

# UTAH GREATER SAGE GROUSE FUND: 2023 RFP

## REAL PROPERTY ACQUISITION PROPOSAL REQUIREMENTS

### 1. Project Proposal Eligibility:

Real property acquisition projects must restore, improve, preserve, and/or conserve greater sage grouse habitat in Utah. Regardless of whether the acquisition entails transfer of fee simple title or imposition of a conservation easement, the primary and paramount purpose of Utah Greater Sage Grouse Fund acquisition projects must be the protection of the greater sage grouse habitat values of the applicable property. Acquisition projects with a primary purpose of protecting commercial, industrial, recreational, or other non-ecological or non-greater sage grouse habitat values are not eligible for funding.

For certain properties, NFWF may determine, in consultation with BLM, that only a portion of the parcel demonstrates a sufficient nexus to lands with greater sage grouse habitat values so as to be eligible for funding from the Utah Greater Sage Grouse Fund. In these instances, the funding request must be commensurate with the appraised value of the portion of the property deemed eligible for funding. In these cases, Applicants are encouraged to coordinate with NFWF prior to obtaining an appraisal to ensure, if necessary, potential differences in valuation between eligible and non-eligible acreage are adequately described.

Properties that have existing legal mechanisms (e.g. deed restrictions or a conservation easement) in place to protect the same ecological or greater sage grouse habitat values of interest to NFWF under this RFP are not eligible for funding.

### 2. Property Acquisition Conditions and Timelines:

Generally, property acquisition projects involve either a single conveyance of property by the current property owner to the entity that will be the ultimate title holder (which may be the federal government or other third party entity) or two separate conveyances, whereby the Recipient (Applicant) itself first acquires the property and then conveys it to the federal government or other third party entity in a second transaction. The Full Proposal Scope of Work must describe all stages of the property acquisition project and clearly identify the entity that will ultimately hold title to the property.

NFWF's key objective in funding property acquisitions through the Utah Greater Sage Grouse Fund is to ensure that such properties are legally protected into perpetuity for conservation so as to preserve their greater sage grouse habitat values. All property acquisition projects must include appropriate legal mechanisms to protect the ecological and greater sage grouse habitat values of the property as outlined below:

1. If the ultimate title holder of the property will be a non-profit organization, a local government entity (e.g., city, town, county), or a State Agency other than as provided in item (2) immediately below, then a permanent conservation easement held by a

third party is required (unless legally prohibited). Applicants must include in the Full Proposal Scope of Work a description of their plan for implementing the conservation easement and may include in the Full Proposal Budget an estimate of all associated costs, including but not limited to long-term stewardship expenses.

2. If the ultimate title holder of the property is a Federal or State natural resource agency which will hold the property under a defined legal regime providing for the perpetual conservation of the property (e.g., National Wildlife Refuges; State Wildlife Management Areas; or other Federal or State conservation lands program) then conservation deed restrictions are required, unless expressly prohibited by law or law provides same or appropriate level of protection as restrictive covenants upon acquisition.

NFWF's standard practice is to fund at or after the date on which appropriate legal mechanisms, consistent with (1) and (2) immediately above, have been put in place to ensure the property's ecological and greater sage grouse habitat values are protected into perpetuity. The Full Proposal Scope of Work must clearly identify the applicable protective mechanism(s) and the timeline for their establishment.

If NFWF invites a Full Proposal for a proposed property acquisition, an Applicant must complete these key steps to render the proposed acquisition eligible for payment:

1. submit a Full Proposal, satisfactory in all respects to NFWF;
2. execute a project funding agreement (using NFWF's standard template), which will incorporate the Full Proposal by reference; and,
3. **no less than sixty (60) days** prior to the proposed closing of each property conveyance, submit to NFWF all required due diligence documentation. During the sixty (60) days, NFWF and the Applicant will work together to resolve any issues with the due diligence documentation to NFWF's satisfaction. If significant document revisions are required to reconcile discrepancies or errors or resolve issues, NFWF's review period may require more than sixty (60) days.

**\*Note\*** When the property acquisition project includes two separate conveyances, whereby the Applicant first acquires the land and then conveys it to a third party, NFWF will disburse acquisition funds **only** after NFWF has verified that the property is legally protected for conservation purposes (see section 3, below).

