



[www.gulfconsortium.org](http://www.gulfconsortium.org)

## AGENDA

### THE GULF CONSORTIUM Board Meeting

March 18, 2021, 4:00 p.m. Eastern

<https://global.gotomeeting.com/join/708107301>

You can also dial in using your phone.

United States: +1 (571) 317-3116

Access Code: 708-107-301

#### Committee Members

As Attached

#### Staff

Valerie Seidel, Dan Dourte, Richard Bernier (The Balmoral Group)  
Lynn Hoshihara, Evan Rosenthal (Nabors, Giblin & Nickerson, P.A.)

#### Item 1. Call to Order.

Chairman Commissioner Christopher Constance will call the meeting to order.

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#### Item 2. Roll Call.

Valerie Seidel will call the roll.

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#### Item 3. Additions or Deletions.

Any additions or deletions to the committee meeting agenda will be announced.

RECOMMEND: Approval of a final agenda.

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#### Item 4. Public Comments.

The public is invited to provide comments on issues that are on today's agenda. All comments regarding a specific agenda item will be considered following the Committee's discussion of that agenda item. The meeting will be conducted electronically (or "virtually") You may participate in the meeting electronically by joining the go to meeting at <https://global.gotomeeting.com/join/708107301> or you may you can also dial in using your phone:

United States: [+1 \(571\) 317-3116](tel:+15713173116)

Access Code: 708-107-301 (please see backup pages 6-7)

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#### Item 5. Consent Agenda.

The consent agenda items are presented for approval. Board members may remove any items from this agenda that they have questions on or would like to discuss in depth. Any items removed would then be included in the regular agenda in an order assigned by the Chair.

#### Consent Agenda Items:



[www.gulfconsortium.org](http://www.gulfconsortium.org)

- Minutes of the January 28, 2021 Board Meeting *(Please see back up pages 7-12)*
- Report on delegated authority through February 28, 2020 *(Please see back up pages 13-15)*

RECOMMEND: Approve Board Meeting Minutes and Delegated Authority Report

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**Item 6. Grant Applications Status**

Dan Dourte will give an update on grant application status. 1 new application was received (from Bay County; about \$1.5M in construction funding requested). Upcoming subrecipient applications should be delivered to the Gulf Consortium by 5/28/2021; these will be reviewed at the July 2021 Board Meeting. The status for all projects with active funding requests is regularly updated and can be accessed on P.7 of the interface at <https://datavisual.balmoralgroup.us/GulfConsortiumProjects>.

RECOMMEND: Approve Grant Application

*(Please see back up pages 16-27)*

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**Item 7. SEP Planning Consultants Status**

Lynn Hoshihara will give an update on the status of the letter requesting definitive legal stance from Treasury. Included in the packet are two versions of the letter, the attachments to the letter (letters from ESA and Langton Consulting and the prior Board meeting agenda item) and recent email correspondence from RESTORE Council General Counsel.

*(Please see back up pages 28-48)*

RECOMMEND: Approve Financial Reports

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**Item 8. Financial Report**

Richard Bernier will deliver updated financial reports. *(Please see back up pages 49-55)*

RECOMMEND: For information only

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**Item 9. General Counsel Report**

Lynn Hoshihara will deliver updated General Counsel Report. *(Please see back up pages 56-57)*

RECOMMEND: For information only

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**Item 10. FDEP-NRDA Restoration Planning.**

Gareth Leonard will give an update on NRDA restoration planning. *(Please see back up pages 58-59)*

RECOMMEND: For information only

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**Item 11. Manager's Report**

Valerie Seidel will present an updated manager's report. *(Please see back up pages 60-62)*

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**Item 12. Public Comments**

The public is invited to provide comments on relevant issues. *(Please see back up pages 63-64)*

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**Item 13. Board Member Comments**

Members of the Gulf Consortium Executive Committee are invited to provide comments on relevant issues. *(Please see back up pages 65-66)*

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**Item 14. Upcoming Gulf Consortium Board Meeting**

TBD Date Between June 29 - July 2, 2021

Staff recommend for the meeting to be June 29th because the Consortium Audit is due on June 30th.

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**Item 15. Adjourn**

## Notice of Meeting/Workshop Hearing

### OTHER AGENCIES AND ORGANIZATIONS

#### Gulf Consortium

The Gulf Consortium announces a public meeting of its Board of Directors via communications media technology to which all persons are invited to participate.

DATE AND TIME: March 18, 2021 at 4:00 pm (ET)

PLACE: This meeting will be conducted exclusively via teleconference. Interested persons may participate by telephone via the following:

Dial In Number: +1 (571) 317-3116

Access Code: 708-107-301

Interested persons who wish to participate may also contact Valerie Seidel at 407-629-2185 ext 104 or [vseidel@balmoralgroup.us](mailto:vseidel@balmoralgroup.us) at least three (3) days in advance of the meeting to arrange for access to be provided to the teleconference at the following location:

The Balmoral Group, 165 Lincoln Avenue, Winter Park, FL 32789

Please note that in light of the current situation surrounding the COVID-19 virus and to limit public gatherings in accordance with Federal and State directives, interested persons who wish to participate are encouraged to do so remotely via telephone, utilizing the contact information described above.

GENERAL SUBJECT MATTER TO BE CONSIDERED: The Board of Directors of the Gulf Consortium will meet to discuss the status of grant applications and grants, review financials, and conduct other business at the discretion of the board. A copy of the agenda may be obtained at [www.gulfconsortium.org](http://www.gulfconsortium.org) or by contacting: General Manager at 407-629-2185 or [Gulf.Consortium@balmoralgroup.us](mailto:Gulf.Consortium@balmoralgroup.us).

Pursuant to the provisions of the Americans with Disabilities Act, any person requiring special accommodations to participate in this workshop/meeting is asked to advise the agency at least 3 days before the workshop/meeting by contacting the General Manager at 407-629-2185 or [Gulf.Consortium@balmoralgroup.us](mailto:Gulf.Consortium@balmoralgroup.us). If you are hearing or speech impaired, please contact the agency using the Florida Relay Service, 1-800-955-8771 (TDD) or 1-800-955-8770 (Voice).

If any person decides to appeal any decision made by the Executive Committee with respect to any matter considered at this meeting, he/she may need to ensure that a verbatim record of the proceeding is made, which record includes the testimony and evidence from which the appeal is to be issued.

For more information, please contact the General Manager at 407-629-2185 or [Gulf.Consortium@balmoralgroup.us](mailto:Gulf.Consortium@balmoralgroup.us).

**Gulf Consortium Directors, Alternates and Governor's Appointees  
2021**

<b>County</b>	<b>Directors and Alternates</b>
Bay	Commissioner Philip Griffiths, Director; Commissioner Robert Carroll, Alternate
Charlotte	Commissioner Christopher Constance, Director; Alternates: Commissioner Ken Doherty, Emily Lewis
Citrus	Commissioner Scott Carnahan, Director
Collier	Commissioner Burt Saunders, Director; Alternates: Commissioner Penny Taylor, Gary McAlpin
Dixie	Tim Alexander, Director
Escambia	Commissioner Robert Bender, Director; Commissioner Doug Underhill, Alternate
Franklin	Commissioner Joseph "Smokey" Parrish, Director; Michael Morón, Alternate
Gulf	Clay Smallwood, Director; Sherry Herring, Alternate
Hernando	Commissioner Wayne Dukes, Director; Alternates: Jeffrey Rogers, County Administrator, Keith Kolasa
Hillsborough	Commissioner Mariella Smith, Director; Alternates: Commissioner Ken Hagan, Jim Taylor
Jefferson	Commissioner Betsy Barfield, Director; Parrish Barwick, Alternate
Lee	Commissioner Cecil Pendergrass, Director; Alternate: Kurt Harclerode
Levy	Commissioner John Meeks, Director; Tisha Whitehurst, Alternate
Manatee	Commissioner Carol Whitmore, Director; Charlie Hunsicker, Alternate
Monroe	George Neugent, Director; Commissioner David Rice, Alternate
Okaloosa	Mel Ponder, Director; Commissioner Carolyn Ketchel, Alternate
Pasco	Commissioner Jack Mariano, Director; Commissioner Ron Oakley, Alternate
Pinellas	Commissioner Charlie Justice, Director, Stacey Day, Alternate
Santa Rosa	Commissioner Dave Piech, Director
Sarasota	Commissioner Nancy Detert, Director; Joseph Kraus, Alternate
Taylor	Commissioner Jim Moody, Director; Alternates: LaWanda Pemberton, Commissioner Thomas Demps
Wakulla	David Edwards, Director; Commissioner Ralph Thomas, Alternate
Walton	Larry Jones, Director; Commissioner Trey Nick, Alternate
Governor's Appointees	Peter Bos, Destin; Lino Maldonado, Niceville; Collier Merrill, Pensacola; Mike Sole, Tallahassee; Neal Wade, Panama City

## **AGENDA ITEM 4**

**Gulf Consortium Board Meeting  
March 18, 2021**

**Agenda Item 4  
Public Comments**

**Statement of Issue:**

The public is invited to provide comments on issues that are on today's agenda

**Attachments:**

None

**Prepared by:**

Amanda Jorjorian  
The Balmoral Group  
General Manager  
On: March 5, 2021

## **AGENDA ITEM 5a**

**Gulf Consortium Board Meeting  
March 18, 2021**

**Agenda Item 5a  
Approval of January 28, 2021 Minutes**

**Statement of Issue:**

Request to approve the minutes of the January 28, 2021 meeting of the Board.

**Options:**

- (1) Approve the January 28, 2021 minutes as presented; or
- (2) Amend and then approve the minutes.

**Recommendation:**

Motion to approve Option 1.

**Prepared by:**

Amanda Jorjorian  
The Balmoral Group  
General Manager

**Attachment:**

Draft Minutes, January 28, 2021 meeting of the Board.

**Action Taken:**

Motion to: \_\_\_\_\_, Made by: \_\_\_\_\_;

Seconded by: \_\_\_\_\_.

Approved \_\_\_\_; Approved as amended \_\_\_\_; Defeated \_\_\_\_.



**Gulf Consortium Board Meeting  
January 28, 2021 3:00pm ET  
Teleconference**

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**Members in Attendance:** Philip Griffiths (Bay County), Chairman Chris Constance (Charlotte), Scott Carnahan (Citrus), John Meeks (Levy) Matt Posner (Escambia), (Gulf County), Dave Pietch (Santa Rosa), Commissioner Betsy Barfield (Jefferson), David Edwards (Wakulla), Nancy Detert (Sarasota), Charlie Hunsicker (Manatee), Charlie Justice (Pinellas), Mel Ponder (Hillsborough), Cheryl Magnusson (Manatee), Lisa Tennyson (Monroe), Hernando, Mel Ponder (Okaloosa), Jack Mariano (Pasco)

**Also in Attendance:** Valerie Seidel, Dan Dourte, Richard Bernier (all, The Balmoral Group), Lynn Hoshihara, Evan Rosenthal (NGN), Lisa Robertson (FDEP), Matt Posner (Escambia)

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**Agenda Item #1 – Call to Order**

Chairman Chris Constance called the meeting to order at 3:00pm (ET).

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**Agenda Item #2 – Roll Call**

Attendees as above.

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**Agenda Item #3 – Addition or Deletions**

Chairman Constance asked if there were any changes or additions to the agenda. There were no questions or comments on the agenda. Commissioner Deter made the motion to approve the agenda as presented, second by Commissioner Mariano. No opposition.

**ACTION: APPROVED**

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**Agenda Item #4 – Public Comment**

Mike Langton asked for him and Mr. Robinson to speak at item 9b. Chairman Constance asked the board for permission for the two speak when the item 9b comes up.

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**Agenda Item #5 – Consent Agenda**

Chairman Constance presented the minutes for Meeting and the Report on Delegated Authority through December 31 2020. Commissioner Carnahan made the motion to approve, Commissioner Meeks seconded. All in favor. No opposition.

**ACTION: APPROVED**

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**Agenda Item #6 – Gulf Consortium Officer Elections**

Dan Dourte presented the process for the Gulf Consortium office elections. The three currently serving officers have self-nominated for their current positions so there were no individual votes needed. Voting would occur by a single board action. Commissioner Constance was self-nominated as chair, Commissioner Mariano self-nominated as secretary, Commissioner Meeks self-nominated to return as co-chair. The recommendation was to vote those 3 officers to their current positions. Charlie Hunsicker (Manatee) made the motion, second by Commissioner Carnahan (Citrus). All in favor.

