple	CE
1. Self-management	1. Who would you co-manage with?
2. As long as agency/ngo holds title	2. In perpetuity (or defined period)
3. More expensive	3. Less expensive
4	4

3. Due Diligence

Due diligence:

- Investigation to ascertain legal and/or environmental challenges related to the property.

Land is acquired with its unique benefits ... and challenges.

After the deal, ability to address problems is limited.

Need to know challenges - before you seal the deal.

Protect your Agency/Trust, and yourself.

Due diligence investigation

- **Legal:**
 - **Title review**
 - **(E.g. owner names)**
 - **Easements (power, water road)**
 - **Surveys**
 - **Permits for improvements**
 - **3rd party interests**
 - **Mineral rights ****
 - **Water rights**
 - **Tax implications**
- **Boundary issues**
- **Zoning issues**
- **Outstanding fees**
- **Environmental**
 - **Site inspections ****
 - **Previous uses ****
 - **Technical reports**
 - **Buildings/improvements**
 - **CWA, or other env. actions**

3. Due Diligence

What differences - fee simple vs. CE?

Fee Simple	CE
1. All concerns relevant to an owner	1. Concerns specific to CE
2. Stewardship - solo - all on you!	2. Stewardship - defined in CE
3. Likely obtain own appraisal	3. Donor gets appraisal (Tax benefit)
4	4

4. Negotiate

Know your position/limits - What it is worth and what can you spend?

Appraisal(s)! and experience in market

Land Value

According to Highest Best Use = Reasonably possible and feasible use of the property that results in the highest value

Comps

Resource values (Timber Cruise, water rights, views, etc.)

Appraisal will affect Grant amounts

Appraisal will affect tax benefits to donors

Other sources - Donors in the wings, partners, fundraising capacity

Timing - to allow for fundraising?

Purchase or Donation Agreement

4. Negotiate

What differences - fee simple vs. CE?

Fee Simple	CE
1. Negotiating for the entire package	1. Must negotiate responsibilities, access, stew. funding, etc.
2. Full price	2. Value of access and right/duty to steward
3. More expensive	3. Less expensive
4. After deal, sellers are done	4. After deal sellers <u>and subsequent owners</u> remain involved & bound

5. Fund

Develop funding sources

Agency/Trust funds (ready cash)

Acquisition grants

Government agencies (E.g. OWEB)

(Often come with their own conservation easement)

Private foundation grants

Private donations

Loans & other approaches

Bridge loan

Other NGO or supporter purchase?

Bank

Amount to fund (See negotiation)

5. Fund

What differences - fee simple vs. CE?

Fee Simple	CE
1. Funders/donors more familiar	1. Need to educate donors/funders
2. Full price - more expensive	2. Value of right to steward - less
3. Legal defense less likely	3. Legal defense more likely
4	4

6. Purchase / Close

Close the Deal

Agency/Trust Board

Authorization

Work with attorney

Review documents

Agreements incorporated?

Accurate?

Authorized signers correct?

Signatures may be executed
separately

Provide payment

After closing

Confirm completed, &
correct

Copies

Record

Store originals pursuant to
Agency/Trust policy

6. Purchase / Close

What differences - fee simple vs. CE?