To provide sufficient time for the completion of these steps, Applicants are strongly advised to schedule property closings **no earlier than 12 months after the date of their initial Full Proposal submissions.**

### **3. Due Diligence Documents Required by NFWF:**

NFWF will not disburse acquisition funding until NFWF has received and approved all

required due diligence documentation (listed below). **NFWF requires no less than sixty (60) days to review and approve the due diligence documentation after the date that the last such document is provided.**

In some instances, additional due diligence may be required. At the outset of a property acquisition project, NFWF recommends close coordination in order to streamline identification and submission of applicable due diligence documents. To expedite due diligence review, NFWF may request to coordinate directly with Sub-recipients such as appraisers or title companies. Costs of Sub-recipient coordination with NFWF are eligible for inclusion in the project budget.

**Applicants should ensure that all documents are consistent in their descriptions of the property and all other respects (including appraised value, dollar amounts, legal descriptions, and square footage or acreage values) before submitting them for NFWF review and approval to avoid unnecessary delays.**

#### Standard Due Diligence Documentation

Please clearly label and upload all available documents with Full Proposal submission. In the Full Proposal Scope of Work, provide a work plan and expected timeline for preparing and submitting any due diligence documents not available at the time of Full Proposal submissions.

#### Purchase and Sale Agreement/Option to Purchase

- Purchase and sale agreement/option to purchase agreement and all amendments thereto which, if not already executed, shall be contingent upon funding of the property acquisition.

#### Appraisal

- A recent (generally within 1 year absent special circumstances) appraisal conforming to the Uniform Standards of Professional Appraisal Practice (USPAP) and/or other appraisal standard required by the ultimate title holder completed by an independent state-certified appraiser showing the fair market value of the property interest. The appraisal should be informed by a recent survey and valid title commitment.

#### Survey and Legal Description

- A recent (generally within 2 years absent special circumstances) boundary survey of the applicable property interest and legal description prepared by a licensed surveyor (unless the project involves acquisition by a federal agency and review by that agency indicates a new survey is not needed).

#### Title Commitment

- A valid title insurance commitment including all underlying documentation. Endorsements regarding the following are required, if applicable: Contiguity, Same as Survey (ALTA 25-06)/Location and Map, Electronic Signature/Policy Authentication (ALTA 39-06), Deletion of Arbitration, and Subdivision. For federal acquisitions the title

commitment must be in a form that results in issuance of a final ALTA U.S. Policy – 9/28/91 (revised 12/3/12).

#### Level One Environmental Assessment

- A recent (generally within 6 months to 1 year of closing) level/phase one environmental assessment report for the property interest prepared by an independent licensed expert, which meets all requirements of the ultimate acquiring entity. In some cases, NFWF will allow an Environmental Transaction Screen conforming to ASTM E1528, or other comparable format (e.g., Pre-Acquisition Liability Survey), in substitution for a level/phase one environmental assessment report. To qualify for a limited assessment a Recipient should respond to the following three questions:
  - Has any part of the property been used for commercial or industrial activities either currently or in the past?
  - Has any property abutting the subject property been used for commercial or industrial activities either currently or in the past? If yes, how close to the boundary of the subject property are/were the abutting commercial or industrial activities?
  - If the property has been used only for residential purposes, have there ever been one or more underground storage tanks installed on the property?

#### Deed

- A deed for the property interest, which if not executed/recorded, shall be the final draft for closing and shall include, as appropriate, the deed language required by NFWF (see section 5, below). If a federal agency is acquiring the property, the deed needs to conform with any applicable requirements under federal or state law, including but not limited to the 2016 Regulations of the Attorney General Governing the Review and Approval of Title for Federal Land Acquisitions (DOJ Title Regulations).

#### Escrow Instructions and Settlement Statement

- Instructions for the title/settlement company, if applicable, and a settlement statement, which if not executed, shall be in final draft for closing.

#### Conservation Management/Stewardship Plan

- A copy of the draft/final conservation management and/or stewardship plan for the property interest, as appropriate (see section 6, below).

#### Net Expense Certification

- A form provided by NFWF certifying the net expense of the purchase price of the property, i.e. the dollar amount that will be paid or has been paid to acquire the property interest. Offsets, seller donations, the foregone value in bargain sales, donated land values, or any other expenses not fully and finally incurred by the Recipient, or not materially required, for the acquisition of the applicable property are ineligible for Utah Greater Sage Grouse Fund funding.

#### Conservation Easement

- If applicable, the conservation easement for the property interest, which if not executed/recorded, shall be the final draft to be recorded and shall include, as appropriate, the easement language required by NFWF (see section 5, below). If a federal agency is acquiring the property, the deed needs to conform with any applicable requirements under federal or state law, including but not limited to the DOJ Title Regulations.

#### Other Funds

- If applicable, a written demonstration (to NFWF's reasonable satisfaction) that the Recipient has secured all other funds necessary for acquiring the property interest.