**ACTION: APPROVED**

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**Agenda Item #7 Committee Assignments**

Valerie commented that the consortium policies provide for several committees. Audit and Risk committee to review outside audit, Finance and Budget committee to review the financial package prior to presentation to full board and the Policy Review committee to review Consortium policies. She commented that they could still use a few more Audit members and appealed to the board for any county member to with experience in finance to consider being on the board. Commissioner

Meeks made the motion to approve the committee assignments as presented, second by Commissioner Mariano. No opposing.

**ACTION: APPROVED**

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**Agenda Item #8– SEP Amendment submit to RESTORE**

Chairman Constance recognized Dan Dourte who presented the 3<sup>rd</sup> SEP amendment which had gone out for 45-day public comment. The final amendment was included in the packet along with comments and responses. The recommendation was for board approval for submission to RESTORE. The SEP amendment has 3 new projects for Taylor County, 1 new project for Pasco County and a scope change for Santa Rosa County and a minor clarification for Hillsborough County. Dan commented that there is 25% limit for infrastructure limit for the entire SEP, with this amendment about \$10 million for Taylor and \$1.4 for Pasco which will be added as primary eligibility as it is related to infrastructure projects. They still have \$23M for future project changes that would be described as infrastructure projects. Dan thanked Taylor, Pasco and Santa Rosa for the counties for submittal of information. Nancy Detert (Sarasota) made the motion to approve, second by Dave Pietch (Santa Rosa). No opposition.

**ACTION: APPROVED**

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**Agenda Item #9 – General Counsel Report**

Chairman Constance recognized Lynn Hoshihara who first discussed the Consortium Manager Contract for Agenda 9a. The Balmoral Group's contract for renewal was presented which was set to expire in April of 2021. RESTORE approved the process of renewing Balmoral's contract. Lynn included the contract and bulleted the items that were revised for the Amendment 4 to The Balmoral Group's agreement to extend to their agreement for 3 years. Commissioner Carnahan made the motion to approve the amendment to Balmoral's agreement, second by Commissioner Mariano. All infavor.

**ACTION: APPROVED**

Lynn Hoshihara presented the SEP Planning Consultants conflict of interest. She provided background to the item as it was requested at the December 2020 Board Meeting to revising the COI clause agreed to by ESA and its subcontractors. It only applies to projects within the SEP, any newly added projects or anything in Pot 1 or Pot 3 are open for ESA or subconsultants to pursue. In February the board denied ESA's request. Executive Committee asked about potential liability and any indemnify. ESA has declined to indemnify the Consortium. General Counsel reached out RESTORE who said they are ok with 4-year recusal, ESA had provided written communication that they would be agreeable to the 4 years but would not indemnify. It is Counsel's recommendation to leave the current COI in place. Charlie Hunsicker asked if anyone had reached out to Treasury. Lynn commented that they had not reached out to Treasury. She asked Evan who commented that they had not reached out to Treasury before. David Edwards asked if ESA could work on new projects before the 4 years? Lynn commented that ESA could work on any of the new projects or non-SEP projects right away. Doug Robison spoke to his disagreements about the legal status. He was not proposing to waive but in their opinion the COI expired when the contract was terminated. Despite disagreements they have respected the two-year recusal but would like to clarify how long they are recused. Effective Dec 31 2020 asking to release ESA and if not then they ask for formal clarification on what projects they can pursue and when. Mike Langton also commented that the board decides what they think is right and submit to RESTORE. If they think is 2 years is fair, then pass it and send to RESTORE. Charlie Justice asked if there was office legal opinion. Lynn responded that Mark from RESTORE in Jan 2019 would agree to the 4 year recusal but still was risk for future audits and the preferred option was to leave the language as is. Charlie Justice asked for formal in writing opinion. Commissioner Barfield asked if

SEP would have to be amended in order for ESA and their group to work with them. Lynn affirmed this. Commissioner Barfield said she did not think it was fair to limit ESA indefinitely. She asked for a hard opinion from Treasury and made the motion to send letter to Treasury and seek legal opinion, second by David Edwards who added can we release ESA in 2 years and if not, when. Charlie Hunsicker asked them to add whether Pot 1 or Pot 3 were involved in Pot 2 projects were excluded. Betsy Barfield was ok with adjustments. Commissioner Mariano was supportive of sending to Treasury as amended so far. Chairman Constance asked to include the letter from ESA as well as any comments from the counties. Commissioner Griffiths asked if this would delay and projects in SEP. Lynn commented that the next SEP amendment is scheduled for November, it should not affect any current projects. Every member should see the letter beforehand with the Chair to review. No opposition.

**ACTION: APPROVED**

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**Agenda Item #10- Financial and Budget Committee Report**

Chairman Constance commented the Financial Reports would be truncated now, they are no longer including the entire reports from the Finance Meetings. The entire Finance Packet was reviewed by the Finance Committee prior to this Board Meeting. The entire packet is available online for anyone that wants to review all the detail. Richard Bernier provided updated financial statements to the Board, approved by the finance committee and executive committee. Richard presented the balance sheet and Income statement, grant status summary and submitted grants graph. Commissioner Carnahan made the motion to approve, second by Mariano. None opposed.

**ACTION: APPROVED**

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**Agenda Item #11– Grant Application Status**

Dan Dourte gave an update on the grant status. There were no new grant applications for this meeting. The next application deadline is February 12th. Informational only.

**Agenda Item# 12– FDEP Pot 2 Update**

Lisa Robertson FDEP gave an update on Pot 2. Council is reviewing comments received for the Pot 2 and the Funded priorities list. New executive director for RESTORE is Mary Walker. No comments or questions.

**Agenda Item# 13– Manager’s Report**

Chairman Constance recognized Valerie Seidel who gave an update on the Consortium activities since the last Board meeting. Valerie thanked the board for the renewal of the manager contract. Valerie welcomed new members to the board, who would be contacted for a bit of onboarding. She informed the board that they could feel free to reach out to Dan or Valerie anytime with any questions. Grant approval is at about 190 days, Balmoral would be reaching out right away to get some meetings on the calendar. The audit was underway and should be done in plenty of time for the statutory requirements. There were no questions.

**Agenda Item #14 – Public Comment**

Mike Langton thanked the board for considering the issue and made an action. He asked legal to reply if any of the 23 counties could use the ESA team for Pot 3 if it was paid for with their own money. Lynn commented regardless of the funding source the recusal was for any Pot 3 project. RESTORE had come back and commented that their position was for any Pot 3 project regardless of the funding source.

**Agenda Item #15 – Board Member Comments**

Jack Mariano thanked the consortium for reelecting him. Chair Constance would be contacting Mariano and Meeks for a call to add the at large members. Commissioner Meeks also thanked the board for electing him as vice chair. The Chairman also commented it was an honor to work for the consortium.

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**Agenda Item #16 – Upcoming Meetings**

Upcoming meeting for March 18, 2021. No time or location yet. Chair Constance said the board should decide now if it would be a virtual meeting or hybrid meeting. Commissioner Barfield commented that they should continue with the virtual meetings. Commissioner Mariano agreed. Chairman Constance agreed that the meetings have going well virtual and said the March meeting would be held virtually.

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**Agenda Item #17-Adjourn**

There being no further business, Chairman Constance adjourned the meeting at 4:18am. Commissioner Mariano made the motion to adjourn, seconded by Commissioner Barfield.

DRAFT

## **AGENDA ITEM 5b**

**Gulf Consortium Board Meeting  
March 18, 2021**

**Consent Agenda**

**Item 5b**

**Report on Delegated Authority  
Actions from January 1 – February 28, 2020**

**Summary:**

Staff report of actions carried out through delegated authority of the Board.

1. 1/22/2021 – Submitted Performance Report: 5-2: St. Andrew Bay Stormwater Improvement Program – St. Andrew Bay Watch – Water Quality Monitoring
2. 1/22/2021 – Submitted Performance Report: 4-1: Choctawhatchee Bay Septic to Sewer Conversion – Feasibility Study
3. 1/27/2021 – Submitted Performance Report: 3-3: Choctawhatchee Bay Estuary Program
4. 1/27/2021 – Submitted Performance Report: 9-2: Wacissa River Park Improvement Program - Planning and Acquisition
5. 1/27/2021 – Submitted Performance Report: 13-2: Cross Florida Barge Canal Boat Ramp - E&D
6. 1/28/2021 – Submitted Financial Report: 9-2: Wacissa River Park Improvement Program - Planning and Acquisition
7. 1/28/2021 - Submitted Performance Report: 19-1: Sarasota County Dona Bay Hydrologic Restoration Program - E&D
8. 1/28/2021 – Submitted Financial Report: 3-3: Choctawhatchee Bay Estuary Program
9. 1/29/2021 - Submitted Financial Report: 19-1: Sarasota County Dona Bay Hydrologic Restoration Program - E&D
10. 1/28/2021 – Submitted Financial Report: 5-2: St. Andrew Bay Stormwater Improvement Program – St. Andrew Bay Watch – Water Quality Monitoring
11. 1/28/2021 – Submitted Financial Report: 4-1: Choctawhatchee Bay Septic to Sewer Conversion – Feasibility Study
12. 1/28/2021 – Submitted Financial Report: 13-2: Cross Florida Barge Canal Boat Ramp - E&D
13. 1/28/2021 – Submitted Financial Report: 14-1: Artificial Reef Program - E&D and Monitoring
14. 2/4/2021- Draw Request submitted Collier County \$18,864.75
15. 2/9/2021 – Submitted SEP Amendment to FDEP
16. 2/9/2021 – Resubmitted 7-3: Apalachicola Bay Cooperative Dredging Program
17. 2/9/2021 – Resubmitted 16-2: Wastewater Collection System Improvements -E&D
18. 2/9/2021 – Resubmitted 20-1: Charlotte Harbor Septic to Sewer - Zone 3 Construction
19. 2/9/2021 – Resubmitted 18-6: Applied Research for Shellfish Aquaculture and Habitat Restoration
20. 2/9/2021 – Resubmitted 18-2: Portosueno Park Living Shoreline
21. 2/11/2021- Draw Request submitted Levy County \$9,566.48

22. 2/23/2021- Draw Request submitted Okaloosa County \$4,823.50

## **AGENDA ITEM 6**



**Gulf Consortium Board Meeting  
March 18, 2021**

**Agenda Item 6  
Grant applications review and SEP project status**

**Statement of Issue:**

All SEP projects with active funding requests are summarized in this item. A table of all submitted applications and project status is included as an attachment to this item. 1 new grant application is presented to the Consortium for review and approval and subsequent processing and submission to RESTORE Council.

**Background:**

The next recommended deadline for submission of grant application materials is 5/28/2021, to allow for staff time to prepare applications for the July Consortium Board Meeting. Any project milestones with 2019-2022 start date can be applied for – see page 1 of project data dashboard at (page navigation arrows at bottom of dashboard) <http://datavisual.balmoralgroup.us/GulfConsortiumProjects>. Please let us know if you have projects planned for later that could possibly start now; these can be considered by the Board for earlier funding.

As of Mar 2, 2021, 18 projects have been awarded. A total of 35 grant applications have been received and processed. 11 are currently under RESTORE Council review: 3 have been withdrawn, 18 have been awarded, and 3 are being prepared for submission to RESTORE Council. The total amount of all grant applications or awards is about \$50M.

**Most Recent Activity:**

The following grant application for SEP project implementation have been prepared in conjunction with County personnel:

- 5-1: North Bay Water Quality Improvement - Raw Water Line –Construction  
**\$1,516,795**

This project includes nearly the entire project total as pre-award costs due to timing constraints for construction at the County level and the lengthy RESTORE Council review timeline. 50 hours/year for management efforts and 30 hours/year for legal oversight are budgeted at the Consortium level, included in the total above.

**Attachments:**

- Project applications summary table
- Certification and Assurances form
- Construction Certifications

**Options:**

- (1) Approve this grant application for submittal to RESTORE
- (2) Board direction

**Recommendation:**

Option 1

**Prepared by:**

Dan Dourte

The Balmoral Group, Manager

On: February 25, 2021

**Action Taken:**

Motion to: \_\_\_\_\_, Made by: \_\_\_\_\_;

Seconded by: \_\_\_\_\_.

Approved \_\_\_\_; Approved as amended \_\_\_\_; Defeated \_\_\_\_.

