



Audit Report



OIG-22-030

GULF COAST RESTORATION

**RESTORE Act: TCEQ Complied with
RESTORE Act Land Acquisition Requirements**

March 15, 2022

Office of Inspector General
Department of the Treasury

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OFFICE OF
INSPECTOR GENERAL

DEPARTMENT OF THE TREASURY
WASHINGTON, D.C. 20220

March 15, 2022

Mary Walker, Executive Director
Gulf Coast Ecosystem Restoration Council
500 Poydras Street
Suite 1117
New Orleans, LA 70130

Re: Final Audit Report: *TCEQ Complied with RESTORE Act Land Acquisition Requirements*

Dear Ms. Walker:

We are pleased to transmit the attached audit report, *TCEQ Complied with RESTORE Act Land Acquisition Requirements* (OIG-22-030; dated March 15, 2022). Under a contract monitored by our office, the certified independent public accounting firm, RMA Associates, LLC (RMA) performed an audit of the Texas Commission on Environmental Quality's (TCEQ) compliance with land acquisition requirements stipulated in Section 1607 of the *Resources and Ecosystems Sustainability, Tourist Opportunities, and Revived Economies of the Gulf Coast States Act of 2012* (RESTORE Act), applicable Federal laws, regulations, and the award agreements.

In its audit report, RMA found that TCEQ and its subrecipients (Texas Parks and Wildlife Department, The Nature Conservancy, and Houston Parks Board) complied with land acquisition requirements stipulated in the RESTORE Act, applicable Federal laws, regulations, and the award agreements. Specifically, TCEQ and its subrecipients appropriately used RESTORE Act funds to acquire land in accordance with Section 1607 of the RESTORE Act, the *Department of the Treasury Regulations for the Gulf Coast Restoration Trust Fund*, the Office of Management and Budget's *Uniform Administrative Requirements, Cost Principles and Audit Requirements for Federal Awards*, 2 CFR Part 200, the Notice of Awards, and the *RESTORE Council Financial Assistance Standard Terms and Conditions*. RMA noted no exceptions related to areas of compliance with Activities Allowed or Unallowed; Allowable Costs and Cost Principles; Cash Management; Financial Management; Property Standards; Procurement Standards; Reporting; Subrecipient Monitoring; Record Retention; Environmental Compliance; and Special Award Conditions contained in the Notice of Awards. As such, there are no recommendations made. Council management agreed with the finding that TCEQ and its subrecipients complied with land acquisition

requirements in the RESTORE Act and other relevant Federal laws, regulations, and award requirements.

Our contract required that the audit be performed in accordance with generally accepted government auditing standards. In connection with our contract, we reviewed RMA's report and related documentation and inquired of its representatives. RMA is responsible for the attached auditor's report and the conclusions expressed therein. Our review found no instances in which RMA did not comply in all material respects, with generally accepted government auditing standards.

We appreciate the courtesies and cooperation provided to RMA and our staff during the audit. If you have any questions or require further information, you may contact me at (202) 577-6609.

Sincerely,

/s/

Cecilia K. Howland
Audit Director, State and Local Fiscal Recovery, RESTORE, and CDFI Programs

cc: Toby Baker, Executive Director, Texas Commission on Environmental Quality
Lisa R. Collier, State Auditor, Texas State Auditor's Office
Reza Mahbod, Partner, RMA Associates, LLC

Attachment

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Abbreviations

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| Bahia Grande | Bahia Grande Coastal Corridor |
| Bayou Greenways | Bayou Greenways (Planning and Implementation) |
| CFR | Code of Federal Regulations |
| Council | Gulf Coast Ecosystem Restoration Council |
| EO | Executive Orders |
| ESA | Environmental Site Assessment |
| FPL | Funded Priorities List |
| Final Rule | <i>Department of the Treasury Regulations for the Gulf Coast Restoration Trust Fund</i> |
| GAO | Government Accountability Office |
| HPB | Houston Parks Board |
| IAA | interagency agreement |
| Matagorda Bay | Matagorda Bay System Priority Landscape Conservation |
| NOA | Notice of Award |
| NWR | National Wildlife Refuge |
| OIG | Office of Inspector General |
| OMB | Office of Management and Budget |
| RESTORE Act | <i>Resources and Ecosystems Sustainability, Tourist Opportunities and Revived Economies of the Gulf Coast States Act of 2012</i> |
| SAC | Special Award Conditions |
| SOP | Standard Operating Procedure |
| ST&C | <i>RESTORE Council Financial Assistance Standard Terms and Conditions</i> |
| TCEQ | Texas Commission on Environmental Quality |
| TNC | The Nature Conservancy |
| TPWD | Texas Parks and Wildlife Department |
| Treasury | Department of the Treasury |
| Trust Fund | Gulf Coast Restoration Trust Fund |
| Uniform Guidance | Office of Management and Budget's <i>Uniform Administrative Requirements, Cost Principles and Audit Requirements for Federal Awards</i> |
| USFWS | United States Fish and Wildlife Service |

March 15, 2022

Ms. Mary Walker
Executive Director
Gulf Coast Ecosystem Restoration Council

This report presents the results of our audit of the Texas Commission on Environmental Quality's (TCEQ) compliance with land acquisition requirements stipulated in Section 1607 of the *Resources and Ecosystems Sustainability, Tourist Opportunities, and Revived Economies of the Gulf Coast States Act of 2012* (RESTORE Act),^{1,2} applicable Federal laws, regulations, and the award agreements. Section 1608 of the RESTORE Act authorizes the Department of the Treasury (Treasury) Office of Inspector General (OIG) to conduct, supervise, and coordinate audits of projects, programs, and activities funded by the act. In this regard, Treasury OIG engaged our firm, RMA Associates, LLC, to perform this audit.

Our audit objective was to determine whether TCEQ used its RESTORE Act funds for the acquisition of land in accordance with the RESTORE Act, applicable Federal laws, regulations, and the award agreements. The scope of work was comprised of three RESTORE Act grants awarded to TCEQ for land acquisition with periods of performance ranging from April 28, 2016 through November 30, 2020. The three awards totaled approximately \$17,499,500 under the Council-Selected Restoration Component³ administered by the Gulf Coast Ecosystem Restoration Council (Council). The three awards were for the following

¹ Pub. L. 112-141, 126 Stat. 588-607 (July 6, 2012).

² As described in the background section of this report, Section 1607 states that (a) funds made available under this subtitle, may only be used to acquire land or interests in land by purchase, exchange, or donation from a willing seller and (b) none of the funds made available under this subtitle may be used to acquire land in fee title by the Federal Government unless: (1) the land is acquired by exchange or donation; or (2) the acquisition is necessary for the restoration and protection of the natural resources, ecosystems, fisheries, marine and wildlife habitats, beaches, and coastal wetlands of the Gulf Coast region and has the concurrence of the Governor of the State in which the acquisition will take place.

³ Under the Council-Selected Restoration Component, 30 percent of the available funding in the Gulf Coast Restoration Trust Fund (Trust Fund) is administered for Gulf Coast-wide ecosystem restoration and protection. See the background section for additional details.

projects: (1) Matagorda Bay System Priority Landscape Conservation (Matagorda Bay) (\$6,012,000); (2) Bahia Grande Coastal Corridor (Bahia Grande) (\$4,378,500); and (3) Bayou Greenways (Planning and Implementation) (Bayou Greenways) (\$7,109,000). TCEQ acquired land for the three projects under subaward agreements with the Texas Parks and Wildlife Department⁴ (TPWD) for Matagorda Bay, The Nature Conservancy⁵ (TNC) for Bahia Grande, and Houston Parks Board⁶ (HPB) for Bayou Greenways (collectively referred to as subrecipients). Of the \$17,499,500 awarded to TCEQ, \$15,988,544⁷ was used for the acquisition of land.⁸

To accomplish the objective, we reviewed applicable laws, regulations, and TCEQ policies and procedures including, but not limited to, the RESTORE Act; the *Department of the Treasury Regulations for the Gulf Coast Restoration Trust Fund (Final Rule)*;⁹ the Office of Management and Budget's (OMB) *Uniform Administrative Requirements, Cost Principles and Audit Requirements for Federal Awards*, 2 CFR Part 200 (Uniform Guidance);¹⁰ the Notice of Awards (NOA); and the *RESTORE Council Financial Assistance Standard Terms and Conditions (Council's ST&C) Special Award Conditions (SAC)*. We also reviewed key documents related to TCEQ and its three subrecipients under the Council-Selected Restoration Component of the RESTORE Act. We conducted interviews with relevant administrative and/or program

⁴ TPWD is a state-run organization within the State of Texas, whose mission is to manage and conserve the natural and cultural resources of Texas and to provide hunting, fishing, and outdoor recreation opportunities for the use and enjoyment of present and future generations. TPWD funds are used for the acquisition and development of state park sites.