#### Federal or State Agency Letter

- If the ultimate title holder of the property is a Federal or State resource agency which will hold the property under a defined legal regime providing for the perpetual conservation of the property, NFWF may request a copy of the applicable legal authorities governing such agency's ownership, use, and management of the land. NFWF also requires a letter from the agency that confirms:
  - its legal mandate or authorization to perpetually protect the conservation value of Utah Greater Sage Grouse Fund -funded properties transferred to it (if a legal mandate/authorization can be shown then the funding agreement language and deed restriction language below may be waived);
  - how pre-existing third-party land rights/interests, such as mineral rights severed from the surface rights, will be managed, if such rights are exercised, to minimize impacts to the habitats and species the acquisition is intended to protect; and/or, if the mineral rights have not been severed, the agency's commitment not to exercise or sever or allow the exercise of those mineral rights.
  - that if it decides to sell, lease, alienate, or exchange such properties, or interests therein, it will notify BLM and use any proceeds, or any residual value derived therefrom, to fund other property acquisitions that, themselves, would qualify for funding under the Utah Greater Sage Grouse Fund (as provided in NFWF's required deed language); and,
  - it will use best efforts to mitigate any other substantial risks to the conservation values of the property.
  - that National Environmental Policy Act (NEPA) compliance has been completed for projects with a federal nexus.
  - that for any ultimate federal acquisition that the proposal complies with the DOJ Title Regulations.

Note: within ninety (90) days after the date of closing of a Utah Greater Sage Grouse Fund -funded property acquisition, Recipients must provide NFWF with copies of the following documents:

- a final executed closing and settlement statement or other appropriate documentation;
- the final title insurance policy;
- the final, executed purchase and sale agreement/option to purchase agreement for the applicable property interest, if not previously provided;
- the final recorded deed and/or easement, as applicable; and,

- the final conservation management plan or stewardship plan, including baseline documentation report signed by the landowner and the conservation easement holder, if not previously provided.

#### Due Diligence Documentation for Secondary Conveyances

In addition to the documents listed above, when the property acquisition project includes two separate conveyances, whereby the Recipient first acquires the land and then conveys it to a third party, Recipient must also provide NFWF with copies of the following due diligence documents sixty (60) days prior to the second conveyance:

- an executed donation agreement between the Recipient and the ultimate title holder and all amendments thereto;
- the deed for the pertinent property interest, which if not executed/recorded, shall be the final draft for closing and shall include, as appropriate, the deed language required by NFWF (see section 5, below);
- a conservation management plan or stewardship plan for the property interest, if applicable;
- a valid title insurance commitment;
- a draft settlement statement or other appropriate documentation; and
- if applicable, the conservation easement for the property interest, which shall be the final draft to be recorded and shall include, as appropriate, the easement language required by NFWF.

Note: Within ninety (90) days after the date of the second closing, Recipients must provide NFWF with copies of the following documents:

- an executed donation agreement, if not previously provided;
- a final executed closing and settlement statement or other appropriate documentation;
- the final title insurance policy; and,
- the final recorded deed and/or easement, as applicable; and,
- the final conservation management plan or stewardship plan, if not previously provided.

#### **4. Funding Policies:**

NFWF maintains the following policies on funding property acquisitions under the Utah Greater Sage Grouse Fund:

Applicants are encouraged to include in their project budget appropriate indirect costs plus salaries, benefits, and all other direct costs necessary for landowner negotiations, due diligence, conservation management or stewardship plans, easements, closing, and conveyance to third-parties, if applicable.

NFWF will fund the **lesser of** (1) the purchase price actually paid by the Recipient for the property and (2) the most recent appraised value of the property interest being acquired using Utah Greater Sage Grouse Fund funding.

## 5. Important Funding Agreement Language and Deed Restrictions:

Applicants should note that the Utah Greater Sage Grouse Fund project funding agreement includes a requirement for deed restrictions to be placed on all Utah Greater Sage Grouse Fund -funded properties regardless of final ownership or presence of additional conservation easements or deed restrictions. **Applicants should contact NFWF immediately if they perceive any obstacles to the imposition of the below funding agreement provisions or deed restrictions on property to be acquired under the Utah Greater Sage Grouse Fund.**

### Funding Agreement

At a minimum, the following provisions will be included in the applicable funding agreement:

