



COMPLIANCE REVIEW REPORT

SAN FRANCISCO BAY CONSERVATION AND DEVELOPMENT COMMISSION

Compliance Review Unit
State Personnel Board
November 23, 2016

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INTRODUCTION

Established by the California Constitution, the State Personnel Board (the SPB or Board) is charged with enforcing and administering the civil service statutes, prescribing probationary periods and classifications, adopting regulations, and reviewing disciplinary actions and merit-related appeals. The SPB oversees the merit-based recruitment and selection process for the hiring of over 200,000 state employees. These employees provide critical services to the people of California, including but not limited to, protecting life and property, managing emergency operations, providing education, promoting the public health, and preserving the environment. The SPB provides direction to departments through the Board's decisions, rules, policies, and consultation.

Pursuant to Government Code section 18661, the SPB's Compliance Review Unit (CRU) conducts compliance reviews of appointing authority's personnel practices in five areas: examinations, appointments, equal employment opportunity (EEO), personal services contracts (PSC's), and mandated training to ensure compliance with civil service laws and board regulations. The purpose of these reviews is to ensure state agencies are in compliance with merit related laws, rules, and policies and to identify and share best practices identified during the reviews. The SPB conducts these reviews on a three-year cycle.

The CRU may also conduct special investigations in response to a specific request or when the SPB obtains information suggesting a potential merit-related violation.

EXECUTIVE SUMMARY

The CRU conducted a routine compliance review of San Francisco Bay Conservation and Development Commission (BCDC) personnel practices in the areas of examinations, appointments, and EEO from September 1, 2015, through May 31, 2016, and mandated training from May 1, 2014, through May 31, 2016. There were no PSC's executed during the compliance review period. The following table summarizes the compliance review findings.

Area	Finding	Severity
Examinations	Examinations Complied with Civil Service Laws and Board Rules	In Compliance
Appointments	Appointments Complied with Civil Service Laws and Board Rules	In Compliance

Area	Finding	Severity
Equal Employment Opportunity	A Disability Advisory Committee Has Not Been Established	Very Serious
Mandated Training	Mandated Training Complied with Statutory Requirements	In Compliance

A color-coded system is used to identify the severity of the violations as follows:

- Red = Very Serious
- Orange = Serious
- Yellow = Non-serious or Technical
- Green = In Compliance

BACKGROUND

The BCDC is a small state agency located in San Francisco’s Civic Center. It is the state agency with the responsibility to comprehensively protect, conserve, and enable the development of the San Francisco Bay and its shoreline. The BCDC carries out this responsibility under the McAteer-Petris Act (Gov. Code § 66600-66682), the Suisun Marsh Protection Act (Gov. PRC § 29000-29612), and the policies of the San Francisco Bay Plan. All persons, organizations, and governmental agencies must secure a permit from BCDC to work within its jurisdiction.

The BCDC employs approximately 40 staff members serving in the Regulatory, Planning, Legal, Administrative Services, and Executive divisions.

SCOPE AND METHODOLOGY

The scope of the compliance review was limited to reviewing BCDC examinations, appointments, and EEO from June 1, 2015, through May 31, 2016, and mandated training from May 1, 2014, through April 30, 2016. The primary objective of the review was to determine if BCDC personnel practices, policies, and procedures complied with state civil service laws and board regulations, and to recommend corrective action where deficiencies were identified.

A cross-section of BCDC examinations and appointments were selected for review to ensure that samples of various examinations and appointment types, classifications, and levels were reviewed. The CRU examined the documentation that the BCDC provided, which included examination plans, examination bulletins, job analyses, 511b’s, scoring results, notice of personnel action forms, vacancy postings, application

screening criteria, hiring interview rating criteria, certification lists, transfer movement worksheets, employment history records, correspondence, and probation reports.

The review of the BCDC EEO program included examining written EEO policies and procedures; the EEO Officer's role, duties, and reporting relationship; the internal discrimination complaint process; the upward mobility program; the reasonable accommodation program; the discrimination complaint process; and the Disability Advisory Committee (DAC).

The BCDC did not execute any PSC's subject to the Department of General Services approval during the compliance review period.

In addition, the BCDC mandated training program was reviewed to ensure all employees required to file statements of economic interest were provided ethics training, and that all supervisors were provided supervisory and sexual harassment prevention training within statutory timelines.