⁵ TNC is a global conservation not-for-profit organization. The mission of TNC is to conserve the lands and waters on which all life depends. TNC's primary sources of revenue are contributions from the public (including gifts of land), government grants, investment income, and sales of conservation interests to governmental agencies or other conservation buyers.

⁶ HPB, is a 501(c)3 organization that seeks donations of land and other assets, manages capital projects, undertakes studies for the benefit of the park system and raises awareness of the need for adequate parks and open spaces for Houston and surrounding communities.

⁷ Of the \$15,988,544 expended on land acquisition, \$15,208,424 was the total population of TCEQ's expenditures and reimbursements between October 2016 through September 2020 that were sampled and tested within the audit scope period of April 2016 through November 2020. Of the \$15,988,544 expended, \$780,120 was outside the scope period of this audit.

⁸ Of the \$17,499,500 initially awarded, \$15,988,544 was expended as follows: (1) \$5,987,350 was expended on the Matagorda Bay project; (2) \$4,308,462 was expended on the Bahia Grande project; and (3) \$5,692,732 was expended on the Bayou Greenways project. The remaining total of \$1,510,956 was returned by TCEQ and the three subrecipients to the Council. See the background section of this report for details.

⁹ The Final Rule (31 CFR Part 34) became effective on February 12, 2016.

¹⁰ OMB's Uniform Guidance, effective December 26, 2014, was applicable at the time of TCEQ's award for the three grants within the audit scope. Revisions to the Uniform Guidance became effective November 12, 2020. References to the December 2014 Uniform Guidance throughout this report are footnoted to identify the updated sections in the November 2020 version.

personnel at TCEQ, TPWD, TNC, and HPB to gain an understanding of TCEQ and each subrecipient's use and TCEQ's administration of the Federal awards. Our audit methodology included testing of TCEQ's and its subrecipients' internal controls as they relate to land acquisition and TCEQ's administration of its subrecipients.

We selected statistical samples of TCEQ and subrecipient transactions to test compliance requirements and internal controls as they relate to land acquisition and TCEQ's administration of subrecipients. Areas of compliance tested included: Activities Allowed or Unallowed, Allowable Costs and Cost Principles, Cash Management, and Financial Management. Our sampling approach utilized a confidence level of 96 percent with a tolerable error rate between 1 and 3 percent. Statistical sampling was used to test TCEQ's and its subrecipients' compliance and related internal controls and not for the purpose of projecting results to the universe due to the high coverage of the sampling population (98.9 percent coverage for TCEQ's expenditures and reimbursements and 97.7 percent for the subrecipients' expenditures). We selected a statistical sample of 20 transactions from TCEQ's population of 345 transactions to test costs and internal controls related to land acquisition expenses and reimbursements. Overall, we tested \$15,042,011 of the \$15,208,424 total population of TCEQ's expenditures and reimbursements (98.9 percent coverage). Additionally, we selected a statistical sample of 57 transactions from the three subrecipients' total population of 694 transactions to test \$15,422,422 of the \$15,777,998 total population of the subrecipients' expenditures (97.7 percent coverage), which included RESTORE Act funds and non-Federal matching funds.¹¹ To test the Property Standards, Procurement Standards, Reporting, Subrecipient Monitoring, Record Retention, Environmental Compliance, and SACs, we reviewed all three subawards under the audit scope for compliance.

Due to the Coronavirus Disease 2019 pandemic, we performed audit fieldwork remotely from RMA Associates, LLC's corporate headquarters in Arlington, Virginia from December 2020 through June 2021. Appendix 1 contains a detailed description of our objective, scope, and methodology.

Results in Brief

In brief, we found that TCEQ and its subrecipients (TPWD, TNC, and HPB) complied with land acquisition requirements stipulated in the

¹¹ The subrecipients' total transaction population of \$15,777,998 includes non-Federal matching funds, and therefore, is greater than TCEQ's total transaction population of \$15,208,424.

RESTORE Act, applicable Federal laws, regulations, and the award agreements. Specifically, TCEQ and its subrecipients appropriately used RESTORE Act funds to acquire land in accordance with Section 1607 of the RESTORE Act, the Final Rule, the Uniform Guidance, the NOAs, and the Council's ST&C. We noted no exceptions related to areas of compliance with Activities Allowed or Unallowed; Allowable Costs and Cost Principles; Cash Management; Financial Management; Property Standards; Procurement Standards; Reporting; Subrecipient Monitoring; Record Retention; Environmental Compliance; and SACs contained in the NOAs. As such, there are no recommendations made.

As part of our reporting process, we provided TCEQ management an opportunity to comment on a draft of this report. In a written response, TCEQ management acknowledged that the report included no recommendations and there were no findings of non-compliance for the items audited. Management agreed with the information included in the report and supported its conclusions. TCEQ's management response, in its entirety, is included as appendix 2 of this report.

After incorporating TCEQ management's response into a draft of this report, we provided the draft to Council management for comment. In a written response, Council management acknowledged the audit report did not identify any weaknesses in TCEQ's implementation of RESTORE Act land acquisition processes. Council management agreed with the finding that TCEQ and its subrecipients complied with land acquisition requirements in the RESTORE Act and other relevant Federal laws, regulations, and award requirements. Council management's response, in its entirety, is included as appendix 3 of this report.

Background

The RESTORE Act was signed into law on July 6, 2012. The legislation established the Gulf Coast Restoration Trust Fund (Trust Fund) within Treasury, for the purpose of providing funds for the environmental and economic restoration of the Gulf Coast that was damaged by the 2010 Deepwater Horizon oil spill. Deposits into the Trust Fund are comprised of 80 percent of all administrative and civil penalties paid after July 6, 2012, under the Federal Water Pollution Control Act.¹² Approximately \$5.3 billion is expected to be deposited into the Trust Fund as a result of the Federal Government's settlements with Transocean, Anadarko Petroleum Corporation, and BP Exploration & Production Inc.

¹² 33 U.S.C § 1251 et seq.

defendants. As of October 7, 2021, the Trust Fund received approximately \$2.4 billion, including related interest.

The RESTORE Act allocates money in the Trust Fund among five components as follows: (1) 35 percent will be made available to the Gulf Coast States (Alabama, Florida, Louisiana, Mississippi, and Texas) in equal shares under the Direct Component; (2) 30 percent plus 50 percent of interest earned on the Trust Fund will be made available for awards under the Council-Selected Restoration Component; (3) 30 percent will be made available for awards under the Spill Impact Component; (4) 2.5 percent plus 25 percent of interest earned on the Trust Fund will be made available to the National Oceanic and Atmospheric Administration (NOAA) RESTORE Act Gulf Coast Ecosystem Restoration Science, Observation, Monitoring, and Technology Program (Science Program) Component; and (5) 2.5 percent plus 25 percent of interest earned on the Trust Fund will be made available to the Centers of Excellence program. Treasury's Office of the Fiscal Assistant Secretary is responsible for administering the Direct Component and the Centers of Excellence program. The Council, a Federal entity established as a result of the RESTORE Act, is responsible for administering the Council-Selected Restoration Component and the Spill Impact Component. NOAA is responsible for administering the Science Program Component.

Under the Council-Selected Restoration Component, the funds will be distributed to the Federal agencies and the Gulf Coast States in the form of grants and interagency agreements for projects and programs in the Council's Comprehensive Plan.¹³ The recipients of the funds will use the money for programs, projects, and activities that help protect and restore the economy, natural resources, ecosystems, fisheries, marine, and wildlife habitats, beaches, and coastal wetlands of the Gulf Coast Region. Under this component, TCEQ's¹⁴ Executive Director, as the Governor's appointee to the RESTORE Council, acts as an administrator

¹³ The RESTORE Act imposed a one-year timeline for development of an Initial Comprehensive Plan to describe how the Council would restore the ecosystem and the economy of the Gulf Coast region. The Initial Comprehensive Plan laid out the framework and processes for how proposals for funding under the Council-Selected Restoration Component would be submitted and evaluated, including proposals for project planning, design, and permitting. The Council developed the Initial Comprehensive Plan and approved the plan in August 2013. On December 16, 2016, the Council voted to approve an update to its 2013 Initial Comprehensive Plan. This update provided important additional strategic guidance for the Council to follow as it makes decisions on funding projects and activities aimed at restoring the Gulf Coast region.

¹⁴ [TCEQ](#) was established September 1, 2002, from the former Texas Natural Resource Conservation Commission agency. TCEQ is the State environmental agency and handles permits and licensing for residents and businesses as well as providing assistance to residents and businesses due to environmental emergencies such as hurricanes and oil spills. TCEQ also establishes and enforces environmental regulations surrounding air quality, water quality and pollution, and waste management and recycling activities.

of RESTORE Act grants and funding for the State of Texas. TCEQ is responsible for addressing ecosystem restoration and economic development along the Texas Coast for the State of Texas and compliance with land acquisition requirements stipulated in Section 1607 of the RESTORE Act and any other applicable criteria.