*For fee title Property Acquisitions, Recipient hereby agrees to ensure the greater sage grouse habitat values of the Property Interest are legally protected in perpetuity and that if the applicable Property Interest acquired with Funds is subsequently sold, conveyed in a manner that allows the Property Interest to be used for purposes other than greater sage grouse habitat protection or conservation, or condemned in whole or in part, Recipient shall use the proceeds, or any residual value derived therefrom, of any such sale, conveyance, or condemnation to pay for property acquisition to conserve and/or preserve lands with greater sage grouse habitat values in the State of Utah. Recipient shall also ensure that the recorded deed applicable to the pertinent Property Interest includes (1) an acknowledgement that funds Recipient used for acquisition of the Property Interest were made available in order to mitigate permitted impacts to greater sage grouse in the State of Utah, (2) perpetual, restrictive covenants that run with the land and protect the conservation values of the Property Interest for which the Utah Greater Sage Grouse Fund provided funding, (3) the BLM as a third party beneficiary of the restrictive covenants, (4) notification to BLM in the event of any sale, conveyance, or condemnation of the Property Interest, and (5) that any owner of the Property Interest use the proceeds of any sale, conveyance, or condemnation in the manner described in the immediately preceding sentence.*

*For easement Property Acquisitions, Recipient hereby agrees to ensure the greater sage grouse habitat values of the Property Interest are legally protected through monitoring and enforcement of the provisions of the conservation easement and that if the applicable Property Interest acquired with Funds is subsequently terminated, extinguished, or modified, Recipient shall use any proceeds of such termination, extinguishment, or modification to pay for property acquisition to conserve and/or preserve lands with greater sage grouse habitat values in the State of Utah. Recipient shall also ensure that the applicable recorded easement includes (1) an acknowledgement that funds Recipient used for acquisition of the Property Interest were made available in order to mitigate permitted impacts to greater sage grouse in the State of Utah, (2) the conservation values for which the Utah Greater Sage Grouse Fund provided funding, (3) notification to BLM in the event of any termination, extinguishment, or modification of the Property Interest, and (4) that any owner of the Property Interest use the proceeds of any termination, extinguishment, or modification in the manner described in the immediately preceding sentence.*

## **Fee Title Property Acquisitions**

The following provisions, at a minimum, will be included in deeds conveying fee title property interests:

### **DEED RESTRICTIONS**

The use and ownership of the above-described lands, the Property, by Grantee, and its successors and assigns, shall be subject to the following restrictive covenants (“Restrictive Covenants”) which shall be perpetual, run with the Property, are for the benefit of the BLM and the people of the United States as third-party beneficiaries as set forth more fully herein, and are binding upon Grantee and its successors and assigns:

A. Purpose. Grantee acknowledges that funds Grantee used for Grantee’s acquisition of the Property were made available in order to mitigate permitted impacts to greater sage grouse in the State of Utah.

B. Restrictions. By acceptance, execution and recordation of this Deed, Grantee covenants and agrees on its own behalf as well as on the behalf of any successor or assignee of Grantee, with the Grantor, that:

(i) NFWF is providing Grantee with funding for the acquisition of the Property for the purpose of protecting the greater sage grouse habitat (“Greater Sage Grouse Values”) of the Property;

(ii) Grantee shall protect the Greater Sage Grouse Values of the Property into perpetuity;

(iii) Grantee shall not conduct or allow activity on or use of the Property that would impair or interfere with the Greater Sage Grouse Values, character, use, or utility of the Property; and, without limiting the foregoing, Grantee acknowledges and agrees the following activities are expressly prohibited: [INSERT PROHIBITED ACTIVITIES];

(iv) Activities on and uses for the Property may include: [INSERT PERMITTED ACTIVITIES AND USES]; and other uses consistent with the Greater Sage Grouse Values of the Property; and

(v) The beneficiaries of the Restrictive Covenants are 1) the BLM, and 2) the people of the United States.

C. Remedies and Self-Help. Grantor shall have the right upon advance notice to Grantee to enter the Property at all reasonable times for the purpose of inspecting the Property to determine if Grantee is complying with the Restrictive Covenants. Employees or agents of BLM shall also have the right but not the obligation upon advance notice to Grantee to enter the Property at all reasonable times for the purpose of inspecting the Property to determine if Grantee is complying with the Restrictive Covenants. If Grantee fails to comply with the



Restrictive Covenants, after having been given written notice of such alleged failure and a reasonable opportunity to cure the same, Grantor shall have the right to enforce, by injunction and/or specific performance, the Restrictive Covenants, as well as the right to exercise any other rights or remedies provided by law or in equity, and these rights shall not be waived by one or more incidents of failure to enforce such rights. If the Grantor fails to enforce such rights, BLM shall have the right but not the obligation to enforce the Restrictive Covenants.

D. Proceeds. If the Property is subsequently (a) conveyed, or (b) condemned, in whole or in part, Grantee or Grantee's successors and assigns, shall use the proceeds of any such conveyance, or condemnation, or any residual value derived therefrom, exclusively to pay for property acquisition to conserve and/or protect greater sage grouse habitat in the State of Utah.