## Project Applications Summary Table

County	Project Name	Milestones	Metrics	Amount	Subrecipient Amount	Start Date	End Date	Pre-award Budget
Bay	5:1 - North Bay Water Quality Improvement - Raw Water Line - Construction	Construction	RES002 - # upgrades to stormwater and/or wastewater systems	\$1,516,795	\$1,500,000	4/1/2021	3/10/2022	\$1,506,600
<b>Total Pot 3 funding request</b>				<b>\$1,516,795</b>	<b>\$1,500,000</b>			

NOTE: See all project status on P. 7 of <http://datavisual.balmoralgroup.us/GulfConsortiumProjects> (navigation arrows at bottom of screen on that link)

## Certification and Assurances Instructions for Grant Awards

The Gulf Coast Ecosystem Restoration Council (Council) is the independent federal entity established by the Resources and Ecosystems Sustainability, Tourist Opportunities, and Revived Economies of the Gulf Coast Act of 2012 (33 U.S.C. § 1321(t) and *note*) (RESTORE Act). The Council is made up of the five Gulf Coast States (Alabama, Florida, Louisiana, Mississippi, and Texas) and six federal agencies (the U.S. Departments of the Army, Agriculture, Commerce, Homeland Security, and Interior, as well as the Environmental Protection Agency) and is responsible for managing a portion of the Gulf Coast Restoration Trust Fund. Specifically, the Council manages two RESTORE Act components: the Council-Selected Restoration Component (33 U.S.C. § 1321(t)(2)) and the Spill Impact Component (33 U.S.C. § 1321(t)(3)). For awards made under both components, the Council uses the standards set forth in the Uniform Administrative Requirements, Cost Principles and Audit Requirements for Federal Awards (2 CFR part 200), and which the Council has adopted at 2 CFR § 5900.101.<sup>1</sup>

These certifications are required by federal law, U.S. Department of the Treasury (Treasury) regulations, and the RESTORE Act and must be submitted with each application to the Council for financial assistance under both the Council-Selected Restoration and Spill Impact Components. The certifications must be signed by an authorized senior official (or authorized representative) of the Applicant who can legally bind the entity and has oversight for the administration and use of the RESTORE Act funds.

Please read the forms carefully and complete the required certifications. Once the authorized senior official has signed the documents, please scan the signed certification document and submit it electronically along with any applicable SF-424 Assurances. The appropriate signed certification and assurances documents must be included as uploaded documents with the agreement application package submitted to the Council through GrantSolutions. In addition, these certifications must be submitted to the Council on at least an annual basis.<sup>2</sup>

- RESTORE Council Applicant Certifications - includes the required RESTORE Act certifications; certification regarding debarment, suspension and other responsibility matters; certification regarding drug-free workplace requirements; and required certifications regarding lobbying.
- Assurances – Construction Programs via submission of Form SF-424D are only required for projects involving construction or real property/ land acquisition.<sup>3</sup>

If you have questions regarding the appropriate documents to submit, please contact the Council Grants Office.

Additional certifications are required in the following situations throughout the award life cycle:

- Disclosure Form to Report Lobbying - in some situations, described in Section D, “Certification Regarding Lobbying,” on the Council Applicant Certifications, the Applicant must also submit Form SF-LLL, “Disclosure Form to Report Lobbying”.

<sup>1</sup> See also 2 CFR §§ 200.205, 200.207, 200.300, 200.302, and 200.303.

<sup>2</sup> See 2 CFR § 200.208.

<sup>3</sup> The past version of this certification form required that applicants complete the Assurances – Non-Construction Programs (Form SF-424B); however, these assurances are now required of all applicants through the System for Award Management (SAM.gov) and are no longer required to be submitted along with these certifications.

- Additional Certifications Required for Expenditures - an official signature is required on all expenditures. The official signature certifies and assures that expenditures are proper and in accordance with the terms and conditions of the federal award and approved project budgets. The semi-annual and final financial reports or vouchers requesting payment under the award must include a certification, signed by an authorized senior official who is authorized to legally bind the non-federal entity, which reads as follows: “By signing this report, I certify to the best of my knowledge and belief that the report is true, complete, and accurate, and the expenditures, disbursements and cash receipts are for the purposes and objectives set forth in the terms and conditions of the federal award. I am aware that any false, fictitious, or fraudulent information, or the omission of any material fact, may subject me to criminal, civil or administrative penalties for fraud, false statements, false claims or otherwise. (See 18 U.S.C. §§ 287 and 1001 and 31 U.S.C. §§ 3729-3730 and 3801-3812).” *See also* 2 C.F.R. § 200.415 “Required certifications.”

#### Certification of the Applicant’s Authorized Senior Official

For each of the certification documents, identify the individual who has the authority to commit the organization to the Council's grant management requirements and who can certify the accuracy of the statements made in the forms.

## **Gulf Coast Ecosystem Restoration Council**

### **Applicant Certifications for Grants**

*Directions: These certifications are required by federal law and U.S. Department of the Treasury (Treasury) regulations to be submitted with each application to the Gulf Coast Ecosystem Restoration Council (Council) for financial assistance under the Council-Selected Restoration Component or Spill Impact Component, which components are authorized under the Resources and Ecosystems Sustainability, Tourist Opportunities, and Revived Economies of the Gulf Coast Act of 2012 (33 U.S.C. 1321(t) and note) (RESTORE Act). The certifications must be signed by an authorized senior official of the Applicant who can legally bind the entity and has oversight for the administration and use of the Council-Selected Restoration or Spill Impact Component funds.*

#### **A. RESTORE Act Certification**

Pursuant to the RESTORE Act, I certify that for any award Agreement resulting from this application:

1. Each activity funded under the Agreement has been primarily designed to plan for or undertake activities to restore and protect the natural resources, ecosystems, fisheries, marine and wildlife habitats, beaches, coastal wetlands, or economy of the Gulf Coast region.
2. Each activity funded under the Agreement is designed to carry out one or more of the eligible activities for the Council-Selected Restoration Component or Spill Impact Component.
3. Each activity funded under the Agreement, other than planning assistance, was part of a plan made available for public review and comment in a manner calculated to obtain broad-based participation from individuals, businesses, Indian Tribes, and nonprofit organizations, and that the activity was selected after consideration of meaningful input from the public, as described in the grant application.
4. Each activity funded under the Agreement that protects or restores natural resources is based on the best available science, as that term is defined in 31 CFR part 34.
5. The recipient has procedures in place for procuring property and services under this award that are consistent with the procurement standards applicable to federal grants. This recipient will not request funds under the Agreement for any contract unless this certification remains true and accurate.
6. Pursuant to 31 CFR § 34.802(f), there is a conflict of interest policy in effect that covers each activity funded under the Agreement. In addition, pursuant to 2 CFR § 200.112, the recipient will disclose in writing any actual or potential conflict of interest to the Council within 14 business days of the date the recipient learns of or discovers the conflict.

I make each of these certifications based on my personal knowledge and belief after reasonable and diligent inquiry, and I affirm that the Applicant maintains written documentation sufficient to support each certification made above, and that the Applicant's compliance with each of these certifications is a condition of the Applicant's initial and continuing receipt and use of the funds provided under the Agreement.

#### **B. Certification Regarding Debarment, Suspension, and Other Responsibility Matters -- Primary Covered Transactions**

*Instructions: The inability of an Applicant to provide the certification required below will not necessarily result in the denial of participation in this covered transaction, but if the Applicant is unable to do so, the Applicant must submit an explanation of why it cannot provide the certification. The certification or explanation will be considered in connection with the Council's approval of the proposed Application. However, failure of the Applicant to furnish a certification or an explanation shall disqualify such person/entity from participation in this transaction. Please be advised of the following:*

1. *This certification is a material representation of fact upon which reliance is placed when the Council determines to enter into this transaction. If it is later determined that the Applicant knowingly rendered an erroneous certification, in addition to other remedies available to the Federal Government, the Council may terminate this transaction for cause or default.*
2. *The Applicant shall provide immediate written notice to the Council if at any time the Applicant learns that its certification was erroneous when submitted or has become erroneous by reason of changed circumstances.*
3. *The terms “covered transactions,” “debarred,” “suspended,” “ineligible,” “lower tier covered transaction,” “participant,” “person,” “primary covered transaction,” “principal,” “proposal”, and “voluntarily excluded,” as used in this certification, are defined consistent with Treasury’s Governmentwide Debarment and Suspension (Nonprocurement) regulations, which are set out at 31 CFR part 19 and which implement Executive Order 12549. You may contact the Council for assistance in obtaining a copy of Treasury’s regulations.*
4. *The Applicant agrees by submitting this Application that, should the proposed covered transaction be entered into, it shall not knowingly enter into any lower tier covered transaction with a person who is debarred, suspended, declared ineligible, or voluntarily excluded from participation in this covered transaction, unless authorized by the Council.*
5. *The Applicant further agrees by submitting this Application that it will include the clause titled “Certification Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion-Lower Tier Covered Transaction,” to be provided by the Council, without modification, in all lower tier covered transactions and in all solicitations for lower tier covered transactions (see the Appendix to 31 CFR part 19 – Covered Transactions).*
6. *A participant in a covered transaction may rely upon a certification of a prospective participant in a lower tier covered transaction that it is not debarred, suspended, ineligible, or voluntarily excluded from the covered transaction, unless it knows that the certification is erroneous. A participant may decide the method and frequency by which it determines the eligibility of its principals. Each participant may, but is not required to, check the Nonprocurement List.*
7. *Nothing contained in the foregoing shall be construed to require establishment of a system of records in order to render in good faith the certification required by this clause. The knowledge and information of a participant is not required to exceed that which is normally possessed by a prudent person in the ordinary course of business dealings.*
8. *Except for transactions authorized under paragraph 4 of this certification, if a participant in a covered transaction knowingly enters into a lower tier covered transaction with a person who is suspended, debarred, ineligible, or voluntarily excluded from participation in the transaction, in addition to other remedies available to the Federal Government, the Council may terminate the transaction for cause or default.*

By signing and submitting the Application, the prospective primary participant (the Applicant) is providing the certification set out below.

**The prospective primary participant (the Applicant) certifies to the best of its knowledge and belief, that it and its principals:**

1. Are not presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from covered transactions by any federal department or agency;
2. Have not within a three-year period preceding this Application been convicted of or had a civil judgment rendered against them for commission of fraud or a criminal offense in connection with obtaining, attempting to obtain, or performing a public (federal, State, or local) transaction or contract under a public transaction; violation of federal or State antitrust statutes or commission of embezzlement, theft, forgery, bribery, falsification or destruction of records, making false statements, or receiving stolen property;
3. Are not presently indicted for or otherwise criminally or civilly charged by a governmental entity (federal, State, or local) with commission of any of the offenses enumerated in paragraph (2) of this certification; and
4. Have not within a three-year period preceding the Application had one or more public transactions (federal, State, or local) terminated for cause or default.

Where the Applicant is unable to certify to any of the statements in this certification, such Applicant shall attach an explanation to the Application.

### **C. Certification Regarding Drug-Free Workplace Requirements**

**The Applicant certifies that it will provide a drug-free workplace by:**

1. Publishing a statement notifying employees that the unlawful manufacture, distribution, dispensing, possession, or use of a controlled substance is prohibited in the Applicant's workplace and specifying the actions that will be taken against employee for violations of such prohibition;
2. Establishing a drug-free awareness program to inform employees about:
  - a. The dangers of drug abuse in the workplace;
  - b. The Applicant's policy of maintaining a drug-free workplace;
  - c. Any available drug counseling, rehabilitation, and employee assistance program; and
  - d. The penalties that may be imposed upon employees for drug abuse violations occurring in the workplace
3. Making it a requirement that each employee to be engaged in the performance of the award be given a copy of the statement required by paragraph (1) of this certification;
4. Notifying the employee in the statement required by paragraph (1) of this certification that, as a condition of employment in such grant, the employee will:
  - a. Abide by the terms of the statement; and
  - b. Notify the employer of any criminal drug use statute conviction for a violation occurring in the workplace no later than five calendar days after such conviction;
5. Notifying the granting agency in writing, within ten calendar days after receiving notice of a conviction under paragraph (4)(b) of this certification from an employee or otherwise receiving actual notice of such conviction;
6. Taking one of the following actions, within 30 days of receiving notice under paragraph (4)(b) of this certification, with respect to any employee who is so convicted:
  - a. Taking appropriate personnel action against such an employee, up to and including termination, consistent with the requirements of the Rehabilitation Act of 1973, as amended; or
  - b. Requiring such employee to participate satisfactorily in a drug abuse assistance or rehabilitation program approved for such purposes by a federal, State, or local health, law enforcement, or other appropriate agency; and
7. Making a good faith effort to continue to maintain a drug-free workplace through implementation of paragraphs 1 through 6 above.