Section 1607 of the RESTORE Act states (a) funds made available under this subtitle, may only be used to acquire land or interests in land by purchase, exchange, or donation from a willing seller and (b) none of the funds made available under this subtitle may be used to acquire land in fee title by the Federal Government unless: (1) the land is acquired by exchange or donation; or (2) the acquisition is necessary for the restoration and protection of the natural resources, ecosystems, fisheries, marine and wildlife habitats, beaches, and coastal wetlands of the Gulf Coast region and has the concurrence of the Governor of the State in which the acquisition will take place.

In August 2013, the Council approved an Initial Comprehensive Plan, which was used for decision-making related to the evaluation, approval, funding, and implementation of projects and programs under the Council-Selected Restoration Component. Under this component, the Council was required to develop a Funded Priorities List (FPL).¹⁵ On behalf of the State of Texas, TCEQ submitted proposed projects to the Council. On December 9, 2015, the Council voted to approve the Initial FPL,¹⁶ which included all three projects, described below, for land acquisition within the scope of this audit. The following are the three grants for land acquisition awarded to TCEQ.

Matagorda Bay System Priority Landscape Conservation Project

The grant was sub-awarded to TPWD to acquire lands for the Matagorda Bay project. The goal of the project was to conserve strategic lands in and around the Matagorda Bay and San Antonio Bay

¹⁵ The FPL is a list of projects and programs to be funded pursuant to the RESTORE Act. The Council approves funding for the Council-Selected Restoration Component projects and programs using the FPLs. The Council develops FPLs through collaboration among its members and with feedback from stakeholders across the Gulf Coast. The Council approved the project and program focused FPLs in 2015 (the Initial FPL), 2020 (FPL 3a), and 2021 (FPL 3b). Funds for approved FPL projects are disbursed via grants to Gulf Coast State members and interagency agreements (IAA) with Federal members. As part of the grant and IAA process, all activities for which funding is sought are carefully reviewed to ensure consistency with the approved FPL and compliance with the RESTORE Act and all other applicable requirements, including compliance with all applicable federal environmental laws and the application of best available science criteria (BAS) as required by the Act and further defined by the Council.

¹⁶ The 2015 Initial FPL included approval of approximately \$156.6 million for (1) restoration and conservation activities focused on habitat and water quality using a watershed- based approach, and (2) several Gulf-wide projects. The Initial FPL also identified and budgeted approximately \$26.6 million for future consideration for possible funding by the Council. These activities are intended to provide near-term “on-the-ground” ecological results, while also building a planning and science foundation for future success.

complex to help ensure long-term native diversity, productivity, and resiliency of the entire bay estuary complex. This acquisition project is a vital part of a larger landscape scale conservation initiative within the Matagorda Bay/San Antonio Bay watershed complex being implemented by Texas and Federal fish and wildlife agencies, private sector partners, and non-profit organizations.

Council awarded TCEQ a total amount of \$6,012,000 to acquire high-quality coastal habitats, including emergent marshes, tidal flats, lagoons, and coastal prairies. Of this amount, TCEQ sub-awarded a total of \$5,991,611 to TPWD and the remaining \$20,389 was allocated to TCEQ for oversight and administration of the grant. Of the \$6,012,000 total award amount, \$5,987,350 was expended and the remaining \$24,650 was returned to the Council. TCEQ's grant award of \$6,012,000 in Federal RESTORE Act funds was contingent upon acquiring a non-Federal match of at least 10 percent of the award. TPWD obtained non-Federal funds totaling \$668,000, which we validated and confirmed through supporting documentation.

TPWD purchased a total of six tracts of land, on the open market from willing sellers, totaling approximately 6,770 acres. Of the tracts that were acquired, the Newcomb Point Tract added 215 acres to Goose Island State Parks to be managed by the Coastal Bend Bays and Estuaries Program; however, TPWD retains ownership of the land. Newcomb Point is an ancient barrier ridge composed of deep sands. The habitat is a complex integration of plant communities that support a diverse array of native flora and wildlife. This tract is an area that specifically provides critical habitat for the endangered whooping crane.

The Sartwelle Lakes Tract added approximately 430 acres of estuarine shoreline and wetlands to Turtle Bay and Matagorda Bay near Palacios, Texas. This tract was key for the following several reasons: (1) it includes the proposed location for a new coastal fisheries research facility and laboratory; (2) the eastern end is the proposed location for a new pump station associated with filling mariculture ponds at the existing stock facility; and (3) the remaining coastal prairie and wetland areas have been identified for permanent conservation in their natural state. TPWD retains ownership of the Sartwelle Lakes tract and is responsible for its management.

The remaining four tracts acquired from the Texas General Land Office and three private citizens expanded the Matagorda Peninsula Coastal Management Area (CMA), which TPWD manages and retains ownership. These four tracts added approximately 6,125 acres to the CMA, which is essentially an undeveloped barrier island chain with

expanses of beach, dune strand prairie, salt meadow tidal flat, lagoon, and salt marsh habitat. These habitats make up a complete barrier island ecosystem, which has been largely lost on the developed barrier islands.

Bahia Grande Coastal Corridor (Implementation) Project

The grant was sub-awarded to TNC to acquire lands for the Bahia Grande project. The goal of the Bahia Grande project was to acquire approximately 2,000 acres of land in three tracts, to complete a critical brush corridor. Historically, this area was used by endangered ocelots. In addition, the Bahia Grande project sought to conserve coastal prairie and marshlands occupied by a breeding Northern Aplomado Falcon population. Two of the planned tracts were purchased entirely with RESTORE Act funds and the third tract was partially funded through non-Federal matching funds. The lands purchased for the project will ultimately be held by the United States Fish and Wildlife Service (USFWS) and become part of the Laguna Atascosa National Wildlife Refuge (NWR).

Council awarded TCEQ a total amount of \$4,378,500 in RESTORE Act funds to acquire three tracts of land. In addition, there was a non-Federal match of \$486,500 to acquire the third tract. Of the Federal award amount, TCEQ sub-awarded a total of \$4,363,391 to TNC and \$15,109 was allocated to TCEQ for oversight and administration of the grant. Of the \$4,378,500 total award amount, \$4,308,462 was expended and the remaining \$70,038 was returned to the Council. We obtained cost-sharing agreements and settlement statements to validate the non-Federal funds were received and applied to land acquisition.

TNC acquired the three tracts, on the open market from willing sellers, for a total of approximately 2,077 acres. The three tracts were transferred to the USFWS on March 31, 2017, for management as part of the Laguna Atascosa NWR, due to their proximity and importance in providing undisturbed habitat to coastal wetland habitats and wildlife migratory corridors. Two of the tracts, Thomas and Zarate, account for 1,820 acres and are adjacent to each other and the Lower Rio Grande Valley National Wildlife Refuge. The third tract, KAAPA Farms, is approximately 257 acres and was previously operated as an aquaculture facility to produce shrimp and game fish. As part of the Laguna Atascosa NWR, restoration of the hydrology to the KAAPA Farms Tract will provide habitat for waterfowl and wading birds. The three tracts together provide habitat for a variety of native waterfowl and play a key role in ocelot conservation as the tracts link together Laguna Atascosa and other USFWS managed lands. In addition, endangered sea turtles forage in the sea grass beds located in the Laguna.

Bayou Greenways (Planning and Implementation) Project

The grant was sub-awarded to HPB to acquire lands for the Bayou Greenways project. The goal of the Bayou Greenways project was to acquire nine tracts of land totaling approximately 80-100 acres along Clear Creek, located in Harris County, Texas, for the purpose of conservation and restoration.

Council awarded TCEQ a total amount of \$7,109,000 in RESTORE Act funds for the project. Of that amount, TCEQ sub-awarded a total of \$7,085,022 to HPB and \$23,978 was allocated to TCEQ for oversight and administration of the grant. Of the \$7,109,000 total award amount, \$5,692,732 was expended and the remaining \$1,416,268 was returned to the Council. There was no non-Federal cost share requirement.

HPB acquired five of the nine tracts totaling 69.5 acres along Clear Creek. HPB was unable to purchase the other four tracts originally identified within the pre-acquisition package as HPB was unable to come to terms with sellers for tracts within this project area during the period of performance. The five tracts HPB was able to acquire were bought on the open market from willing sellers to expand on the Clear Creek Greenway, which is part of the larger Bayou Greenways system. These tracts provide riparian buffer corridors along the major waterways in Harris County and the City of Houston. The five tracts were transferred from HPB to the City of Houston in March 2018 for long-term management and maintenance under the Houston Parks and Recreation Department. The City of Houston began evaluating these tracts in 2021 to remove invasive species of trees and plants, and replace them with native tree species, re-establish grasslands where feasible, and re-establish wetlands and wet prairie species where possible.