E. Notice. In the event of any subsequent transfer, sale, conveyance, donation, or condemnation of the Property, or any part thereof, by Grantee, or Grantee's successors and assigns, the then owner of the Property shall give written notice of any such transfer, sale, conveyance or condemnation to BLM at [insert address] or BLM's successor organization, if one has been designated, on or before thirty (30) days from the date of any such transfer, sale, conveyance, donation, or condemnation.

### **Easement Property Acquisitions**

All easements funded through the Utah Greater Sage Grouse Fund must be conservation easements, clearly protecting the primacy of the greater sage grouse habitat values for which Utah Greater Sage Grouse Fund will be providing funding. All reservations and restrictions must be compatible with Utah Greater Sage Grouse Fund conservation purposes. Easements with the primary purpose of protecting uses or activities other than greater sage grouse habitat protection are not eligible for funding under the Utah Greater Sage Grouse Fund. Such uses and activities must be subordinate to, and will be allowed only to the extent compatible with, the greater sage grouse habitat values for which Utah Greater Sage Grouse Fund funding is being provided.

### **6. Conservation Management or Stewardship Plan:**

Recipients will be expected to prepare and submit a plan describing the activities necessary to ensure sustainability of the project's conservation outcomes.

For Utah Greater Sage Grouse Fund projects where land is acquired in fee, a conservation management plan for the property should be submitted to NFWF for review and approval with the due diligence documentation, as appropriate. The conservation management plan should include, as applicable, a description of:

- Current conditions, including any habitat or species inventories, and the greater sage grouse habitat values being protected by the property acquisition;
- the desired future conditions, and management strategies and actions (if any) to achieve them;
- the anticipated schedule to implement management strategies and actions and the

- responsible entity or organization; and
- the long-term funding needed to sustain the greater sage grouse habitat value of the property, and the anticipated source(s) of such funding.

For Utah Greater Sage Grouse Fund projects where land is protected under easement, a stewardship plan for the property should be submitted to NFWF for review and approval with the due diligence documentation, as appropriate. The stewardship plan should include, as applicable:

- the baseline report, describing current conditions, including any habitat or species inventories, and the conservation value being protected by the easement;
- the entity that will hold the easement interest, and how that entity will monitor the property to verify compliance with easement terms;
- the entity's capacity and procedures to defend the easement interest; and
- the long-term funding needed to monitor and defend the easement interest, and the anticipated source(s) of such funding.

As appropriate, Recipients may be required to submit both a conservation management plan and stewardship plan for review and approval based on the protective mechanisms and conservation objectives for the property.

## **7. Long-Term Stewardship Funds:**

Applicants may propose using Utah Greater Sage Grouse Fund monies to establish a fund to pay for the long-term, perhaps perpetual, management, monitoring, stewardship, and legal defense (together, "stewardship") of a conservation easement or natural resources on a specified property. Applicants interested in proposing long-term stewardship funds ("LTS Funds") should contact NFWF for more information prior to submitting a Full Proposal.

When proposing LTS Funds in a Full Proposal:

- identify the organization intended to receive and administer the LTS Funds,
- upload the investment plan or investment policy statement, and any other policies, that would govern the organization's management of the LTS Funds,
- identify the period of time during which the LTS Funds are expected to exist and the rationale for that period,
- provide an itemization of the activities and costs driving the total request for the LTS Funds, including:
  - o annual stewardship activities and associated costs,
  - o non-annual activities and associated costs (including one-time costs, such as legal defense); and,
  - o administration costs,
- if applicable, identify the assumed rate of return used to calculate the request for the LTS Funds (often referred to as a "capitalization rate").

NFWF's disbursement of LTS Funds will be governed by donative instrument executed with the organization intended to receive the LTS Funds. The donative instrument, among other

things, will:

- restrict the scope and purpose of the LTS Funds, and investment earnings on the LTS Funds, and
- oblige the organization receiving the LTS Funds to manage them consistent with applicable institutional fund management laws (i.e. the state-specific version of UPMIFA).

In the Full Proposal, confirm that the organization intended to receive the LTS Funds would be able to accept and manage the LTS Funds consistent with the above requirements, and for recipient federal agencies consistent with federal laws and regulations.

NFWF has an established investment platform that it administers internally to provide long-term stewardship organizations with an option for management of the LTS Funds. NFWF's platform is constructed upon certain financial and investment modeling principles that are shared with organizations electing to use the platform. Applicants interested in utilizing NFWF's investment platform for LTS Funds should contact NFWF for further details.