### **D. Certification Regarding Lobbying**

The Applicant certifies, to the best of his or her knowledge and belief, that:

1. No federal appropriated funds have been paid or will be paid, by or on behalf of the Applicant, to any person for influencing or attempting to influence an officer or employee of an agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with the awarding of any federal contract, the making of any federal grant, the making of



any federal loan, the entering into of any cooperative agreement, and the extension, continuation, renewal, amendment, or modification of any federal contract, grant, loan, or cooperative agreement.

2. If any funds other than federal appropriated funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with this federal contract, grant, loan, or cooperative agreement, the undersigned shall complete and submit Form SF-LLL, "Disclosure Form to Report Lobbying," in accordance with its instructions.
3. The Applicant shall require that the language of this certification be included in the award documents for all subawards at all tiers (including subcontracts, subgrants, and contracts under grants, loans, and cooperative agreements) and that all subrecipients shall certify and disclose accordingly. This certification is a material representation of fact upon which reliance was placed when this transaction was made or entered into. Submission of this certification is a prerequisite for making or entering into this transaction imposed by title 31 U.S.C. § 1352. Any person who fails to file the required certification shall be subject to a civil penalty of not less than \$10,000 and not more than \$100,000 for each such failure.

This certification is a material representation of fact upon which reliance was placed when this transaction was made or entered into. Submission of this certification is a prerequisite for making or entering into this transaction imposed by 31 U.S.C. § 1352. Any person who fails to file the required certification shall be subject to a civil penalty of not less than \$10,000 and not more than \$100,000 for each such failure.

Project/Program Name:

5-1: North Bay Water Quality Improvement - Raw Water Line – Construction

Signature of Authorized Senior Official

Date

Name:

Title:

Agency: The Gulf Consortium

## ASSURANCES - CONSTRUCTION PROGRAMS

OMB Number: 4040-0009  
Expiration Date: 01/31/2019

Public reporting burden for this collection of information is estimated to average 15 minutes per response, including time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Send comments regarding the burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden, to the Office of Management and Budget, Paperwork Reduction Project (0348-0042), Washington, DC 20503.

**PLEASE DO NOT RETURN YOUR COMPLETED FORM TO THE OFFICE OF MANAGEMENT AND BUDGET. SEND IT TO THE ADDRESS PROVIDED BY THE SPONSORING AGENCY.**

**NOTE:** Certain of these assurances may not be applicable to your project or program. If you have questions, please contact the Awarding Agency. Further, certain Federal assistance awarding agencies may require applicants to certify to additional assurances. If such is the case, you will be notified.

As the duly authorized representative of the applicant: I certify that the applicant:

1. Has the legal authority to apply for Federal assistance, and the institutional, managerial and financial capability (including funds sufficient to pay the non-Federal share of project costs) to ensure proper planning, management and completion of project described in this application.
2. Will give the awarding agency, the Comptroller General of the United States and, if appropriate, the State, the right to examine all records, books, papers, or documents related to the assistance; and will establish a proper accounting system in accordance with generally accepted accounting standards or agency directives.
3. Will not dispose of, modify the use of, or change the terms of the real property title or other interest in the site and facilities without permission and instructions from the awarding agency. Will record the Federal awarding agency directives and will include a covenant in the title of real property acquired in whole or in part with Federal assistance funds to assure non-discrimination during the useful life of the project.
4. Will comply with the requirements of the assistance awarding agency with regard to the drafting, review and approval of construction plans and specifications.
5. Will provide and maintain competent and adequate engineering supervision at the construction site to ensure that the complete work conforms with the approved plans and specifications and will furnish progressive reports and such other information as may be required by the assistance awarding agency or State.
6. Will initiate and complete the work within the applicable time frame after receipt of approval of the awarding agency.
7. Will establish safeguards to prohibit employees from using their positions for a purpose that constitutes or presents the appearance of personal or organizational conflict of interest, or personal gain.
8. Will comply with the Intergovernmental Personnel Act of 1970 (42 U.S.C. §§4728-4763) relating to prescribed standards of merit systems for programs funded under one of the 19 statutes or regulations specified in Appendix A of OPM's Standards for a Merit System of Personnel Administration (5 C.F.R. 900, Subpart F).
9. Will comply with the Lead-Based Paint Poisoning Prevention Act (42 U.S.C. §§4801 et seq.) which prohibits the use of lead-based paint in construction or rehabilitation of residence structures.
10. Will comply with all Federal statutes relating to non-discrimination. These include but are not limited to: (a) Title VI of the Civil Rights Act of 1964 (P.L. 88-352) which prohibits discrimination on the basis of race, color or national origin; (b) Title IX of the Education Amendments of 1972, as amended (20 U.S.C. §§1681 1683, and 1685-1686), which prohibits discrimination on the basis of sex; (c) Section 504 of the Rehabilitation Act of 1973, as amended (29)U.S.C. §794), which prohibits discrimination on the basis of handicaps; (d) the Age Discrimination Act of 1975, as amended (42 U.S.C. §§6101-6107), which prohibits discrimination on the basis of age; (e) the Drug Abuse Office and Treatment Act of 1972 (P.L. 92-255), as amended relating to nondiscrimination on the basis of drug abuse; (f) the Comprehensive Alcohol Abuse and Alcoholism Prevention, Treatment and Rehabilitation Act of 1970 (P.L. 91-616), as amended, relating to nondiscrimination on the basis of alcohol abuse or alcoholism; (g) §§523 and 527 of the Public Health Service Act of 1912 (42 U.S.C. §§290 dd-3 and 290 ee 3), as amended, relating to confidentiality of alcohol and drug abuse patient records; (h) Title VIII of the Civil Rights Act of 1968 (42 U.S.C. §§3601 et seq.), as amended, relating to nondiscrimination in the sale, rental or financing of housing; (i) any other nondiscrimination provisions in the specific statute(s) under which application for Federal assistance is being made; and (j) the requirements of any other nondiscrimination statute(s) which may apply to the application.

11. Will comply, or has already complied, with the requirements of Titles II and III of the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970 (P.L. 91-646) which provide for fair and equitable treatment of persons displaced or whose property is acquired as a result of Federal and federally-assisted programs. These requirements apply to all interests in real property acquired for project purposes regardless of Federal participation in purchases.
12. Will comply with the provisions of the Hatch Act (5 U.S.C. §§1501-1508 and 7324-7328) which limit the political activities of employees whose principal employment activities are funded in whole or in part with Federal funds.
13. Will comply, as applicable, with the provisions of the Davis-Bacon Act (40 U.S.C. §§276a to 276a-7), the Copeland Act (40 U.S.C. §276c and 18 U.S.C. §874), and the Contract Work Hours and Safety Standards Act (40 U.S.C. §§327-333) regarding labor standards for federally-assisted construction subagreements.
14. Will comply with flood insurance purchase requirements of Section 102(a) of the Flood Disaster Protection Act of 1973 (P.L. 93-234) which requires recipients in a special flood hazard area to participate in the program and to purchase flood insurance if the total cost of insurable construction and acquisition is \$10,000 or more.
15. Will comply with environmental standards which may be prescribed pursuant to the following: (a) institution of environmental quality control measures under the National Environmental Policy Act of 1969 (P.L. 91-190) and Executive Order (EO) 11514; (b) notification of violating facilities pursuant to EO 11738; (c) protection of wetlands pursuant to EO 11990; (d) evaluation of flood hazards in floodplains in accordance with EO 11988; (e) assurance of project consistency with the approved State management program developed under the Coastal Zone Management Act of 1972 (16 U.S.C. §§1451 et seq.); (f) conformity of Federal actions to State (Clean Air) implementation Plans under Section 176(c) of the Clean Air Act of 1955, as amended (42 U.S.C. §§7401 et seq.); (g) protection of underground sources of drinking water under the Safe Drinking Water Act of 1974, as amended (P.L. 93-523); and, (h) protection of endangered species under the Endangered Species Act of 1973, as amended (P.L. 93-205).
16. Will comply with the Wild and Scenic Rivers Act of 1968 (16 U.S.C. §§1271 et seq.) related to protecting components or potential components of the national wild and scenic rivers system.
17. Will assist the awarding agency in assuring compliance with Section 106 of the National Historic Preservation Act of 1966, as amended (16 U.S.C. §470), EO 11593 (identification and protection of historic properties), and the Archaeological and Historic Preservation Act of 1974 (16 U.S.C. §§469a-1 et seq).
18. Will cause to be performed the required financial and compliance audits in accordance with the Single Audit Act Amendments of 1996 and OMB Circular No. A-133, "Audits of States, Local Governments, and Non-Profit Organizations."
19. Will comply with all applicable requirements of all other Federal laws, executive orders, regulations, and policies governing this program.
20. Will comply with the requirements of Section 106(g) of the Trafficking Victims Protection Act (TVPA) of 2000, as amended (22 U.S.C. 7104) which prohibits grant award recipients or a sub-recipient from (1) Engaging in severe forms of trafficking in persons during the period of time that the award is in effect (2) Procuring a commercial sex act during the period of time that the award is in effect or (3) Using forced labor in the performance of the award or subawards under the award.

SIGNATURE OF AUTHORIZED CERTIFYING OFFICIAL <div style="border: 1px solid black; height: 40px; width: 100%;"></div>	TITLE <div style="border: 1px solid black; height: 20px; width: 100%;"></div>
APPLICANT ORGANIZATION <div style="border: 1px solid black; padding: 2px;">The Gulf Consortium</div>	DATE SUBMITTED <div style="border: 1px solid black; height: 20px; width: 100%;"></div>

## **AGENDA ITEM 7**

**Gulf Consortium Board of Directors Meeting  
March 18, 2021**

**Agenda Item 7  
SEP Planning Consultants – Conflict of Interest**

**Executive Summary:**

Pursuant to a request from ESA, at the January 2021 meeting the Board discussed potentially relaxing the conflict-of-interest provision and permitting ESA and their subcontractors to work on FSEP implementation projects. To that end, the Board directed General Counsel to prepare a letter seeking guidance from the Department of Treasury as to whether this would be permissible under applicable Federal law. A draft letter was prepared and sent to the Chairman and Board members, which is attached as version 1.

In discussions with Mark Bisgeier, General Counsel for RESTORE Council, he opined that since Treasury does not administer Pot 3 funds it would not be appropriate for the Consortium to correspond or advocate directly with Treasury regarding this issue. Rather, Mr. Bisgeier offered to consult with Treasury on the Consortium's behalf and to consider any advisory opinion Treasury may offer. A copy of Mr. Bisgeier's response is attached.

**Executive Committee comments:**

The Executive Committee voted to remove any reference to Treasury's previous determination regarding unfair competitive advantage dealing with Pot 1 funds, which is attached as version 2.

**Attachments**

- ESA letter, Agenda Item from January 2021 Board meeting, Langton Consulting letter
- Letter version 1
- Letter version 2
- Email correspondence from RESTORE Council attorney

**Options:**

- Option #1, Approve version 1 or version 2.
- Option #2, Revise version 1 or version 2.
- Option #3, Board direction.

**Prepared by:**

Lynn Hoshihara and Evan Rosenthal  
Nabors, Giblin & Nickerson, P.A.  
General Counsel  
March 11, 2021



5401 South Kirkman Road  
Suite 475  
Orlando, FL 32819  
407.403.6300  
407.403.6301



January 8, 2021

Gulf Consortium Board of Directors  
c/o The Balmoral Group, Manager  
165 Lincoln Avenue  
Winter Park, FL 32789

**Subject:** Release of the ESA Consulting Team from Non-Compete Restrictions on SEP-Related Project Work

Dear Directors:

On behalf of Environmental Science Associates (ESA) and our State Expenditure Plan (SEP) consulting team, I am respectfully requesting the Directors to formally lift all restrictions prohibiting our firms from fairly competing for and engaging in SEP-related project work, effective December 31, 2020 - 2 years from termination of ESA's agreement. The ESA consultant team was selected by the Consortium in 2014 to assist the member counties in maximizing the benefits of the Spill Impact Component, and to prepare the SEP. We worked closely and diligently with the Consortium member counties, and the final SEP was approved by the Restoration Council on September 17, 2018. Upon ESA's satisfactory completion of its scope of work, the agreement between ESA and Consortium was jointly terminated on December 31, 2018.

ESA's agreement contained a conflict of interest clause that prohibited the consultant team from working on projects described in the approved SEP. This clause was agreed to by ESA because our original scope of work called for the consultant team to independently select and rank SEP projects. Our scope of work was subsequently revised by the Consortium to allow for the counties to select and rank their own projects, thus eliminating the intended purpose of the clause. ESA attempted to negotiate a contract amendment to address this inconsistency, but the amendment was rejected by the Consortium for unspecified reasons.