Audit Results

We performed tests of TCEQ's and its subrecipients' (TPWD, TNC, and HPB) compliance with the applicable provisions of the RESTORE Act, the Final Rule, the Uniform Guidance, the NOAs, and the Council's ST&Cs as it related to TCEQ's use of its awards for the acquisition of land. Among those provisions, the Uniform Guidance requires that "the non-Federal entity must establish and maintain effective internal control over the Federal award that provides reasonable assurance that the non-Federal entity is managing the Federal award in compliance with Federal statutes, regulations, and the terms and conditions of the

Federal award.” As part of our audit, we also performed test of TCEQ’s and its subrecipients’ internal controls as they relate to land acquisition and TCEQ’s administration of its subrecipients. Controls included proper supervisory reviews, accurate and timely recording of transactions, and appropriate documentation of transactions.

We found that TCEQ and its subrecipients (TPWD, TNC, and HPB) complied with land acquisition requirements stipulated in the RESTORE Act, applicable Federal laws, regulations, and the award agreements. Specifically, TCEQ and its subrecipients appropriately used RESTORE Act funds to acquire land in accordance with Section 1607 of the RESTORE Act, the Final Rule, the Uniform Guidance, the NOAs, and the Council’s ST&C. As described below, we noted no exceptions related to areas of compliance with Activities Allowed or Unallowed; Allowable Costs and Cost Principles; Cash Management; Financial Management; Property Standards; Procurement Standards; Reporting; Subrecipient Monitoring; Record Retention; Environmental Compliance; and SACs contained in the NOAs.

Section 1607 of the RESTORE Act

Section 1607(a) states that all funds received may only be used to acquire land or interests in land from a willing seller. To be compliant, TCEQ obtained documentation from the subrecipients verifying that each parcel of land purchased was from a willing seller and was available on the open market. In addition, Section 1607(b) requires that if the funds are used to acquire land in fee title for the Federal Government, the Governor of the State in which the acquisition takes place must concur.

As the property purchased by TNC was transferred to USFWS under the Bahia Grande Coastal Corridor project, we confirmed that a letter of concurrence from the Governor of the State of Texas was sent prior to the transfer of the properties to USFWS. As the properties purchased by TPWD and HPB for the Matagorda Bay and Bayou Greenways projects are held by either State or local organizations, a letter of concurrence from the Governor of Texas was not required for either of these projects.

Based on the results of procedures performed, we noted no findings of non-compliance with Section 1607 of the RESTORE Act.

Activities Allowed or Unallowed

Per the RESTORE Act, the Final Rule, and Council’s ST&C, the recipient

must use funds only for the purposes identified in the grant award agreement and in accordance with the requirements of 31 CFR §34.202. According to 31 CFR §34.202, the Council may expend funds that are available under the Council-Selected Restoration Component for eligible activities, which include activities in the Gulf Coast Region that are included in the Comprehensive Plan. This includes projects and programs that restore and protect the natural resources, ecosystems, fisheries, marine and wildlife habitats, beaches, coastal wetlands, and economy of the Gulf Coast.

During our review of transactions and related controls, we evaluated the nature of activities on which TCEQ and its subrecipients expended Federal funds to ensure they were in accordance with each respective project's objective(s) as described in the grant and subaward agreement and as allowed by the respective project's approved budget.

We reviewed project activities related to direct and indirect costs, fringe benefits, payroll, vendor invoiced transactions, and travel expenses. From our sample selections, we tested 7 of 20 TCEQ sample transactions totaling \$117,745 and 18 of 57 subrecipient sample transactions totaling \$96,885.¹⁷ We reviewed detailed budget support and other documentation to confirm that the Federal awards were expended only for allowable activities in accordance with the criteria contained in the RESTORE Act, the Final Rule, the Uniform Guidance ("Basic Considerations" 2 CFR §200.402 through §200.411 and "General Provisions for Selected Items of Cost" 2 CFR §200.420 through §200.475) and Council's ST&C ("Programmatic Requirements" Section B and "Financial Requirements" Section C).

We validated that transactions in our samples were for allowable activities, either the purchase of land or activities related to the purchase of land, in accordance with the aforementioned criteria. We ensured the transactions relating to these activities were properly identified, accumulated, classified, recorded, and reported in accordance with the Uniform Guidance and Council's ST&C. We concluded that TCEQ's and its subrecipients' activities for land acquisition and related administration were allowable and the related transactions were properly classified, accumulated, and recorded.

Based on the results of procedures performed, we noted no findings of non-compliance for Activities Allowed or Unallowed.

¹⁷ Subrecipient samples were comprised of 4 transactions for TPWD totaling \$83,470; 8 transactions for TNC totaling \$6,797; and 6 transactions for HPB totaling \$6,618. See appendix 1 for details of sample selections and related testing.

Allowable Costs/Costs Principles

The Uniform Guidance and Council's ST&C, which reaffirms the Uniform Guidance, details the cost principles related to allowable costs, reasonable costs, allocable costs, among other provisions.

We tested a statistical sample of 20 TCEQ transactions totaling \$15,042,011 and 57 subrecipient transactions totaling \$15,422,422 for allowable costs, which included testing of direct and indirect costs, fringe benefits, travel, payroll, and vendor invoiced transactions charged to the three TCEQ awards for compliance with the criteria contained in the Uniform Guidance ("Compensation—personal services" 2 CFR §200.430; "Compensation—fringe benefits" 2 CFR §200.431; "Indirect (F&A) Costs" 2 CFR §200.414; and "Travel Costs" 2 CFR §200.474),¹⁸ and Council's STC (Section C "Financial Requirements"). We determined the costs charged to the land projects were reasonable, necessary, allowable, and in compliance with the cost principles outlined in the Uniform Guidance.

We evaluated TCEQ's and its subrecipients' expenditures and timing of payments and TCEQ's reimbursements to the subrecipients. We noted the related costs were authorized and made in accordance with the guidelines of the grant awards. We compared amounts by expenditure type (i.e., direct and indirect costs, fringe benefits, payroll, vendor invoiced transactions, and travel expenses) from the trial balances to the funding limits for each expenditure type from the subaward agreements and verified the total amount for the expenditures did not exceed the overall budget limits.

Based on the results of procedures performed, we noted no findings of non-compliance with Allowable Costs/Cost Principles.

Financial Management

Per the Uniform Guidance and the Council's ST&C, which reaffirms the Uniform Guidance, each State must expend and account for the Federal award in accordance with State laws and procedures for expending and accounting for the State's own funds. Among other requirements, the State's and other non-Federal entity's financial management systems must be sufficient to permit the preparation of reports required by general and program-specific terms and conditions; and the tracing of funds to a level of expenditures adequate to establish that such funds

¹⁸ In the Uniform Guidance version effective November 13, 2020, "Travel Costs" are found at 2 CFR §200.475.

have been used according to the Federal statutes, regulations, and the terms and conditions to the Federal award.

We reviewed financial and performance reports for TCEQ and reconciled them to TCEQ's and its subrecipients' financial management system records. We reviewed TCEQ's summary expenses totaling \$15,208,424 and the subrecipients' summary expenses totaling \$15,777,998 (which included RESTORE Act funds and non-Federal matching funds) to ensure amounts agreed to the control totals/ending balances per the general ledger for the period April 28, 2016 through November 30, 2020 to test financial management compliance requirements. Of these amounts, we tested a statistical sample of 20 TCEQ transactions totaling \$15,042,011 and 57 subrecipients' transactions totaling \$15,422,422. We compared the expenditures to the amounts budgeted within each subaward agreement to ensure all award funds were received, expended, and tracked according to project requirements. We verified the funds awarded reconciled to financial management system records for compliance with the criteria contained in the Uniform Guidance ("Financial Management" 2 CFR §200.302) and Council's ST&C ("Financial Management" Section C.02).

Based on the results of procedures performed, we noted no findings of non-compliance for Financial Management.

Cash Management

The Uniform Guidance and Council's ST&C, which reaffirms the Uniform Guidance, details requirements related to cash management, to include advance payments, reimbursements, and cost sharing or matching¹⁹ requirements for States and for non-Federal entities other than States.

We reviewed the requirements for cost sharing for TCEQ's three land acquisition grants within the subaward agreements and verified that the funds were received and applied to the land acquisition costs for the relevant purchases. We reconciled the cost sharing amounts from the subaward agreements to the respective settlement statements and subsequent "Real Property Status Report."²⁰ We determined that the amount of non-Federal funds of \$668,000 for the Matagorda Bay project and \$486,500 for the Bahia Grande project were properly

¹⁹ Per the Uniform Guidance 2 CFR §200.1, *Cost sharing or matching* means the portion of project costs not paid by Federal funds or contributions (unless otherwise authorized by Federal statute).