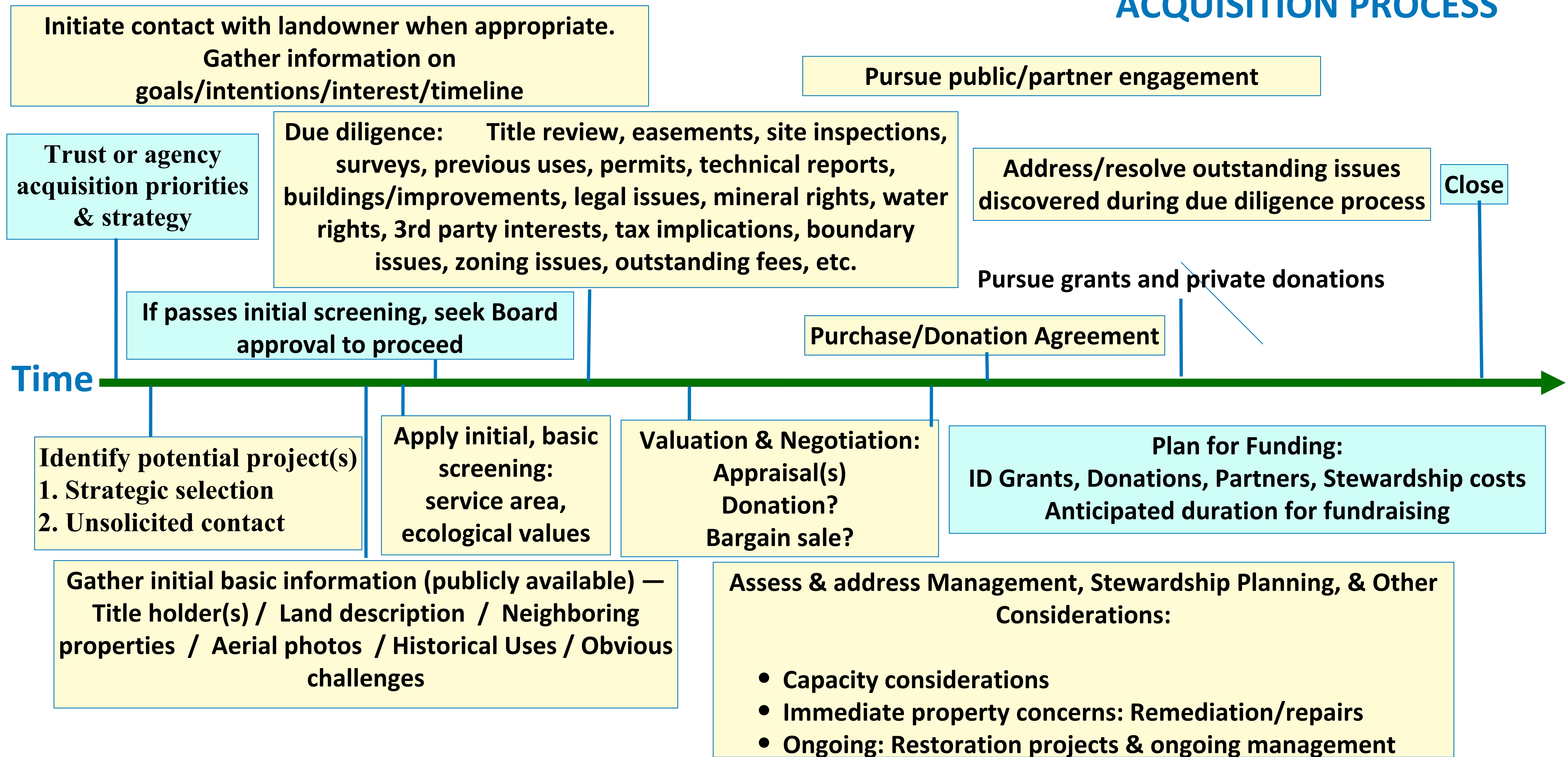
Fee Simple	CE
1. Tax form (8283) if bargain sale (Charitable non-cash donation)	1. Tax form 8283 almost always
2. No CE to record	2. Must emphasize CE in deed
3	3
4	4

Easy, eh?



Another perspective

ACQUISITION PROCESS



What does it mean to ‘own’ land?

“Ownership” — Hold enforceable rights related to the property

- To be present on the property
- To change the property
- To influence what others can/cannot do on the property

A little bit of rights▶ All the rights

No objection

Verbal permission

Invitee

By agreement

For a moment

For a while

For a defined time

“Fee simple” “Exclusive ownership”

1. Just you ... sole/undivided
2. Right to invite, or exclude
3. Forever ... Until transfer rights ...