Regardless, we contend that this clause, and any restrictions on competing for SEP-related project work, terminated with our agreement as no post-agreement terms or end date were ever negotiated with ESA. The Consortium's general counsel has nonetheless continued to assert that our non-compete status is in effect indefinitely. Over the past two years several member counties have requested ESA consultant team members to compete for SEP-related project work, only to be told that their grant monies may be at risk if ESA consultant team members were to be hired. As it stands, this arbitrary and ambiguous non-compete status is detrimental to both the success of those member counties as well as our ability to pursue significant business opportunities.

Chapter 112.313 of the Florida Statutes addresses standards of conduct for public officers, employees of agencies, and local government attorneys. Several sections in this statute consistently define a 2-year period following the vacation of an office or position during which said individuals may not pursue or accept business with the vacated agency due to conflict of interest or competitive advantage. The 2-year "non-compete" period defined in the statute is a reasonable timeframe that is applicable to the restriction imposed on the ESA consultant team. Any term longer than 2 years is unprecedented in Florida law and is clearly punitive. The ESA consultant team has no conflicts of interest, and any competitive advantage we may have developed in preparing the SEP has long since diminished after the completion of the SEP.

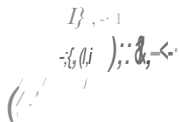
**Therefore, I am respectfully requesting the Directors to formally release the ESA consultant team from any and all restrictions on fairly competing for SEP-related project work, effective December 31, 2020 (2 years from the termination date of ESA's agreement).**

January 8, 2021

Page 2

Fair and open competition is the basic tenet of public procurement, and member counties should be free to independently determine which consultants and contractors are best qualified to compete for requested professional services. We are very well qualified to assist member counties in the implementation of their SEP projects, and after two years on the sidelines, there is no justification or legal precedent for continuing to restrict the ESA consulting team from freely conducting our businesses in Florida. Our suggested Board motion is provided below. Thank you for considering our request.

Sincerely,



Julie Sullivan  
ESA Southeast Regional Director

#### **SUGGESTED BOARD MOTION**

**I Move that the Board of Directors to adopt a resolution stating that the ESA consultant team is released from any and all restrictions on fairly competing for SEP-related project work, effective December 31, 2020 (2 years from the termination of ESA's agreement with the Consortium.)**

#### **Reasons to support this motion:**

- The current restrictions being imposed by the Consortium on the ESA consultant team are arbitrary, capricious, and ambiguous, with no defined terms or end date.
- In the absence of any negotiated terms or end date, the 2-year "non-compete" period defined in Chapter 112.313 Florida Statutes is the appropriate standard.
- Fair and open competition is the basic tenet of public procurement, and member counties should be free to independently determine which consultants and contractors are best qualified to compete for requested professional services.
- The current restrictions are detrimental to both the success of member counties seeking assistance from the ESA consultant team, as well as the ability of our firms to pursue significant business opportunities.
- The ESA consultant team has no conflicts of interest, and any competitive advantage it may have gained in the preparation of the SEP has long since diminished after the completion of the SEP.
- After two years on the sidelines, there is no justification or legal precedent for continuing to restrict the ESA consulting team from freely conducting their businesses in Florida.

**Gulf Consortium Board of Directors Meeting  
January 28, 2021**

**Agenda Item \_  
SEP Planning Consultants - Conflict of Interest**

**Executive Summary:**

At the December 2020 Gulf Consortium Board Meeting, it was requested that the Board revisit the Conflict of Interest (COi) clause agreed to by Environmental Science Associates (ESA) and its subcontractors that currently prohibits ESA and its subcontractors from working on implementation of the State Expenditure Plan (SEP) for the Consortium and the 23 member counties. The COi clause was originally proposed by ESA and was developed primarily in order to comply with Treasury regulations prohibiting conflicts of interest in the development and implementation of the SEP and was included within the SEP itself. It provides as follows:

The Consultant agrees to recuse itself from all participation in any projects, programs, and activities ultimately included in the State Expenditure Plan. Attached as composite Exhibit E is a copy of each Consultant's agreements with its named team partner firms and individuals regarding such firms' recusal from all participation in any projects, programs, and activities ultimately included in the State Expenditure Plan.

State Expenditure Plan at Page 20.

It is important to note that the COi clause only extends to projects that were ultimately included in the SEP. ESA and its subcontractors are free to work on Pot 1 and Pot 2 projects as well as any other projects not related to SEP implementation for the Consortium and the member counties.

In response to multiple requests from ESA that the COi clause be waived or amended, the Board previously addressed the COi clause over the course of several meetings spanning from 2017 - 2019. In February 2018 and again in January 2019, the Board voted to deny ESA's request and leave the COi clause in place.

Because the COi clause was included within the SEP, any adjustment to the COi clause would require an SEP amendment, which must be approved by the RESTORE Council prior to taking effect. Further, even if changes to the COi clause were to be approved by the RESTORE Council, a future audit could nonetheless determine that a prohibited conflict of interest exists, thus potentially resulting in the recoupment of grant funds awarded to the Consortium and/or the denial of subsequent reimbursement requests.

ESA cites to Chapter 112, Florida Statutes, to justify a two-year recusal period. However, that is inapplicable here since the SEP is governed entirely by Federal regulations. Since attempting to weaken or eliminate the COi clause would result in increased risk to the



Consortium, General Counsel recommends the Board leave the existing COi clause in place.

In the event the Board nonetheless wishes to explore revising the COi clause, General Counsel would strongly recommend that any proposed changes first be submitted to the RESTORE Council for review and comment.

### **Background/History:**

The following is a summary of pertinent events related to the development of the COi clause and subsequent attempts to modify same:

**April 2014:** Consortium issued an Invitation to Negotiate (ITN) for Consultant Services for the Development of the SEP.

**Sept. 2014:** A Request for Best and Final Offer (RBAFO) was issued to four firms, which among other things required them to address "how the Consortium's use of the Firm in implementing the SEP would comply with the Treasury Interim Final Rule section 34.503(b)(3) to prevent conflicts of interest in the development and implementation of the SEP."

**Oct. 2014:** In its response to the RBAFO, ESA agreed to avoid any actual or perceived conflicts of interest by expressing the following:

*We have reviewed and carefully considered the Conflict of Interest clause contained in the RBAFO, as well as later clarification of that clause provided by the Leon County Purchasing Department . **As we interpret it, the clear intention of this clause is to preclude any actual or perceived bias on the part of the SEP planning consultant such that they could later profit from participating in the implementation of projects, programs, and activities included in the SEP.***

*The ESA team fully accepts the limitations expressed in this clause, and ESA and its named team partner firms and individuals will formally recuse themselves from all later participation in any projects, programs, and activities ultimately included in the SEP. **If selected by the Consortium, the ESA team will be beholden solely and exclusively to the interests of the Consortium, and will not seek to profit from the subsequent implementation of the SEP prepared by the ESA team.***

**March 2015:** Consortium and ESA entered into an Agreement, which contained the current COi clause.

**April 2016:** ESA's agreement with the Consortium was amended to address the change in scope, increase the contract amount, and update certain required provisions. ESA proposed revising or deleting the COi clause, but this was rejected and the existing COi

clause was carried forward into the Amended Agreement (as well as the Administrative Grant Application and PSEP).

**November 2017:** The Board considered a request from ESA to revise/delete the COi clause. The Board voted to direct the General Counsel to negotiate with counsel for ESA on revised COi language that would satisfy both ESA's and the Consortium's interests as well as RESTORE Council.

General Counsel worked with ESA and the RESTORE Council to negotiate a potential compromise of a four (4) year recusal (from the date of SEP approval) from working on those components of SEP projects funded with Pot 3 funds. When this was presented to RESTORE Council staff, they gave tentative approval with the caveat that the four (4) year recusal period cover all projects included in the SEP regardless of funding source.

**February 2018:** The potential compromise position was presented to the Board for consideration, which included the four (4) year blanket recusal from work on any projects included in the SEP. At the meeting, ESA's legal counsel addressed the Board and stated that they did not approve of the proposed compromise and that they wanted more time to negotiate with RESTORE Council. Ultimately, the Board voted not to make any modifications to the COi clause.

**January 2019:** In response to a request from a Director, the Board again revisited the COi clause. General Counsel recommended leaving the existing COi clause in place. Additionally, RESTORE Council's General Counsel spoke at the meeting and expressed agreement with the General Counsel's position. RESTORE Council's General Counsel further stated that RESTORE Council would closely scrutinize any situation where an ethical provision was amended to become less restrictive. Representatives from ESA and their subcontractors also addressed the Board. The Board unanimously voted to leave the existing COi clause in place.

**June 2019:** ESA and its subcontractors objected to the inclusion of the COi clause in the Subrecipient Agreements. The Board voted to leave the COi clause as written.

**December 2020:** In response to a request from a Director, the Consortium Board agreed to revisit the COi clause and directed staff to place it on the January meeting agenda.

### **Analysis**

It is the responsibility of all public officers, employees, and consultants to ensure the integrity and impartiality of the Consortium's procurement process. Fair and open competition is a basic tenet of public procurement. Such competition reduces the appearance and opportunity for favoritism and inspires public confidence that contracts are awarded equitably and economically and helps to establish public confidence in the process by which services are procured.

To that end, the COi clause was put in place to provide sufficient control to prevent conflicts in the development and implementation of the SEP as required by Treasury. ESA agreed to this restriction when it first contracted with the Consortium and spent 3+ yrs working closely with the 23 counties on the development of the projects ultimately included in the SEP.

Under federal law, the Consortium is required to safeguard against conflicts of interests in administering federal funds. The Consortium should consider the following guiding principles related to competitive procurements and COi:

#### Federal Law

- The U.S. Department of Treasury Regulation requires the SEP to "describe the processes used to prevent conflicts of interests in the development and implementation of the plan." §34.503(b)(3), 31 CFR Part 34.
- "In order to ensure objective contractor performance and eliminate unfair competitive advantage , contractors that develop or draft specifications , requirements , statements of work , or invitations for bids or requests for proposals must be excluded from competing for such procurements ." §200.319(a), 2 CFR Part 200.

#### RESTORE Council

- The Council has adopted a Code of Conduct which requires the Consortium to maintain written standards of conduct regarding conflicts of interest. The provision includes a conflict certification form that requires the Consortium to "establish safeguards to prohibit employees from using their positions for a purpose that constitutes or presents the appearance of personal or organizational conflict of interest, or personal gain in the administration of this award." *Form SF-424B , Section N, Restore Council Financial Assistance Standard Terms and Conditions.*

#### Florida Law

- "A person who receives a contract that has not been procured pursuant to subsections (1) - (3) to perform a feasibility study of the potential implementation of a subsequent contract, who participates in the drafting of a solicitation or who develops a program for future implementation, is not eligible to contract with the agency for any other contracts dealing with that specific subject matter." §287.057(1)(c), F.S.

The COi clause was originally offered by ESA during the procurement process in response to the Consortium's request for best and final offer. ESA voluntarily contracted with the Consortium to serve as the planning consultant responsible for development of the SEP and has reaped the benefits thereof. The COi clause is reasonable, serves a legitimate public interest and is limited solely to the projects included in the SEP. ESA is free to work on Pot 1 projects, Pot 2 projects, Triumph projects, or any other individual counties' projects.

As described above, because the COi clause was included within the SEP, any adjustment to the COi clause would require an SEP amendment, which must be approved by the RESTORE Council prior to taking effect. Further, even if changes to the COi clause were to be approved by the RESTORE Council, a future audit could nonetheless determine that a prohibited conflict of interest exists, thus potentially resulting in the recoupment of grant funds awarded to the Consortium and/or the denial of subsequent reimbursement requests.