On November 14, 2016, an exit conference was held with the BCDC to explain and discuss the CRU's initial findings and recommendations. The CRU received and carefully reviewed the BCDC written response on November 18, 2016, which is attached to this final compliance review report.

FINDINGS AND RECOMMENDATIONS

Examinations

Examinations to establish an eligible list must be competitive and of such character as fairly to test and determine the qualifications, fitness, and ability of competitors to perform the duties of the class of position for which he or she seeks appointment. (Gov. Code, § 18930.) Examinations may be assembled or unassembled, written or oral, or in the form of a demonstration of skills, or any combination of those tests. (*Ibid.*) The Board establishes minimum qualifications for determining the fitness and qualifications of employees for each class of position and for applicants for examinations. (Gov. Code, § 18931.) Within a reasonable time before the scheduled date for the examination, the designated appointing power shall announce or advertise the examination for the establishment of eligible lists. (Gov. Code, § 18933, subd. (a).) The advertisement shall contain such information as the date and place of the examination and the nature of the minimum qualifications. (*Ibid.*) Every applicant for examination shall file an application in the office of the department or a designated appointing power as directed by the examination announcement. (Gov. Code, § 18934.) Generally, the final earned rating of

each person competing in any examination is to be determined by the weighted average of the earned ratings on all phases of the examination. (Gov. Code, § 18936.) Each competitor shall be notified in writing of the results of the examination when the employment list resulting from the examination is established. (Gov. Code, § 18938.5.)

During the period under review, the BCDC conducted eight examinations. The CRU reviewed six of those examinations, which are listed below:

Classification	Exam Type	Exam Components	Final File Date	No. of Apps
Coastal Program Analyst I	Departmental Open	Qualification Appraisal Panel ¹	10/16/2015	85
Coastal Program Analyst I	Departmental Open	Qualification Appraisal Panel	2/26/2016	49
Coastal Program Analyst II	Departmental Open	Qualification Appraisal Panel	10/16/2015	88
Coastal Program Analyst II	Departmental Open	Qualification Appraisal Panel	2/26/2016	37
Coastal Program Analyst III	Departmental Open	Qualification Appraisal Panel	9/1/2015	34
Coastal Program Manager	Departmental Open	Qualification Appraisal Panel	9/1/2015	28

FINDING NO. 1 – Examinations Complied with Civil Service Laws and Board Rules

The CRU reviewed six departmental open examinations which the BCDC administered in order to create eligible lists from which to make appointments. The BCDC published and distributed examination bulletins containing the required information for all examinations. Applications received by the BCDC were accepted prior to the final filing date and were thereafter properly assessed to determine whether applicants met the minimum qualifications for admittance to the examinations. The BCDC notified applicants as to whether they qualified to take the examination, and those applicants

¹ The qualification appraisal panel (QAP) interview is the oral component of an examination whereby competitors appear before a panel of two or more evaluators. Candidates are rated and ranked against one another based on an assessment of their ability to perform in a job classification.

who met the minimum qualifications were also notified about the next phase of the examination process. After all phases of the examination process were completed, the score of each competitor was computed, and a list of eligible candidates was established. The examination results listed the names of all successful competitors arranged in order of the score received by rank. Competitors were then notified of their final scores.

The CRU found no deficiencies in the examinations that the BCDC conducted during the compliance review period. Accordingly, the BCDC fulfilled its responsibilities to administer those examinations in compliance with civil service laws and board rules.

Appointments

In all cases not excepted or exempted by Article VII of the California Constitution, the appointing power must fill positions by appointment, including cases of transfers, reinstatements, promotions, and demotions in strict accordance with the Civil Service Act and Board rules. (Gov. Code, § 19050.) Appointments made from eligible lists, by way of transfer, or by way of reinstatement, must be made on the basis of merit and fitness, which requires consideration of each individual’s job-related qualifications for a position, including his or her knowledge, skills, abilities, experience, and physical and mental fitness. (Cal. Code Regs., tit. 2, § 250, subd. (a).)