²⁰ The SF-429, "Real Property Status Report" is an OMB-approved form used by recipients of Federal financial assistance to report real property status.

tracked and met or exceeded the required amount per the subaward agreements and in accordance with the cost sharing requirements outlined in the Uniform Guidance (“Cost Sharing or Matching” 2 CFR §200.306) and Council’s ST&C (“Federal and Non-Federal Sharing” Section C.04). The Bayou Greenways project did not have a non-Federal cost share requirement.

We tested a statistical sample of 20 TCEQ transactions totaling \$15,042,011 related to reimbursements and advance payments to subrecipients, for compliance with the criteria contained in the Uniform Guidance (“Payment” 2 CFR §200.305(a)) and Council’s ST&C (“Award Payments” Section C.03). We reviewed TCEQ’s policies and procedures to ensure TCEQ was compliant with the payment requirements stipulated in the Uniform Guidance and Council’s ST&C. Our tests over the pre-award expenditures, reimbursements, and advance payments determined that requests were reasonable, properly supported, and reimbursements were made timely in accordance with the Federal payment requirements of the applicable criteria.

Based on the results of procedures performed, we noted no findings of non-compliance with Cash Management.

Property Standards

Per the Uniform Guidance and Council’s ST&C, which reaffirms the Uniform Guidance, the property standards include requirements related to insurance coverage, real property, Federally-owned and exempt property, equipment, supplies, intangible property, and property trust relationship.

We obtained title insurance policies, recorded deeds, executed purchase contracts, Notice of Federal Interest,²¹ and property disposition agreements (collectively referred to as recorded documents) to validate that land acquisitions were made in accordance with the Uniform Guidance (“Property Standards” 2 CFR §200.310 through §200.316), Council’s ST&C (“Property Standards” Section E), and the SACs contained in each subaward agreement. Based on review of supporting documentation, we determined that the subaward agreements between

²¹ Per 45 CFR §1303.46, if a grantee uses Federal funds to purchase real property or a facility, excluding modular units, appurtenant to real property, it must record a notice of Federal interest in the official real property records for the jurisdiction where the facility is or will be located. Furthermore, per 45 CFR §1303.47, a notice of Federal interest for a facility, other than a modular unit, and real property the grantee owns or will own must include, in part, the grantee’s correct legal name and current mailing address; a legal description of the real property; grant award number, amount and date of initial facilities funding award or initial use of base grant funds for ongoing purchase or mortgage payments.

TCEQ and subrecipients and the recorded documents included the required property standards. We also confirmed that the land was transferred and/or maintained per the subaward agreements.

Based on the results of procedures performed, we noted no findings of non-compliance with the Property Standards.

Procurement Standards

The Uniform Guidance and Council's ST&C, which reaffirms the Uniform Guidance, provides general procurement standards related to full and open competition; the method of procurement to be followed; contract cost and price; contract provisions; and conflicts of interest, among other things.

We reviewed TCEQ's and its subrecipients' applicable procurement policies and procedures for compliance with the requirements of the Uniform Guidance ("Procurement Standards" 2 CFR §200.317 through §200.326)²² and Council's ST&C ("Procurement Standards" Section F). We also reviewed requirements for the qualifications and selection of vendors and the procurement process documented within the subaward agreements. The procurement process for appraisers and surveyors and other vendors had taken place as part of the pre-acquisition process in order to develop accurate costing for the grant application. We evaluated the selection of the appraisers for each property and observed that each property had an appraisal and appraisal review that was selected. We noted these appraisers were independent of each other and of the individuals selecting them. In addition, we evaluated to confirm that procedures were in place to identify and mitigate potential conflicts of interest.

Based on the results of procedures performed, we noted no findings of non-compliance with the Procurements Standards.

Reporting

Per the Uniform Guidance and the Council's ST&C, which reaffirms the Uniform Guidance, the performance and financial monitoring and reporting requirements include requirements for financial reporting, monitoring and reporting program performance, and reporting on real property.

²² In the Uniform Guidance version effective November 13, 2020, the "Procurement Standards" are found at 2 CFR §200.317 through §200.327.

We reviewed 16 financial reports, 7 performance reports, and 12 “Real Property Status Reports,” for the three projects, submitted by TCEQ to the Council from July 30, 2017 through July 30, 2020 for compliance with criteria contained in the Uniform Guidance (“Performance and Financial Monitoring and Reporting” 2 CFR §200.327 through §200.329)²³ and Council’s ST&C (“Performance (Technical) Reports” Section B.01; “Reporting on Real Property” Section B.02; and “Financial Reports” Section C.01). According to TCEQ’s award agreement with the Council, financial reports are due semi-annually; performance reports are due annually; and “Real Property Status Reports” are due annually for the first three years of the award, and every five years thereafter.

We found that the reports were filed timely per the award agreement and verified the accuracy and completeness of the reports’ information (i.e., expenditures and non-Federal share amounts) by tying data to TCEQ’s general ledger for each corresponding period.

Based on the results of procedures performed, we noted no findings of non-compliance with Reporting.

Subrecipient Monitoring

The Uniform Guidance and the Council’s ST&C, which reaffirms the Uniform Guidance, details requirements for subrecipient monitoring and management, which includes guidelines for subrecipient and contractor determinations; and requirements for pass-through entities; among other things.

We obtained documentation (i.e., subaward agreements; audit reports of subrecipients; TCEQ’s risk assessment of subrecipients) to verify that TCEQ complied with the subrecipient monitoring requirements in accordance with the Uniform Guidance (“Subrecipient Monitoring and Management” 2 CFR §200.330 through §200.332)²⁴ and Council’s ST&C (“Codes of Conduct and Subaward, Contract, and Subcontract Provisions” Section N). We verified that the provisions of TCEQ’s monitoring plans outlined in the subaward agreements specified the purpose of each property and ensured that the property was acquired to protect, in perpetuity, the conservation value.

Based on the results of procedures performed, we noted no findings of

²³ In the Uniform Guidance version effective November 13, 2020, the “Performance and Financial Monitoring and Reporting” requirements are found at 2 CFR §200.328 through §200.330.

²⁴ In the Uniform Guidance version effective November 13, 2020, the “Subrecipient Monitoring and Management” requirements are found at 2 CFR §200.331 through §200.333.

non-compliance with Subrecipient Monitoring.

Record Retention

The Uniform Guidance and the Council's ST&C, which reaffirms the Uniform Guidance, details requirements for record retention and access. Among other things, the criteria requires financial records, supporting documents, statistical records, and all other non-Federal entity records pertinent to a Federal award must be retained for a period of 3 years from the date of submission of the final expenditure report or for Federal awards that are renewed quarterly or annually, from the date of the submission of the quarterly or annual financial report, respectively, as reported to the Federal awarding agency or pass-through entity in the case of a subrecipient.

We reviewed TCEQ's record retention policies and procedures for compliance with the criteria outlined within the subaward agreements, Council's ST&C ("Record Retention" Section H), and the Uniform Guidance ("Retention Requirements for Records" 2 CFR §200.333).²⁵ We found no instances of non-compliance by TCEQ with record retention requirements as we obtained the documents and records for each of the subrecipients, their subaward agreements, and the related land acquisition documentation (such as the title insurance policies, recorded deeds, executed purchase contracts, Notice of Federal Interest, and property disposition agreements).

Based on the results of procedures performed, we noted no findings of non-compliance with Record Retention.

Environmental Compliance

Per the Council's ST&C, non-Federal entities must comply with all applicable environmental laws, regulations, and policies. Additionally, recipients may be required to assist the Council in complying with laws, regulations, and policies applicable to Council actions. Laws, regulations, and policies potentially applicable to Council actions and/or recipients may include, but are not limited to, the statutes and Executive Orders (EO) listed in Section P, "Environmental Compliance," of the Council's ST&C. If a recipient is permitted to make any subawards, the recipient must include all of the environmental statutes, regulations and EOs in any agreement or contract with a subrecipient, and require the subrecipient to comply with all of these and to notify

²⁵ In the Uniform Guidance version effective November 13, 2020, the "Record Retention and Access" requirements are found at 2 CFR §200.334 through §200.338.

the recipient if the subrecipient becomes aware of any impact on the environment that was not noted in the recipient’s approved application package.

We reviewed all three subaward agreements entered into by TCEQ and its subrecipients and verified that they included all of the environmental statutes, regulations, and EOs set forth in Council’s ST&C (“Environmental Compliance” Section P).

Based on the results of procedures performed, we noted no findings of non-compliance with Environmental Compliance requirements.