### **Concerns in Amending the COi Clause:**

- The Consortium is assigned a risk designation by RESTORE Council which is utilized to determine whether additional monitoring requirements and controls are applied to the Consortium and the federal funds it receives under Pot 3 of the RESTORE Act. The Consortium was previously deemed a "high-risk" entity by the RESTORE Council. Only recently was the Consortium able to reduce its risk designation to "moderate risk," which among other things allows the Consortium to draw down grant funding immediately upon request without a pre-audit of proposed expenses. Submission of a proposed SEP amendment seeking to reduce or eliminate ethical restrictions that were included in the SEP to comply with Treasury Regulations relating to conflicts of interest in the development and implementation of the SEP may undermine these efforts and result in the re-evaluation of the Consortium's risk designation. An increase in the Consortium's risk designation could result in delays in accessing funds and additional monitoring controls.
- While ESA has previously contended that the COi clause became obsolete after the Consortium shifted to the "Even-Steven" approach whereby each county would receive equal funding, even under the Even-Steven approach, ESA had a significant role in the development of the projects ultimately included in the SEP. ESA and its subcontractors may be deemed as having an "unfair advantage" over other future bidders as they are in a position to have more information about timing, costs, leveraging and inner-project needs.
  - A state agency may not enter into a contract if a conflict of interest is based upon the vendor gaining an unfair competitive advantage . §287.057(16) ,F.S.
  - An "unfair competitive advantage" exists when the vendor has obtained:
    - a) Access to information that is not available to the public and would assist the vendor in obtaining the contract; or
    - b) Source selection information that is relevant to the contract but is not available to all competitors and that would assist the vendor in obtaining the contract.
- A concern may be raised as to the integrity of the original selection process as other consulting firms may have decided not to bid on the development of the SEP to remain eligible to compete on implementation.
- Future bidders may be discouraged from competing on SEP implementation based on a perception of favoritism towards ESA and its subcontractors.

- The ultimate determination as to whether a conflict of interest exists could be raised in an audit, which may result in financial repercussions.
- The Consortium has spent over \$54,000 in legal fees since 2017 addressing ESA's request to revise/delete the COi clause.

When the Board addressed this issue most recently in January 2019, RESTORE Council staff were present at the meeting and expressed agreement with the General Counsel's position that the COi clause not be modified. RESTORE Council staff have further stated that the elimination or diminution of the COi clause, if inconsistent with Federal law or regulations, could result in disallowance of future cost reimbursements under SEP awards to the Consortium.

### **Executive Committee comments:**

- The Executive Committee requested a list of newly added SEP projects, which ESA and its subcontractors would be free to work on. There are 5 new projects are:
  - 18-10: Kingfish Boat Ramp Renovation and Expansion (Manatee County)
  - 10-1: Spring Warrior (Taylor County) - pending RESTORE Council approval
  - 10-2 : Hodges Park Rehabilitation (Taylor County) - pending RESTORE Council approval
  - 10-3 : Keaton Beach and Steinhatchee Boat Ramps By-Pass (Taylor County) - pending RESTORE Council approval
  - 15-9: Channel Restoration (Pasco County) - pending RESTORE Council approval
- The Executive Committee also asked about the potential liability to individual counties in the event the Consortium Board weakened the recusal period.
  - A federal audit could result in disallowance or claw back of cost reimbursements, which would jeopardize County projects that are in the queue.
  - When requested, ESA has refused to indemnify the Consortium or the counties.

### **Conclusion:**

Pursuing an amendment to the SEP that relaxes the existing COi clause would place the Consortium at increased risk. RESTORE Council staff is on record that any attempts to weaken the COi clause or any other ethical provision would be closely scrutinized. All Directors are further encouraged to consult with their respective County Attorneys to the extent they have questions regarding this issue.

### **Options:**

Option #1, Do not make any changes to the existing COi clause.

Option #2, Direct General Counsel to seek guidance from RESTORE Council as to whether a four (4) year blanket recusal from work on any projects included in the SEP (measured from the date of approval of the SEP by RESTORE Council) would be permissible.

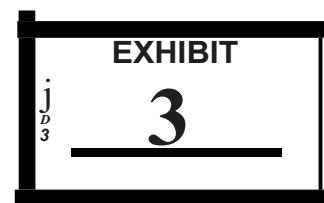
Option #3, Board direction.

**Recommendation:**

Option #1

**Prepared by:**

Lynn Hoshihara and Evan Rosenthal  
Nabors, Giblin & Nickerson, P.A.  
General Counsel  
January 21, 2021



February 26, 2021

Maureen Klovers  
Director, RESTORE Act  
Office of Grants and Asset Management  
U.S. Department of Treasury  
1500 Pennsylvania Avenue, NW  
Washington, D.C. 20220  
[Maureen.Klovers2@treasury.gov](mailto:Maureen.Klovers2@treasury.gov)

**Subject:** Release of ESA Consulting Team from Non-Compete Restrictions on Florida Spill Impact Component project work detailed in the 2018 State Expenditure Plan.

Dear Ms. Klovers:

The Reason we are reaching out to you, Our Position, and Our Request of you, are outlined below.

**Our Reason to contact you:**

The General Counsel for the Florida Gulf Consortium has currently imposed a recusal policy (currently held as indefinite) that restricts Environmental Science Associates (ESA) and its subconsultants, including Langton Associates, Inc. (Langton) from openly competing on contract work for projects funded through the RESTORE Act Spill-Impact Program due to our work on the development of the Florida State Expenditure Plan (FSEP) completed on June 27, 2018. The General Counsel's point of view is that because ESA, Langton and their partners were the procured consultants selected to assist Florida local government grantees with the development of the FSEP, that any future contract work on this Program would present an unfair advantage and therefore the firms should be recused from being able to openly compete to provide engineering, environmental, or grant consulting services for projects funded through this Program.

The General Counsel has cited 2 CFR §200.319 *Competition*, as the source for the determination that a recusal is required. The regulation states, *"In order to ensure objective contractor performance and eliminate unfair competitive advantage, contractors that develop or draft specifications, requirements, statements of work, or invitations for bids or requests for proposals must be excluded from competing for such procurements."*

**Our Position:**

- Neither 2 CFR §200.319, nor any other Federal regulation included in the 2 CFR 200 Uniform Administrative Guidance, Cost Principles, and Audit Requirements for Federal Awards, require a recusal policy from competing on contract work for an entire grant Program. The word "recusal" is not used in the regulations at all.
- Neither ESA, nor Langton, actually developed *draft specifications, requirements, statements of work, or invitations for bids or requests for proposals* as part of our work in developing the FSEP. Grantees designed their own projects and submitted them to the ESA and Langton team to be included in the Plan.
- Neither ESA, nor Langton, has ever nor will ever, be responsible for drafting requirements, statements of work or invitations for bids or requests for proposals processes that we would then compete for.
- ESA and Langton have proposed to accept a two (2) year non-compete clause starting from the date of Approval of the FSEP (September 2018) by the RESTORE COUNCIL, in order to comply with Florida best practices (F.S. 542.335 Valid Restraints of Trade and 112.313) and avoid the illusion of unfair advantage for our experience and knowledge of the RESTORE Act Spill-Impact Program.

**Our Request of you:**

We respectfully request that you investigate and advise whether there are any Federal regulations that you are aware of, that would restrict the Gulf Consortium Board of Directors from removing the current recusal prohibitions and furthermore whether this action in and of itself would create any potential audit findings that could jeopardize FSEP funding moving forward.

Thank you for your careful consideration of this important matter.

Sincerely,

Michael Langton

*fao/;6t:=-*

Michael Langton, GPC  
President, Langton Consulting





[www.gulfconsortium.org](http://www.gulfconsortium.org)

\_\_\_\_\_, 2021

Mark Bisgeier  
General Counsel  
Gulf Coast Ecosystem Restoration Council  
[Mark.Bisgeier@RestoreTheGulf.gov](mailto:Mark.Bisgeier@RestoreTheGulf.gov)

Re: Request for Guidance

The Gulf Consortium (“Consortium”) is a special district governmental entity created by interlocal agreement of the 23 Florida counties affected by the Deepwater Horizon oil spill to oversee and administer the funding allocated to the State of Florida pursuant to the Spill Impact Component (commonly referred to as “Pot 3”) of the Resources and Ecosystems Sustainability, Tourist Opportunities, and Revived Economies of the Gulf Coast States Act (“RESTORE Act”).

As the Department of Treasury is vested with audit and oversight authority over all “projects, programs, and activities” funded through the RESTORE Act, including under Pot 3,<sup>1</sup> the Consortium is seeking guidance concerning the potential application of federal regulations governing conflicts of interest and competitive advantage to the Consortium and certain private firms with whom it has previously contracted, as further described herein.

### **Background**

In 2014, the Consortium issued a competitive procurement seeking firms to assist in the preparation of the Florida State Expenditure Plan (“FSEP”). Similar to the Multiyear Implementation Plan (“MYIP”) required under the Direct Component (“Pot 1”) of the RESTORE Act, the FSEP is a planning document that sets forth the State’s plan for utilizing its allocation of funding under Pot 3.<sup>2</sup>

The procurement process culminated with the Consortium’s award of a contract to Environmental Science Associates (“ESA”). ESA’s scope of services included working with each of the 23 member counties that comprise the Consortium to develop the various projects, programs, and activities that were ultimately included in the FSEP.

31 C.F.R. § 34.503(b)(3), requires each state’s state expenditure plan to “describe the processes used to prevent conflicts of interests in the development and implementation of the plan.” Additionally, 2 C.F.R. § 200.319(a) provides that “[i]n order to ensure objective contractor performance and eliminate unfair competitive advantage, contractors that develop or draft specifications, requirements, statements of work, or invitations for bids or requests for proposals must be excluded from competing for such procurements.”

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<sup>1</sup> Section 1608, RESTORE Act.

<sup>2</sup> The Florida State Expenditure Plan is available at: <https://www.gulfconsortium.org/state-expenditure-plan>



[www.gulfconsortium.org](http://www.gulfconsortium.org)

In light of the foregoing provisions, the contract between the Consortium and ESA specifically prohibited ESA and its subcontractors<sup>3</sup> from participating in the implementation of the projects, programs, and activities ultimately included in the FSEP. Language to this effect was ultimately included within the FSEP itself (hereinafter the “Recusal Clause”).<sup>4</sup>

ESA completed their scope of work in 2018 and the FSEP was approved by the RESTORE Council on September 27, 2018. Since that time, ESA has refrained from participation in the implementation of FSEP projects, in accordance with their contractual obligations and the express language of the FSEP.

Pursuant to a request from ESA, at the January 2021 meeting of the Gulf Consortium Board of Directors (“Board”), the Board discussed potentially relaxing the Recusal Clause and permitting ESA and their subcontractors to work on FSEP implementation projects. Prior to taking any action, the Board opted to seek guidance from the Department of Treasury as to whether this would be permissible under applicable Federal law.

### **Analysis**

The Consortium is cognizant of the above-cited provision in 31 C.F.R. § 34.503(b)(3) governing conflicts of interest in the preparation and implementation of the FSEP. The Consortium respectfully submits that there would be no conflict of interest in ESA’s participation in the implementation of the FSEP. ESA had no vested interest in the selection of the projects ultimately included in the FSEP. As further described in the FSEP, each of the 23 member counties that make up the Consortium will receive the same amount of funding – roughly \$12.6 million dollars per county – to expend on eligible projects, programs and activities. ESA’s scope of work did not include ranking or otherwise selecting the projects through any sort of competitive process. Rather, ESA merely assisted the 23 member counties with identifying and developing such projects and describing them with the FSEP.<sup>5</sup>

As noted above, more than two years have passed since the approval of the FSEP, during which time ESA has not performed any FSEP implementation work. This constitutes a reasonable “cooling off” period and is consistent with analogous Florida law governing the recusal period applicable to lobbying by former statewide elected officers and local elected officers. Section 112.313(9), (13), Fla. Stat.<sup>6</sup>

Further, at the January 2021 Board of Directors meeting, it was noted that some member counties were experiencing difficulty procuring consultant services necessary in connection with the implementation of their FSEP projects, which services ESA may be capable of offering.

<sup>3</sup> ESA and their subcontractors shall hereinafter be referred to collectively as “ESA.”

<sup>4</sup> Florida State Expenditure Plan at p. 20.

<sup>5</sup> This “county-driven” process for project selection is further described on pages 31-38 of the Florida State Expenditure Plan.

<sup>6</sup> Effective December 31, 2022, the lobbying prohibition for elected statewide officers will increase to six (6) years. Article II, Section 8, Fla. Const.; Article XII, Section 38, Fla. Const.



[www.gulfconsortium.org](http://www.gulfconsortium.org)

The Consortium is also aware that the “RESTORE Act, Frequently Asked Questions (FAQs) Relating to the Direct Component Program,” dated April 3, 2019, issued by the Department of Treasury contains the following:

**53. Q. May a contractor who enters into a contract with an eligible Louisiana parish or Florida county to prepare a multiyear plan and/or grant application compete for subsequent procurements related to that multiyear plan and/or grant application?**

**A.** No. Consistent with 2 CFR 200.319, to help ensure objective contractor performance and eliminate unfair competitive advantage, a contractor who prepares the multiyear plan and/or grant application, or develops the draft specifications, requirements, statements of work, and/or invitation for bids or request for proposals for the project grant may not compete for subsequent procurement contracts to implement that multiyear plan or project grant.

