



Conditions for Land Purchase Funding

The Global Conservation Fund (GCF) finances the creation, expansion and long-term management of protected areas in the world's biodiversity *hotspots*, *high-biodiversity wilderness areas* and *important marine regions*.

GCF Land Purchase Policy

Given the unique cultural, economic, legal, political and environmental conditions in each region where GCF works, GCF applies broad meaning to the term "protected area" – *sites with legal recognition as a protected area (whether through legislation, decree, contractual arrangement or other legally enforceable means) and with biodiversity protection as an objective*. This definition includes, among other things, parks, reserves, community-managed resource protected areas and privately owned and managed lands.

GCF recognizes that establishing protected areas often involves land owned and controlled by individuals, corporations and/or communities. In such instances, where biodiversity conservation is an objective, a wide range of options should be considered, including land purchases, options to purchase, land leases, easements and incentive agreements (i.e. agreements under which landowners are compensated for opportunity costs).

While GCF, as a policy matter, will not take title to acquired lands, GCF funds are available to finance eligible land purchases and other land related transaction. Grantees considering a request for land purchase funding should carefully review the following requirements.¹

Due Diligence; Local Counsel

Prior to authorizing any grant for land purchases, GCF will carefully assess all aspects of the project to ensure that it presents a viable and sustainable means of effectively addressing the biodiversity conservation needs/threats in the relevant area. More specifically, the following will be considered in determining whether to approve land purchase proposals:

-- Purchase Price; Transaction Costs

All applications must set forth the proposed purchase price and all other costs associated with the land purchase. A summary of local market conditions/prices should be included in all applications. Where possible, applicants should describe comparable transactions in the region.

-- Land Purchase Strategy

Applicants must provide GCF with a clear purchase strategy. This strategy should describe the status of negotiations with the landowner and a brief background of the proposed sale should be provided (e.g., why is the landowner selling? have there been prior attempts to acquire the

¹ Applicants seeking funds for purchase options, land leases, easements, incentive agreements and other related transactions should contact Chris Stone (GCF Grant Director – c.stone@conservation.org) for a summary of GCF requirements relating to such transactions.

land?). The purchase strategy should anticipate potential hurdles to the purchase and present solutions.

If an applicant seeks funds in connection with a land purchase program (i.e., a plan to acquire numerous parcels), the strategy should describe the plan for approaching different landowners in a coordinated way and plans for coordinating the purchases in a manner that will maximize the ability to acquire all parcels within the proposed price range.

-- Level of Protection

Prior to funding any land purchase, GCF must be satisfied that acquired land will be held in perpetuity primarily for conservation purposes. It is anticipated that in most instances, title to acquired land will be held by a conservation entity organized under the laws of the relevant country. *Under no circumstances will CI or GCF take title to real property.*

While there are a variety of mechanisms for ensuring that property will be held in perpetuity, GCF expects all land purchases to contain one or more of the following safeguards:

- Organizational mission -- The entity taking title to acquired land must be obligated to hold the land for conservation purposes and, preference will be given to entities whose primary purpose is conservation. This obligation should be reflected in the entity's charter/other organizational documents.
- Prohibition on Subsequent Transfers – The entity taking title to land must be prohibited from selling or otherwise transferring the land if any such transfer would adversely impact the conservation objectives underlying the initial purchase. This restriction must be accepted prior to any GCF funding and it will be included as an ongoing covenant in the GCF Grant Agreement and other relevant purchase documents (e.g., conservation easement).
- Transfer upon Dissolution -- The charter/organizational documents of the entity taking title to land (and all subsequent landholders) must provide that, upon liquidation or other dissolution, acquired land will be automatically transferred to an organization with a similar mission
- Conservation Easement – GCF recommends that all acquired land be covered by a conservation easement filed with the appropriate government authority. Such an easement should (i) require all landowners to maintain the acquired land in accordance with specified conservation objectives; (ii) prohibit the sale or other transfer of the acquired land as noted above; (iii) provide for the transfer of land upon dissolution as contemplated above. Preference will be given to applicants including such a component.²
- Government Recognition – Where possible, official government recognition of acquired land as a protected area should be obtained.
- Right of First Refusal – Where appropriate in the context of any future transfers of the target land, GCF may request a right of first refusal/right to identify subsequent titleholders.

Applicants should consult with local counsel on the above recommended safeguards and GCF may require a legal opinion regarding any aspect of the foregoing.

-- Ongoing management; Sustainability

Applicants will be expected to describe the plans for holding and managing the acquired land and GCF will expect all applicants to produce a management plan covering the acquired parcel.

² *Conservation easements* are not recognized in all jurisdictions. Applicants should consult with local counsel regarding the availability of *conservation easements* in the relevant jurisdiction. If easements are not available as a conservation tool, alternative safeguards may be relied upon.