Special Award Conditions

We performed procedures to determine if TCEQ complied with the SACs contained in Council’s three NOAs and applicable amendments.

For the Matagorda Bay project (sub-awarded to TPWD), we evaluated and confirmed TCEQ’s compliance with the following SACs:

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| 1. Use of Real Property in Accordance with Award Requirements; Repayment of the Federal Interest | We reviewed the Deed without Warranty ²⁶ and confirmed that the “Use of Real Property in Accordance with Award Requirements; Repayment of Federal Interest” language was included in accordance with the SAC. |
| 2. Pre-Acquisition Requirements and Documentation | We reviewed the pre-acquisition documentation for the land acquisitions, which included, in part, certificates of title, agreements with the sellers to acquire the properties, appraisal documentation, maps, surveys, and Phase I Environmental Site Assessments (ESAs). ²⁷ We verified the pre-acquisition documents were submitted by TCEQ to the Council for approval to acquire the properties under the awards in accordance with the SAC. |

²⁶ A Deed without Warranty is a document that transfers title without any warranties, express or implied, as to any subjects. This type of instrument is the lowest form of deed in Texas.

²⁷ The Phase I ESA uses existing information to help a community understand the property conditions by examining current and historical uses of the site and potential threats to human health or the environment. Environmental assessments must be completed or overseen by an environmental professional, which may include a licensed geologist, engineer, or site professional. They will review records, review government databases, visually inspect the site, and interview owners, neighbors, and past works.

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| 3. Deed Restriction, Notice of Federal Interest, and Attorney’s Certification | We verified that (1) the Special Warranty Deeds ²⁸ included the required deed restriction language, (2) the Notice of Federal Interest ²⁹ was executed and recorded as required, and (3) the executed attorney’s certification ³⁰ was provided to the Grants Officer for each property to ensure TCEQ’s compliance with the provisions of the SAC. |
| 4. Acquisition Updates and Reporting Requirements | We verified that TCEQ (1) submitted information related to the post-acquisition requirements regarding lands to the Grants Officer and (2) provided the Council with (a) a description of the property interest purchased and (b) a copy of the title documentation held by TPWD if it purchased or otherwise acquired any private undivided interest in the Property using funds other than the award funds. |
| 5. Long-Term Property Stewardship | We verified that TPWD submitted to TCEQ a plan that describes how TPWD will monitor and maintain the lands during and beyond the period of performance to achieve authorized award purposes as required by the SAC. |
| 6. Real Property Reporting Requirements | We reviewed the “Real Property Status Report,” for each property acquired and verified that TCEQ completed and submitted the “Real Property Status Report” to the Council annually for the first 3 years of the award and every 5 years thereafter, in accordance with the SAC. |
| 7. Non-Federal Share Requirement | We reviewed the cost sharing agreements and verified that the required non-Federal funds were obtained in accordance with the SAC. |
| 8. Oil Spill Liability Trust Fund | We verified that TCEQ did not seek any compensation for the approved project from any other funding source, including without limitation the Oil Spill Liability Trust Fund. |
| 9. Updates to Milestones and Project Completion Metrics | We verified that TCEQ reported the project completion metrics and milestones as required by the SAC. |
| 10. Project Performance Reporting | We verified that TCEQ submitted the |

²⁸ A Special Warranty Deed is a document that transfers title with both express and implied warranties. However, unlike in a General Warranty Deed, the grantor only warrants the title from the time the grantor has owned the property.

²⁹ A Notice of Federal Interest may be required from the grantee as a lien when the Federal government has provided funding for a substantial improvement (property construction or major renovations).

³⁰ Proof of the execution of an instrument, acknowledged by an attorney.

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| | project performance reports to the Council on an annual basis per the schedule in the SAC. |
| 11. Observational Data Management and Delivery | We verified that TCEQ managed and delivered all data under the federal award in accordance with the SAC. |

Based on the results of procedures performed, we noted no findings of non-compliance with the SACs.

For the Bahia Grande project (sub-awarded to TNC), we evaluated and confirmed TCEQ’s compliance with the following SACs:

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| 1. Use of Real Property in Accordance with Award Requirements; Repayment of the Federal Interest | We reviewed the Deed without Warranty and confirmed that the “Use of Real Property in Accordance with Award Requirements; Repayment of Federal Interest” language was included in accordance with the SAC. |
| 2. Pre-Acquisition Requirements and Documentation | We reviewed the pre-acquisition documentation for the land acquisitions, which included, in part, certificates of title, agreements with the sellers to acquire the properties, appraisal documentation, maps, surveys, and phase I ESAs. We verified the pre-acquisition documents were submitted by TCEQ to the Council for approval to acquire the properties under the awards in accordance with the SAC. |
| 3. Deed Restrictions, Notice of Federal Interest, and Attorney’s Certification | We verified that (1) the Special Warranty Deeds included the required deed restriction language, (2) the Notice of Federal Interest was executed and recorded as required, and (3) the Executed Attorney’s Certification was provided to the Grants Officer for each property as required by the SAC. |
| 4. Post-Acquisition Requirements | We reviewed the post-acquisition requirements and ensured TCEQ submitted the required documentation to the Council in accordance with the SAC. |
| 5. Long-Term Property Stewardship | We verified that TNC submitted to TCEQ a stewardship/management plan that describes how TCEQ and TNC will manage and maintain the property to achieve the purposes of the award before and after the property is transferred to USFWS in accordance with the SAC. |
| 6. Real Property Reporting Requirements | We reviewed the “Real Property Status Report” for each property acquired. We |

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| | verified TCEQ completed and submitted the "Real Property Status Reports" annually to the Council for the first 3 years of the award and every 5 years thereafter in accordance with the SAC. |
| 7. Advance Payments | We reviewed the documentation related to TCEQ's advance payment to TNC and verified the advance payment was made within 3 days in accordance with the requirements in the SAC. |
| 8. Limitation on Transfers to Subrecipients | We verified that TCEQ complied with the SAC, "Limitation on Transfers to Subrecipients," which states that TCEQ will not make any subaward to TNC until at least 30 days after the Council has posted the required notice in the Federal Register and delivered such notice to designated Congressional committees. We confirmed that the necessary steps were taken to meet this requirement. |
| 9. Non-Federal Share Requirement | We reviewed the cost sharing agreements and verified that the required non-Federal funds were obtained in accordance with the SAC. |
| 10. Oil Spill Liability Trust Fund | We verified that TCEQ did not seek any compensation for the approved project from any other funding source, including without limitation the Oil Spill Liability Trust Fund. |
| 11. Project Performance Reporting | We verified TCEQ submitted the project performance reports to the Council on an annual basis per the schedule in the SAC. |
| 12. Updates to Project Completion Metrics | We verified TCEQ reported the project completion metrics as required by the SAC. |
| 13. Updates to the Observational Data Plan | We verified that TCEQ updated the project's Observational Data Plan and delivered updated plans and accompanying metric targets to the Council at least annually until all values labeled as "N/A" or "TBD" are provided as required by the SAC. |
| 14. Updates to the Data Management Plan | We verified that TCEQ updated the project's Data Management Plan and delivered updated plans to the Council at least annually until all values labeled as "N/A" and "TBD" are provided as required by the SAC. |
| 15. Observational Data Management and Delivery | We verified that TCEQ managed and delivered all data to the Council under the Federal award in accordance with the SAC. |

Based on the results of procedures performed, we noted no findings of non-compliance with the SACs.

For the Bayou Greenways (sub-awarded to HPB), we evaluated and confirmed TCEQ’s compliance with the following SACs:

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| 1. Property Acquisition under the Award and Use of Property for Authorized Purposes | We reviewed the Deed without Warranty and confirmed that the “Property Acquisition under the Award and Use of Property for Authorized Purposes” language was included in accordance with the SAC. |
| 2. Authorized Award Conservation Purposes | We reviewed the Special Warranty Deeds and Notice of Federal Interest and confirmed they contained the required language in accordance with the SAC. |
| 3. Pre-Acquisition Requirements and Documentation | We reviewed the pre-acquisition documentation for the land acquisitions, which included, in part, certificates of title, agreements with the sellers to acquire the properties, appraisal documentation, maps, surveys, and phase I ESAs. We verified the pre-acquisition documents were submitted by TCEQ to the Council for approval to acquire the properties under the awards in accordance with the SAC. |
| 4. Deed Restriction, Covenant, and Attorney Certification | We verified that (1) the Special Warranty Deeds included the required deed restriction language, (2) the covenant ³¹ was executed and recorded as required, and (3) the executed Attorney Certification was provided to the Grants Officer for each property to ensure TCEQ complied with the provisions of the SAC. |
| 5. Post-Acquisition Requirements and Real Property Reporting | We verified that TCEQ submitted documents related to post-acquisition and that TCEQ completed and submitted the “Real Property Status Report” annually to the Council for the first 3 years of the award and every 5 years thereafter in accordance with the SAC. |

³¹ An agreement between two or more parties detailing certain requirements for the purpose and use of real property.