The Consortium recognizes that there are similarities between the multiyear implementation plan under Pot 1 and the state expenditure plan under Pot 3, and as such is seeking guidance as to whether a similar prohibition would exist for any contractors who develop or draft a state expenditure plan.

To assist with your review of the question posed in this correspondence and provide you with some additional background materials, enclosed please find the agenda item presented to the Board at the January 2021 Board of Directors meeting, prepared by the Consortium’s general counsel, as well as a letter submitted by ESA and Langton (subconsultant to ESA) related to this issue. Should you have any questions or require any additional information related to this request, please do not hesitate to contact me.

Sincerely,

Christopher Constance  
Chairman, Gulf Consortium Board of Directors

Enclosures:

1. ESA Letter to Gulf Consortium Board of Directors, Dated January 8, 2021
2. Gulf Consortium Board of Directors Agenda Item 9b SEP Planning Consultants – Conflict of Interest, Dated January 28, 2021
3. Langton Consulting Letter to Maureen Klovers, Dated February 26, 2021



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\_\_\_\_\_, 2021

Mark Bisgeier  
General Counsel  
Gulf Coast Ecosystem Restoration Council  
[Mark.Bisgeier@RestoreTheGulf.gov](mailto:Mark.Bisgeier@RestoreTheGulf.gov)

Re: Request for Guidance from Treasury

The Gulf Consortium (“Consortium”) is a special district governmental entity created by interlocal agreement of the 23 Florida counties affected by the Deepwater Horizon oil spill to oversee and administer the funding allocated to the State of Florida pursuant to the Spill Impact Component (commonly referred to as “Pot 3”) of the Resources and Ecosystems Sustainability, Tourist Opportunities, and Revived Economies of the Gulf Coast States Act (“RESTORE Act”).

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[www.gulfconsortium.org](http://www.gulfconsortium.org)

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Sincerely,

Christopher Constance  
Chairman, Gulf Consortium Board of Directors

Enclosures:

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2. Gulf Consortium Board of Directors Agenda Item 9b SEP Planning Consultants – Conflict of Interest, Dated January 28, 2021
3. Langton Consulting Letter to Maureen Klovers, Dated February 26, 2021

## **Hoshihara, Linn**

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**From:** Mark Bisgeier <mark.bisgeier@restorethegulf.gov>  
**Sent:** Monday, March 8, 2021 2:53 PM  
**To:** Rosenthal, Evan  
**Cc:** VSeidel@balmoralgroup.us; Daniel us>; Hoshihara, Lynn; Mary Walker; Kristin Smith  
**Subject:** Re: Recusal of SEP Consultants

Dear Evan:

Thank you for your email.

As we know, 2 CFR § 200.319 broadly restricts unfair competitive advantage on the part of contractors. Per our previous discussions, in our opinion a contractor's role as a consultant in the development or selection of potential Spill Impact Component projects requires that the contractor be excluded from bidding on or participating in the implementation of those projects in order to avoid an unfair competitive advantage.

This is consistent with the April 3, 2019 Department of the Treasury RESTORE Act FAQ No. 53 relating to Direct Component grants referred to in your proposed letter, which we believe also provides guidance for Spill Impact Component grants administered by the Council.

We therefore see no reason for relaxing ESA's permanent recusal from such projects as set forth in its original agreement with the Consortium. We have, however, considered that a four-year recusal, rather than a permanent one, might satisfy the requirements of § 200.319.

Since Treasury does not administer Spill Impact Component grants or activities, in our view it would not be appropriate for the Consortium to correspond or advocate directly with Treasury regarding ESA's Spill Impact Component recusal. That said, and given the Consortium's desire for a "second opinion" from Treasury, the Council would be willing to consult with Treasury and to consider its advisory opinion (should it offer one) as to whether ESA's recusal is necessary, and if so, whether it should remain permanent or instead extend for some shorter period of time.

Happy to discuss further if you have any questions or comments.

Thanks and best,

Mark

**Mark D. Bisgeier**  
General Counsel  
Gulf Coast Ecosystem Restoration Council  
(504) 444-3626  
Mark.Bisgeier@RestoreTheGulf.gov

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On Thu, Mar 4, 2021 at 2:36 PM Rosenthal, Evan <erose nthal@ng n-t ally.co m> wrote:

Good afternoon Mark,

At the Gulf Consortium's January 2021 Board of Directors meeting, the Board directed the General Counsel and General Manager to prepare a letter to the Department of Treasury inquiring about the recusal of certain SEP planning consultants that were engaged by the Consortium to assist with the preparation and development of the SEP. As you are aware from when this issue previously came up in 2018 and 2019, such SEP planning consultants contractually agreed to recuse themselves from participation in the implementation of the projects that they assisted in developing and were included in the SEP. The Board specifically requested that we inquire of Treasury as to whether it might be possible to release the SEP planning consultants from this recusal-and if so, any specific terms and conditions that may apply to such a release- and further directed that correspondence from the SEP Planning consultants providing their view of the situation be included with the letter and brought to Treasury's attention.

Pursuant to the Board's direction, and given that the RESTORE Council is the Federal entity with direct oversight authority over the Spill Impact Component (Pot 3) of the RESTORE Act, I wanted to inquire as to whether it would be appropriate for the above-described letter to be submitted by the Consortium directly to Treasury or whether the RESTORE Council would be so inclined to submit this question to Treasury on behalf of the Consortium.

Thank you for your assistance with this matter and if you have any questions or concerns, please do not hesitate to contact me.

Evan J. Rosenthal, Esq.

Nabors  
Giblin &  
Nickerson,  
Attorneys at Law

1500 Mahan Drive, Suite 200

Tallahassee, Florida 32308

(850) 224-4070

[erose nthal@ngn-tally.com](mailto:erose nthal@ngn-tally.com)

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## **AGENDA ITEM 8**

**Gulf Consortium Board Meeting  
March 18, 2021**

**Agenda Item 8  
Financial Report**

**Statement of Issue:**

Presentation of the most recent monthly financial statements. The report also includes a snapshot of Grant applications for SEP Implementation.

**Background:**

Financial Statements are produced monthly for the Consortium. Additionally, attachments include a snapshot of the amounts allocated to the Adaptive Planning Grant and the amounts pertaining to Grant Applications for SEP projects.

**Attachments:**

- a) Financial Statements through February 28 – Balance Sheet and Income Statement
- b) Grant Status Summary
- c) Submitted Grants Graph

**Action Required:**

- 1) Approve Financial Reports
- 2) Other Board direction

**Staff Recommendation:**

Approve as proposed.

**Prepared by:**

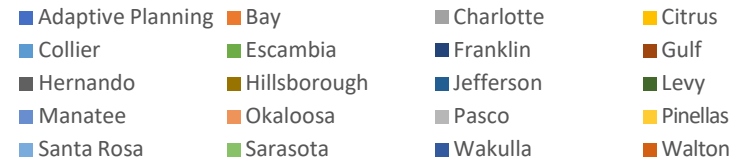
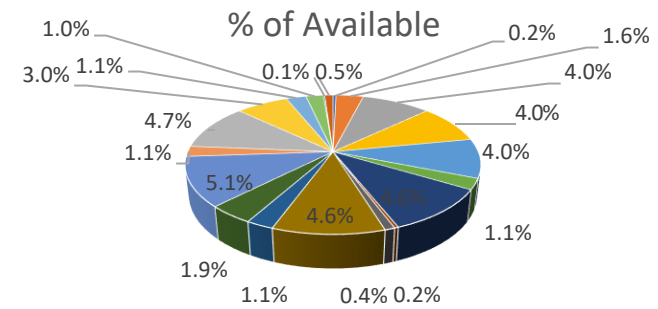
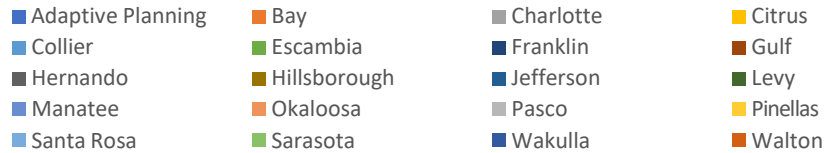
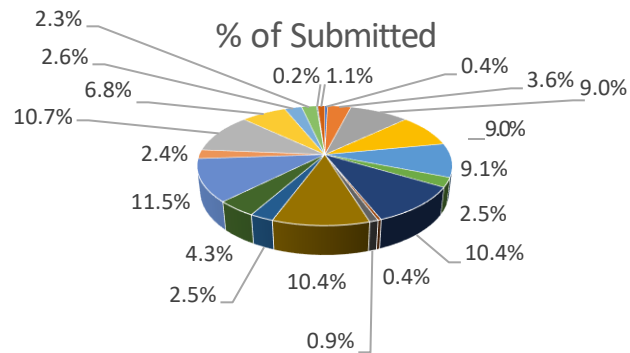
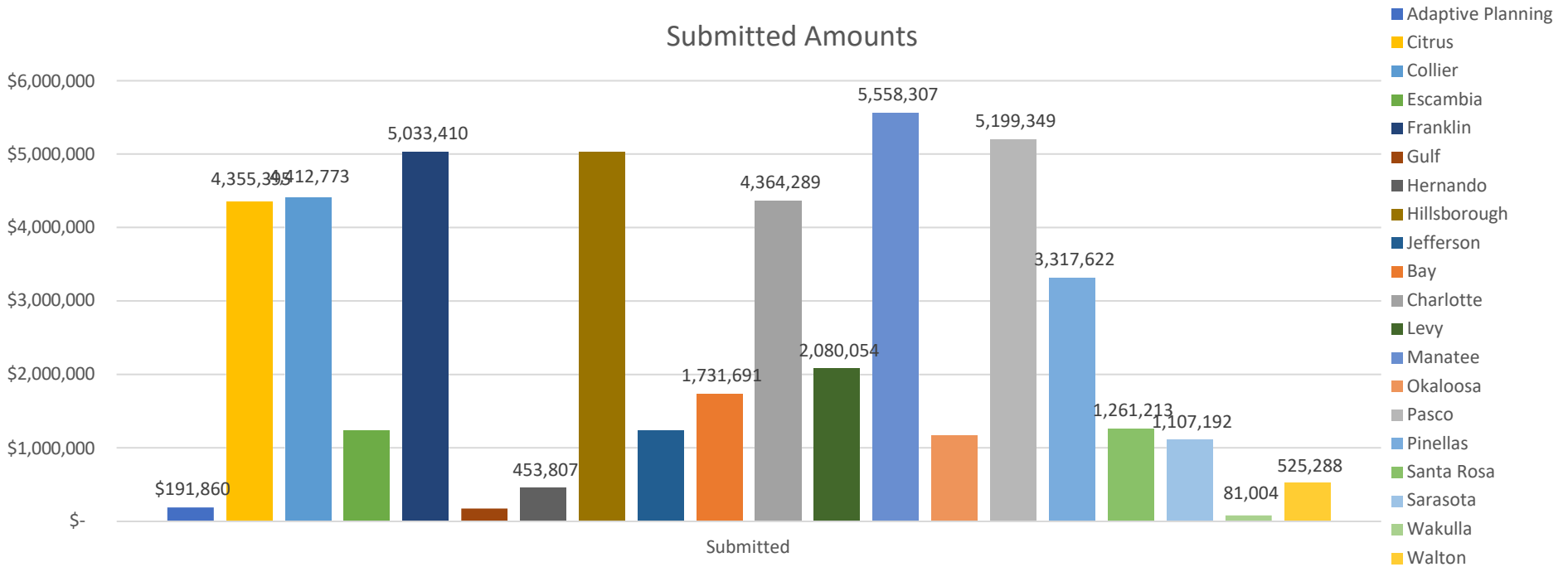
Richard Bernier  
The Balmoral Group  
On: March 5, 2021

**Action Taken:**

Motion to: \_\_\_\_\_, Made by: \_\_\_\_\_;

Seconded by: \_\_\_\_\_.

Approved \_\_\_\_; Approved as amended \_\_\_\_; Defeated \_\_\_\_.