Further, a financial plan should be in place to ensure that the cost of ongoing management is covered.

-- Local Support

Applicants will be expected to consider all ramifications of land purchases and any anticipated opposition from individuals, community groups or others should be disclosed to GCF. GCF recognizes that in all projects, there may be opposition from certain parties and this will not *de facto* result in a decision not to fund a project. Any such opposition will be carefully considered by GCF on the merits and the applicant should be prepared to address such opposition.

-- Legal Diligence; Local Counsel

The legal aspects of each land purchase funded by GCF will be unique, driven by the structure of the transaction and by local laws and land purchase customs. GCF diligence requirements will be adjusted as necessary to confirm that all proposed land purchases comply with local laws and customs as well as U.S. laws governing the issuance of grants by GCF. It is highly recommended that all applicants seeking funds for land purchases engage local legal counsel to provide advice on legal requirements associated with the proposed transaction (*and preference will be given applications which include an analysis of the legal aspects of the transaction from local counsel*³).

- Clear land title; no adverse claims – Applicants will be required to conduct (and provide to GCF) a title search, confirming that the seller holds clear title to the target land, free and clear of any adverse claims, disputes, liens or other encumbrances. Further, any adverse land claims by indigenous or community groups must be disclosed to GCF.
- Title holder – Applicants will be required to identify the entity which will hold title to the land going forward. Prior to issuing funds for a land purchase, GCF will review the core organizational documents of the title-holding entity (i.e., charter, bylaws, etc.) to ensure that the entity was established primarily for conservation purposes and to ensure that such entity is legally authorized to hold title.
- Boundary confirmation; surveys -- Applicants will be required to clearly indicate (via detailed map or survey) the physical boundaries of the target parcel.⁴ Further, the applicant must confirm that the land description set forth in all purchase documents, deeds, easements and related documents have been verified against actual land boundaries.
- Purchase Documents; Deed -- Applicants will be expected to provide copies of all land purchases documents to GCF, including without limitation land purchase agreements, deeds and easements. Where appropriate (and as requested by the applicant), GCF will provide technical input and assist with negotiations.
- Local counsel opinion – Local counsel for the applicant will be required to deliver a legal opinion confirming the foregoing and any other matters relating to the transaction deemed material by GCF.

[If any of the foregoing are inapplicable/not possible under the laws of a particular jurisdiction, applicants will be expected to provide an explanation satisfactory to GCF.]

³ The local counsel analysis should include the following: (i) a summary of land purchase procedures and closing/filing requirements in the relevant jurisdiction; (ii) a description of title search and other procedures available for disclosing all judgments, liens and adverse claims relating to the property; (iii) a summary of government approvals and filings required in connection with land purchases.

⁴ GCF may require all involved parties to examine the survey and provide a letter indicating their satisfaction with the delineation of the property under consideration.

-- *Financial Due Diligence*

GCF may require applicants to deliver certain financial information prior to authorizing a grant.

Conditions to Funding; Grant Agreement

Upon approval of a land purchase proposal, applicant will be expected to execute a grant agreement with GCF. The grant agreement will set forth the details of the grant (including the total amount of funds awarded by GCF, the terms and conditions of the grant and ongoing covenants that will bind the applicant). More specifically, each grant agreement will include the following provisions:

- Conditions for distribution of funds – GCF funds will not be wired until (i) due diligence has been completed to the satisfaction of GCF; (ii) a clear land purchase strategy has been provided to GCF; (iii) a land purchase agreement has been negotiated and reviewed by GCF; (iv) any opposition to the purchase has been addressed to the satisfaction of GCF; and (v) a clear plan for owning and managing the acquired land has been established.
- Ongoing Covenants -- Each Grantee will be subject to covenants (i) requiring it to notify GCF upon certain events impacting ownership of, or the conservation objectives for, the land; (ii) governing the terms under which the land will be owned and requiring transfer in certain instances (e.g., failure of the title holder to manage the land for conservation purposes); (iii) restricting the terms upon which acquired land may be subsequently conveyed (and, in certain cases, granting GCF a right of first refusal or a right to select a subsequent owner); (iv) requiring the title holder to maintain certain provisions in its charter (e.g., provision governing conveyance of the land upon liquidation); and (v) requiring the grantee/title holder to hold the acquired land in perpetuity for conservation purposes.
- Deliveries – Grantees will be expected to deliver such documents, maps and other information as may be requested by GCF to confirm aspects of the transaction. After closing, copies of all filed documents should be delivered to GCF (including a copy of the conveyance instrument).
- Monitoring; Reporting – Grantees will be required to deliver periodic reports to GCF regarding the ongoing management of the acquired property. Further, GCF or its designees may, upon prior notice to grantees, conduct site visits to assess the performance of the project.

Monitoring

See GCF “*Outcome Monitoring Framework*” in the publications section of www.conservation.org/gcf