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| 6. Long-Term Property Stewardship | We verified that HPB submitted to TCEQ a stewardship/management plan that details how HPB will manage and maintain the properties to achieve the purposes of the award before and after they are transferred to the City of Houston as required by the SAC. |
| 7. Transfer from HPB to the City of Houston | We reviewed the documents related to the transfer of each tract of the property from HPB to the City of Houston to verify that HPB transferred each tract of the property through donation to the City of Houston as required by the SAC. |
| 8. Non-Duplicative Use of RESTORE Act Funds | We verified that TCEQ did not seek any compensation for the approved project from any other funding source, including without limitation the Oil Spill Liability Trust Fund. |
| 9. Project Performance Reporting | We verified that TCEQ submitted the project performance reports to the Council on an annual basis per the schedule in the SAC. |
| 10. Observational Data Management and Delivery | We verified that TCEQ managed and delivered all data to the Council under the Federal award in accordance with the SAC. |

Based on the results of procedures performed, we noted no findings of non-compliance with the SACs.

Conclusion

We determined that TCEQ and its subrecipients (TPWD, TNC, and HPB) complied with land acquisition requirements of the RESTORE Act, applicable Federal laws, regulations, and the conditions stipulated within the award agreements with no exceptions noted. As such, we make no recommendations to Council management.

* * * * *

We appreciate your courtesies and cooperation provided to our staff during the audit. Thank you for the opportunity to serve your organization. We are happy to discuss the report. You may contact me at (571) 429-6598.



Reza Mahbod
RMA Associates, LLC

Appendix 1: Objective, Scope, and Methodology

Section 1608 of the *Resources and Ecosystems Sustainability, Tourist Opportunities, and Revived Economies of the Gulf Coast States Act of 2012* (RESTORE Act) authorizes the Department of the Treasury (Treasury) Office of Inspector General (OIG) to conduct, supervise, and coordinate audits of projects, programs, and activities funded by the RESTORE Act. In this regard, the Treasury OIG engaged our firm, RMA Associates, LLC, to perform this audit. Our audit objective was to determine whether Texas Commission on Environmental Quality (TCEQ) used its RESTORE Act funds for the acquisition of land in accordance with the RESTORE Act, applicable Federal laws, regulations, and the award agreements.

The scope of work was comprised of three RESTORE Act grants awarded to TCEQ for land acquisition with periods of performance ranging from April 28, 2016, through November 30, 2020. The three awards totaled approximately \$17,499,500 under the Council-Selected Restoration Component administered by the Gulf Coast Ecosystem Restoration Council (Council). The three awards were for the following projects: (1) Matagorda Bay System Priority Landscape Conservation (\$6,012,000); (2) Bahia Grande Coastal Corridor (\$4,378,500); and (3) Bayou Greenways (\$7,109,000). TCEQ acquired land for the three projects under subaward agreements with the Texas Parks and Wildlife Department (TPWD) for Matagorda Bay, The Nature Conservancy (TNC) for Bahia Grande, and Houston Parks Board (HPB) for Bayou Greenways. Of the \$17,499,500 awarded to TCEQ, \$15,988,544 was used for the acquisition of land. Of this amount, \$15,208,424 was the total population of TCEQ's expenditures and reimbursements that were sampled and tested within the audit scope. See below for details of our sampling methodology.

Due to the Coronavirus Disease 2019 pandemic, we performed audit fieldwork remotely from RMA Associates, LLC's corporate headquarters in Arlington, Virginia from December 2020 through June 2021.

To accomplish the objective, we performed the following:

- Reviewed applicable Federal laws, regulations, guidance, and key documents including:
 - *Resources and Ecosystems Sustainability, Tourist Opportunities and Revived Economies of the Gulf Coast States Act of 2012* (RESTORE Act), July 6, 2012;

- *RESTORE Council Financial Assistance Standard Terms and Conditions*, August 2015;
- Treasury, *Department of the Treasury Regulations for the Gulf Coast Restoration Trust Fund (Final Rule)*, 31 CFR Part 34, February 12, 2016;
- Office of Management and Budget (OMB), *Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards*, 2 Code of Federal Regulations (CFR) 200 (Uniform Guidance), version effective December 26, 2014 and the updated version effective November 12, 2020;
- U.S. Government Accountability Office's (GAO) "Standards for Internal Control in the Federal Government" (Green Book), September 2014;
- GAO, "Assessing Data Reliability," December 2019;
- Notice of Awards and related amendments and subaward agreements for Matagorda Bay System Priority Landscape Conservation, Bahia Grande Coastal Corridor, and Bayou Greenways projects awarded on April 28, 2016;
- Special Award Conditions within each subaward agreement, dated January 2017, April 2017, and January 2018;
- Council's Funding Priorities List, December 2015;
- TCEQ policies, procedures, and guidance, including TCEQ "Texas Commission on Environmental Quality - Contract Management Handbook" dated December 2017; "TCEQ Guide for Administrative Procedures," Chapter 1, dated February 2017; and "State of Texas Procurement and Contract Management Guide" dated December 2019;
- TPWD policies, procedures, and guidance, including TPWD "Federal Grants Guidance Manual" dated March 2019; "Asset Management Manual" dated August 2020; "Expenditure of Foundation Funds Policy" dated June 2013; "Federal Aid Monitoring and Reporting Policy" dated March 2019; and "Purchasing and Contracting Policy" dated April 2019;

- TNC policies, procedures, and guidance, including “Cash Receipting” Standard Operating Procedure (SOP) dated October 2017; “External and Internal Audit” SOP dated October 2017; “Agreements - Receiving and Disbursing Public Funds” SOP dated November 2019; and “Reporting Suspected Violations of Law and Policy” SOP dated October 2017; and
- HPB policies, procedures, and guidance, including “Amended and Restated Administrative Policies and Procedures” dated June 2016 and “Internal Accounting Controls & Procedures Documentation.”
- Conducted interviews with relevant administrative and/or program personnel at TCEQ and at the three subrecipients (1) TNC, (2) TPWD, and (3) HPB to gain an understanding of TCEQ’s use and administration of the Federal awards.
 - TCEQ
 - Senior Advisor for Policy and Development
 - Federal Funds Section Manager, Budget, and Planning
 - Director, Office of Legal Services
 - Deputy Director, General Law Division
 - Deputy Director, Budget, and Planning
 - Deputy Director, Financial Administration
 - RESTORE Program Manager, Office of Legal System
 - Federal Funds Section, Budget and Planning
 - TPWD
 - Land Conservation Branch Manager, Infrastructure Division
 - Landman, Land Conservation Project Manager
 - Grants and Federal Funds Manager
 - Federal Grants Accountant
 - TNC
 - Grant Specialist
 - Director of Land
 - HPB
 - Director of Accounting
 - Interim Manager of Capital Programs
 - Senior Land Acquisition Manager
 - President and CEO

- Assessed data reliability of the information from TCEQ's and subrecipients' financial reporting systems and grant systems³² in accordance with GAO's *Assessing Data Reliability*. Specifically, we (1) reviewed existing information about the data and the systems that produced them; (2) conducted interviews with TCEQ, TPWD, TNC and HPB's personnel knowledgeable about the data; and (3) evaluated expenditure reports, invoices, and relevant support documents and tied them out to the general ledger and trial balances to verify the consistency and accuracy of the data being reported, as part of our sampling test work. We determined that the data were sufficiently reliable for the purposes of answering our objective.
- Selected statistical samples of TCEQ and subrecipient transactions to test compliance requirements and internal controls as they relate to land acquisition and TCEQ's administration of subrecipients. Areas of compliance tested included: Activities Allowed or Unallowed, Allowable Costs and Cost Principles, Cash Management, and Financial Management. Our sampling approach utilized a confidence level of 96 percent with a tolerable error rate between 1 and 3 percent. Statistical sampling was used to test TCEQ's and its subrecipients' compliance and related internal controls and not for the purpose of projecting results to the universe due to the high coverage of the sampling population (98.9 percent coverage for TCEQ's expenditures and reimbursements and 97.7 percent for the subrecipients' expenditures).

TCEQ

- Selected a statistical sample of 20 TCEQ transactions from the population of 345 transactions to test costs related to land acquisition expenses and reimbursements. Overall, we tested \$15,042,011 of the \$15,208,424 total population of TCEQ's expenditures and reimbursements (98.9 percent coverage) within the audit scope.

³² TPWD used Business Information System through September 1, 2020 (which was the system in place during the period of performance of the award) for financial reporting and utilizes Uniform Statewide Accounting Systems for receiving and tracking grant funds. TNC utilizes Concur for financial management and Insight for grant management. HPB utilizes Abila MIP Fund Accounting Software and Prolog for project management of land.