**Gulf Consortium**  
**Balance Sheet**  
**As of February 28, 2021**  
Feb 28, 2021

**ASSETS**

**Current Assets**

**Checking/Savings**

**Cash**

Grant Account (Wells Fargo) 5,297.66

Operating Account (Seaside) 98,982.67

**Total Cash** 104,280.33

**Total Checking/Savings** 104,280.33

**Accounts Receivable**

**Accounts Receivable**

Grants Receivable (SEP) 14,991,774.57

Accounts Receivable (General) 6,306.00

**Total Accounts Receivable** 14,998,080.57

**Total Accounts Receivable** 14,998,080.57

**Other Current Assets**

**Other Current Assets**

Other Receivables 41,362.79

Prepaid Expenses 9,791.00

Other Current Assets - Other 13,241.37

**Total Other Current Assets** 64,395.16

**Total Other Current Assets** 64,395.16

**Total Current Assets** 15,166,756.06

**TOTAL ASSETS** 15,166,756.06

**LIABILITIES & EQUITY**

**Liabilities**

**Current Liabilities**

**Accounts Payable**

**Payables**

Accounts Payable (Grants) 40,089.59

Accounts Payable (General) 4,012.50

**Total Payables** 44,102.09

**Total Accounts Payable** 44,102.09

**Other Current Liabilities**

**Accrued Liabilities**

Accrued Liabilities (Grants) 15,030,820.79

**Total Accrued Liabilities** 15,030,820.79

**Total Other Current Liabilities** 15,030,820.79

**Total Current Liabilities** 15,074,922.88

**Total Liabilities** 15,074,922.88

**Equity**

Funds Transfers (51,652.24)

Unrestricted Net Assets 74,535.45

Net Income 68,949.97

**Total Equity** 91,833.18

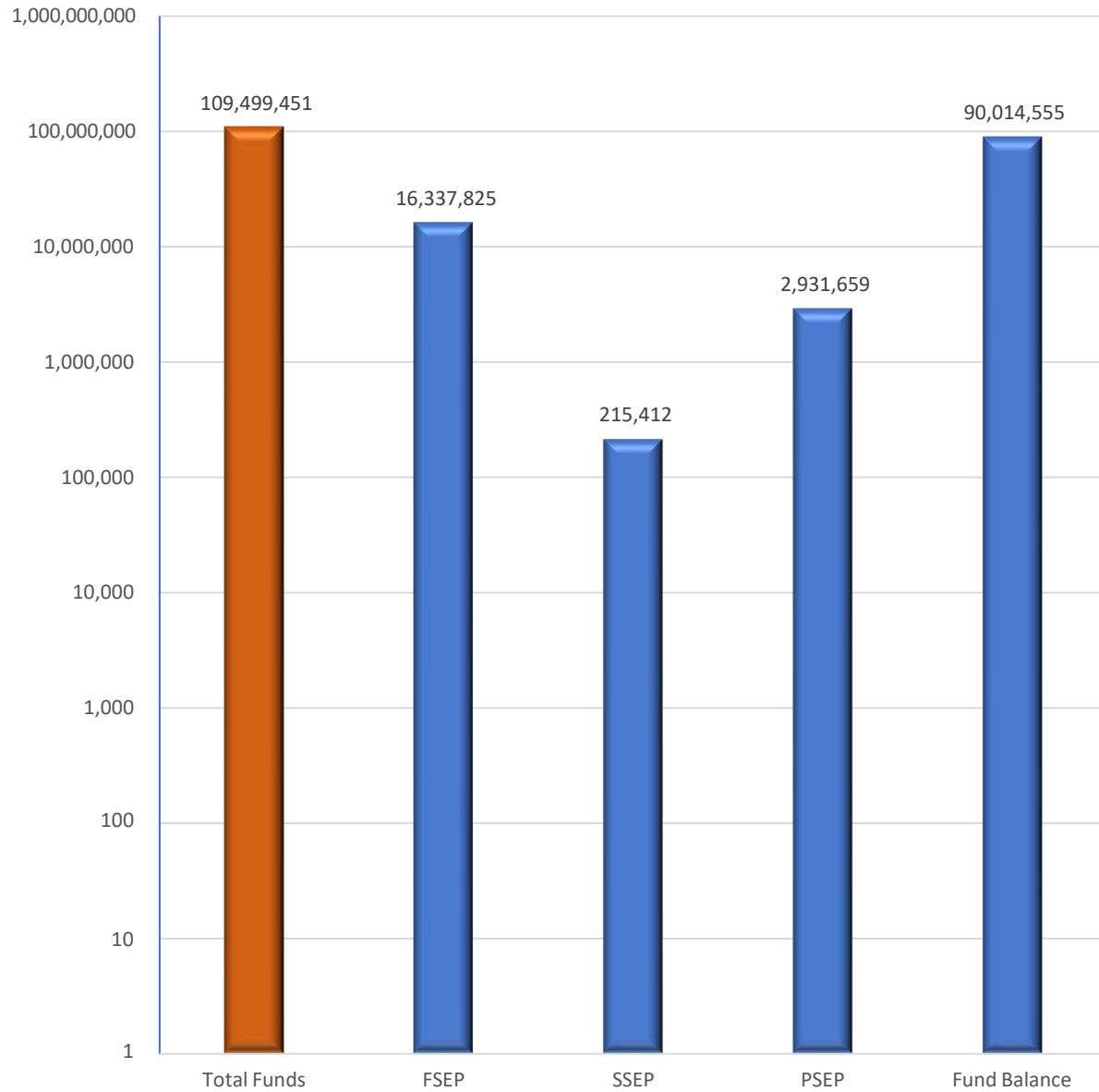
**TOTAL LIABILITIES & EQUITY** 15,166,756.06

**Gulf Consortium**  
**Profit & Loss**  
October 2020 through February 2021

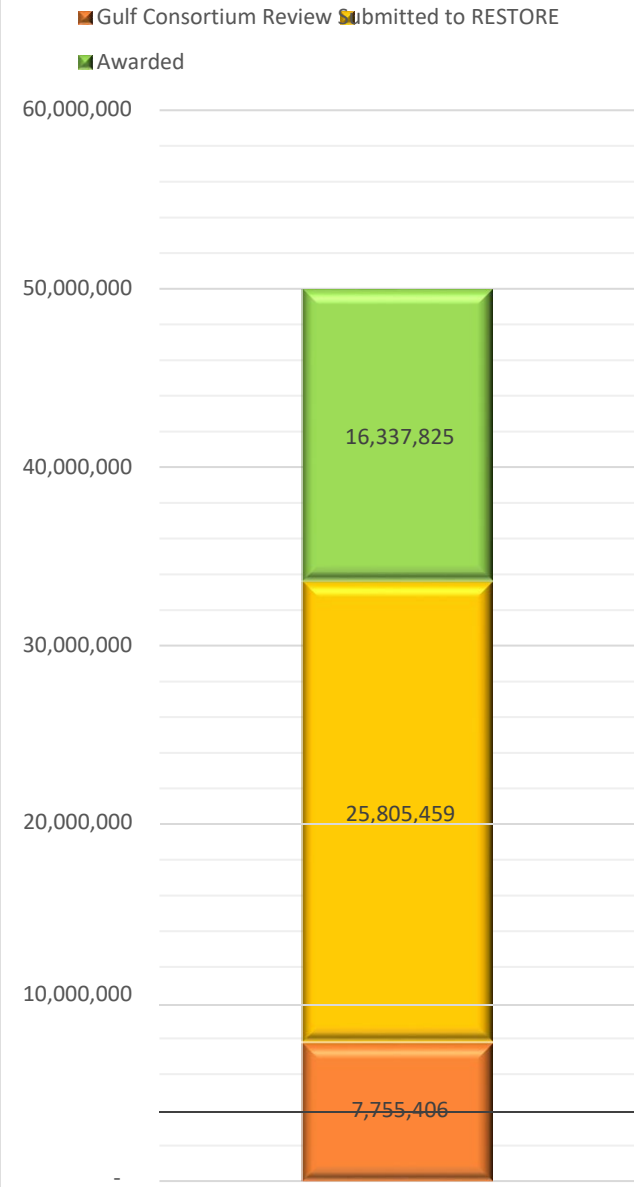
	<u>Adaptive Planning</u>	<u>General Fund</u>	<u>SEP Grants</u>	<u>TOTAL</u>
<b>Income</b>				
Adaptive Planning Grant	62.50	-	-	62.50
Direct Contributions	-	106,790.00	-	106,790.00
Grant Funds - SEP	-	-	92,726.11	92,726.11
<b>Total Income</b>	<u>62.50</u>	<u>106,790.00</u>	<u>92,726.11</u>	<u>199,578.61</u>
<b>Expense</b>				
Adaptive Planning	62.50	-	-	62.50
SEP Grants	-	-	92,726.11	92,726.11
General Consortium Expenses				
Other Expense	-	58.13	-	58.13
Special District Fees	-	175.00	-	175.00
Bank Fees	-	599.34	-	599.34
Meeting Expense	-	328.86	-	328.86
Accounting/Accounting	-	2,500.00	-	2,500.00
Management Fees	-	28,586.50	-	28,586.50
Legal Fees	-	5,437.50	-	5,437.50
Compliance Fees	-	154.70	-	154.70
<b>Total General Consortium Expenses</b>	<u>-</u>	<u>37,840.03</u>	<u>-</u>	<u>37,840.03</u>
<b>Total Expense</b>	<u>62.50</u>	<u>37,840.03</u>	<u>92,726.11</u>	<u>130,628.64</u>
<b>Net Income</b>	<u>-</u>	<u><b>68,949.97</b></u>	<u>-</u>	<u><b>68,949.97</b></u>

## TRUST FUND

through February 2021



## GRANT STATUS



ImplementationGrants



## **AGENDA ITEM 9**



**Gulf Consortium Board Meeting  
March 18, 2021**

**Agenda Item 9  
General Counsel's Report**

**Statement of Issue:**

General Counsel will provide a verbal update to the Board.

**Action Required:**

None, informational only

**Prepared By:**

General Manager  
The Balmoral Group  
March 5, 2021

## **AGENDA ITEM 10**

**Gulf Consortium Board Meeting  
March 18, 2021**

**Agenda Item 10  
Status of NRDA Restoration Planning**

**Statement of Issue:**

Per Board approval to include regular reports from the Consortium's partners, DEP/FWC staff will provide a verbal update of related projects. For information only; no action is required.

**Background:**

The State partner agencies' report will be given verbally at the Board Meeting on March 18, 2021

**Attachments:**

None

**Prepared by:**

Amanda Jorjorian  
The Balmoral Group  
On: March 5, 2021

# **AGENDA ITEM 11**

**Gulf Consortium Board Meeting  
March 18, 2021**

**Agenda Item 11  
Manager's Report**

**Statement of Issue:**

Consortium staff provides a report on updates to Consortium activities since the last Board meeting.

**Discussion:**

*SEP Activity:* The SEP amendment approved at the last Board meeting was forwarded to DEP on February 9, and is pending RESTORE approval.

*Grant Activity:* Since the last Board meeting, staff has progressed the SEP amendment and several pending grants. Eight performance reports and financial reports were filed at the end of January, and overall RESTORE Coordinators have done a great job getting staff the information to document and upload the reports timely. Four grants reported performance behind scheduled activity, due to COVID constraints (mostly delayed procurements), but no “problem projects” have been identified that warrant special attention at this time.

We currently have 35 active grants in various stages of processing, for a total of about \$50 million in total funding. The SEP schedule projects that about \$128 million in total funding would be obligated by the end of this year. We have reached out with a simplified template to assist some counties in expediting their grant application process, and encouraged RESTORE Coordinators to reach out if they need additional guidance to advance their grant application process. We encourage any Counties that have projects ready to go, even if they were not scheduled to apply for funding yet, to reach out to Consortium staff for discussion on expediting funding.

*New Fed Rules:* Policy Review Committee meets for the first time this week. The revisions to 2 CFR Part 200 prompted several edits which we will be bringing to future Board meetings for approval.

*Audit:* Warren Averett has reached draft stage with the current year audit. Audit committee will meet with the auditors to review the draft report.

*RESTORE Council Updates:* Management staff met with the new RESTORE Council Director, Mark Walker, on March 4 for an introductory call. Ms. Walker comes from an EPA background.

**Attachments:**

1) None

**Action Required:**

1) None; informational only.

**Prepared by:**

Valerie Seidel, The Balmoral Group

On: March 4, 2021

## **AGENDA ITEM 12**

**Gulf Consortium Board Meeting  
March 18, 2021**

**Agenda Item 12  
Public Comments**

**Statement of Issue:**

The public is invited to provide comments on issues that are on today's agenda

**Attachments:**

None

**Prepared by:**

Amanda Jorjorian  
The Balmoral Group  
General Manager  
On: March 3, 2021



## **AGENDA ITEM 13**

**Gulf Consortium Board Meeting  
March 18, 2021**

**Agenda Item 13  
Board Member Comments**

**Statement of Issue:**

Members of the Board are invited to provide comments on relevant issues.

**Attachments:**

None

**Prepared by:**

Amanda Jorjorian  
The Balmoral Group  
General Manager  
On: March 5, 2021