- Tested 7 sample transactions totaling \$117,745 for non-land acquisition costs for (1) Allowable Costs/Cost Principles, (2) Activities Allowed or Unallowed covering payroll, fringe benefits, travel, and indirect costs, (3) Cash Management; and (4) Financial Management and
- Tested 13 sample transactions totaling \$14,924,266 related to TCEQ reimbursements to subrecipients for land acquisition costs, including the purchase of land, appraisal fees, and deed recordation fees in accordance with the award provisions to test (1) Allowable Costs/Cost Principles, (2) Activities Allowed or Unallowed, (3) Cash Management, and (4) Financial Management.

Subrecipients

- Selected a statistical sample of 57 subrecipient expenditure transactions totaling \$15,422,422 from a population of 694 expenditure transactions totaling \$15,777,998 to test land acquisition and related expenditures (97.7 percent coverage), which included RESTORE Act funds and non-Federal matching funds. The subrecipient sample was comprised of (1) 12 of 56 total transactions for TPWD (i.e. \$5,658,706 of \$5,823,382); (2) 28 of 228 total transactions for TNC (i.e. \$4,231,650 of \$4,230,152); and (3) 17 of 410 total transactions for HPB (i.e. \$5,532,066 of \$5,724,464) We performed the following tests:
 - tested 4 sample transactions for TPWD totaling \$83,470 for non-land acquisition costs for (1) Allowable Costs/Cost Principles, (2) Activities Allowed or Unallowed covering payroll, fringe benefits, travel, and indirect costs, (3) Cash Management, and (4) Financial Management;
 - tested 8 sample transactions for TPWD totaling \$5,575,236 for land acquisition costs, including the purchase of land, appraisal fees, and deed recordation fees in accordance with the award provisions to test (1) Allowable Costs/Cost Principles, (2) Activities Allowed or Unallowed, (3) Cash Management, and (4) Financial Management;
 - tested 8 sample transactions for TNC totaling \$6,797 for non-land acquisition costs for (1) Allowable Costs/Cost Principles, and (2) Activities Allowed or Unallowed covering payroll, fringe benefits, travel, and indirect costs, (3) Cash Management, and (4) Financial Management;

- tested 20 sample transactions for TNC totaling \$4,224,853, of which 10 transactions were for advance payments (totaling \$4,215,695), for land acquisition costs, including the purchase of land, appraisal fees, and deed recordation fees in accordance with the award provisions to test (1) Allowable Costs/Cost Principles, (2) Activities Allowed or Unallowed, (3) Cash Management, and (4) Financial Management;
 - tested 6 sample transactions related to HPB totaling \$6,618 for non-land acquisition costs were selected to test (1) Allowable Costs/Cost Principles, and (2) Activities Allowed or Unallowed covering payroll, fringe benefits, travel, and indirect costs, (3) Cash Management, and (4) Financial Management; and
 - tested 11 sample transactions for HPB totaling \$5,525,449 for land acquisition costs, including the purchase of land, appraisal fees, and deed recordation fees in accordance with the award provisions to test (1) Allowable Costs/Cost Principles, (2) Activities Allowed or Unallowed, (3) Cash Management, and (4) Financial Management.
 - Tested for compliance with the Property Standards, Procurement Standards, Reporting, Subrecipient Monitoring, Record Retention, Environmental Compliance, and SACs contained in NOAs for all three subawards under the audit scope as follows:
 - 16 financial reports, 7 performance reports, and 12 “Real Property Status Reports,” submitted by TCEQ to the Council for the period July 30, 2017 through July 30, 2020, were selected for all three projects within the audit scope;
 - all three subaward agreements and subsequent amendments were reviewed for compliance with the Uniform Guidance and Council’s ST&C;
 - all three subaward agreements were reviewed to determine compliance with the “Special Award Conditions;” and
 - all three subrecipients were selected to test TCEQ’s subrecipient monitoring.

- We reviewed the GAO Green Book to identify the components of internal control and principles that are significant within the context of the audit objective. We determined that the control environment, control activities, information and communication, and monitoring components of internal controls were significant to our audit objective. Specifically, we assessed TCEQ and its subrecipients (TPWD, TNC, and HPB) policies and procedures and other relevant internal control documents (outlined above) against the following related principles:
 - Management should establish an organizational structure, assign responsibility, and delegate authority to achieve the entity's objectives;
 - Management should design control activities to achieve objectives and respond to risks;
 - Management should implement control activities through policies;
 - Management should use quality information to achieve the entity's objectives; and
 - Management should establish and operate monitoring activities to monitor internal control system and evaluate the results.

We conducted this performance audit in accordance with Generally Accepted Government Auditing Standards. Those standards require that we plan and perform the audit to obtain sufficient, appropriate evidence to provide a reasonable basis for our findings and conclusions based on our audit objectives. We believe that the evidence obtained provides a reasonable basis for our findings and conclusions based on our audit objectives.

Appendix 2: TCEQ Management Response

Jon Niermann, *Chairman*
Emily Lindley, *Commissioner*
Bobby Janecka, *Commissioner*
Toby Baker, *Executive Director*



TEXAS COMMISSION ON ENVIRONMENTAL QUALITY

Protecting Texas by Reducing and Preventing Pollution

February 28, 2022

Cecilia K. Howland
Audit Director, State and Local Fiscal Recovery, RESTORE, and CDFI Programs
U.S. Department of the Treasury
Office of Inspector General
875 15th Street, NW
Washington, DC 20005

Dear Ms. Howland:

Thank you for the opportunity to comment on the discussion draft of the performance audit report conducted on behalf of Treasury's Office of Inspector General by RMA Associates, on the implementation of RESTORE Bucket 2, FPL 1 land acquisition projects in Texas.

As the Texas Governor's appointee to the RESTORE Council, and responsible for directing the implementation of the RESTORE Act in Texas, I was pleased that the report includes no recommendations and that for each of the 12 items audited there were no findings of non-compliance. I agree with the information included in the report and support its conclusions. Other than our verbal remarks communicated to your staff prior to, and at the exit conference, we do not have any additional comments.

I also want to take this opportunity to note that the positive outcome of this report reflects the tremendous amount of work put forth by the staff of the RESTORE Council and TCEQ's RESTORE program staff to ensure compliance with the federal RESTORE Act and all applicable state and federal regulations. This effort is a testament to the close collaboration between the two staffs to ensure that processes were established that provided for accountability and transparency. These established processes will provide assurance of compliance with federal and state requirements as RESTORE grant funds continue to be used for land acquisitions.

Finally, I want to recognize both your staff and RMA for their diligence and thoroughness in conducting this performance audit.

Respectfully,

A handwritten signature in black ink, appearing to read "Toby Baker".

Toby Baker
Executive Director

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Appendix 3: Council Management Response



Gulf Coast Ecosystem Restoration Council
New Orleans, LA 70130

March 11, 2022

Cecilia K. Howland
Audit Director, State and Local Fiscal Recovery, RESTORE, and CDFI Programs
U.S. Department of the Treasury
Office of Inspector General
875 15th Street, NW
Washington, DC 20005

Re: Response to the Office of Inspector General Report, *TCEQ Complied with RESTORE Act Land Acquisition Requirements*

Thank you for the opportunity to review the formal draft audit report conducted by RMA Associates on behalf of Treasury's Office of Inspector General regarding implementation of the Resources and Ecosystems Sustainability, Tourist Opportunities, and Revived Economies of the Gulf Coast States Act of 2012 (RESTORE Act) Bucket 2, FPL 1 land acquisition projects in Texas.

The Council is pleased the audit report did not identify any weaknesses in the Texas Commission on Environmental Quality's (TCEQ) implementation of RESTORE Act land acquisition processes, and we agree with your finding that TCEQ and its subrecipients complied with land acquisition requirements in the RESTORE Act and other relevant federal laws, regulations, and award requirements. In conjunction with TCEQ, the Council worked diligently to ensure land acquisition transactions conducted under the three reviewed awards adhered to all award terms and conditions. Council staff will continue to ensure compliance with all federal and state requirements for land acquisition projects funded under the RESTORE Act.

We appreciate the time and effort your staff, as well as RMA Associates, contributed toward the performance audit process.

Sincerely,

MARY
WALKER

Digitally signed by
MARY WALKER
Date: 2022.03.11
10:49:10 -0500

Mary S. Walker
Executive Director
Gulf Coast Ecosystem Restoration Council

Gulf Coast Ecosystem Restoration Council
500 Poydras Street, Suite 1117, New Orleans, LA 70130
www.restorethegulf.gov

Appendix 4: Report Distribution

Gulf Coast Ecosystem Restoration Council

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