During the compliance review period, the BCDC made 22 appointments. The CRU reviewed 12 of those appointments, which are listed below:

Classification	Appointment Type	Tenure	Time Base	No. of Appts
Associate Governmental Program Analyst	Certification List	Limited Term	Full Time	1
Senior Accounting Officer (Specialist)	Certification List	Limited Term	Full Time	1
Office Assistant (Typing)	Certification List	Limited Term	Full Time	1
Coastal Program Manager	Certification List	Permanent	Full Time	1
Coastal Planner Coastal Program Analyst I	Certification List	Limited Term	Full Time	1
Regulatory Analyst Coastal Program Analyst I	Certification List	Limited Term	Full Time	1
Coastal Planner Coastal Program Analyst II	Certification List	Limited Term	Full Time	1

Enforcement Coastal Program Analyst II	Certification List	Limited Term	Full Time	1
Coastal Program Analyst III Regulatory	Certification List	Permanent	Full Time	1
Coastal Program Analyst III Regulatory	Certification List	Permanent	Full Time	1
Office Technician (Typing)	Mandatory Reinstatement	Limited Term	Full Time	1
Senior Legal Typist	Training and Development	Permanent	Full Time	1

FINDING NO. 2 – Appointments Complied with Civil Service Laws and Board Rules

The BCDC measured each applicant’s ability to perform the duties of the job by conducting hiring interviews and selecting the best-suited candidates. For each of the 10 certification list appointments reviewed, the BCDC ordered a certification list of candidates ranked competitively. After properly clearing the certification lists including SROA, the selected candidates were appointed based on eligibility attained by being reachable within the first three ranks of the certification lists.

The BCDC made one appointment via reinstatement. A state agency is required to reinstate an employee to his or her former position if the employee is (1) terminated from a temporary or limited-term appointment by either the employee or the appointing power; (2) rejected during probation; or (3) demoted from a managerial position. (Gov. Code, § 19140.5.) The following conditions, however, must apply: the employee accepted the appointment without a break in continuity of service and the reinstatement is requested within 10 working days after the effective date of the termination. (*Ibid.*) The BCDC complied with the rules and laws governing mandatory reinstatements.

Eligibility for training and development assignments are limited to employees who (1) have permanent status in their class, or (2) who have probationary status and who previously have had permanent status and who, since such permanent status, have had no break in service due to a permanent separation. The CRU reviewed one training and development appointment, and determined it to be in compliance with applicable civil service laws and board rules (Gov. Code, § 438, subd. (a)(b)).

The CRU found no deficiencies in the appointments that the BCDC conducted during the compliance review period. Accordingly, the CRU found that all the appointments the BCDC made during the compliance review period satisfied civil service laws and board rules.

Equal Employment Opportunity

Each state agency is responsible for an effective EEO program. (Gov. Code, § 19790.) The appointing power for each state agency has the major responsibility for monitoring the effectiveness of its EEO program. (Gov. Code, § 19794.) To that end, the appointing power must issue a policy statement committed to EEO; issue procedures for filing, processing, and resolving discrimination complaints; issue procedures for providing equal upward mobility and promotional opportunities; and cooperate with the California Department of Human Resources by providing access to all required files, documents and data. (*Ibid.*) In addition, the appointing power must appoint, at the managerial level, an EEO Officer, who shall report directly to, and be under the supervision of, the director of the department to develop, implement, coordinate, and monitor the department's EEO program. (Gov. Code, § 19795.)

Because the EEO Officer investigates and ensures proper handling of discrimination, sexual harassment and other employee complaints, the position requires separation from the regular chain of command, as well as regular and unencumbered access to the head of the organization. In a state agency with less than 500 employees, like the BCDC, the EEO Officer may be the Personnel Officer.

Each state agency must establish a separate committee of employees who are individuals with a disability, or who have an interest in disability issues, to advise the head of the agency on issues of concern to employees with disabilities. (Gov. Code, § 19795, subd. (b)(1).) The department must invite all employees to serve on the committee and take appropriate steps to ensure that the final committee is comprised of members who have disabilities or who have an interest in disability issues. (Gov. Code, § 19795, subd. (b)(2).)

The CRU reviewed the BCDC EEO program that was in effect during the compliance review period.

After reviewing the policies, procedures, and programs necessary for compliance with the EEO program's role and responsibilities according to statutory and regulatory guidelines, the CRU determined that the BCDC's EEO program provided employees with information and guidance on the EEO process including instructions on how to file discrimination claims. Furthermore, the EEO program outlines the roles and responsibilities of the EEO Officer, as well as supervisors and managers. The EEO Officer, who is at a managerial level, reports directly to the Executive Director of the BCDC. The CDE also provided evidence of its efforts to promote EEO in its hiring and

employment practices, to increase its hiring of persons with a disability, and to offer upward mobility opportunities for its entry-level staff.

However, the BCDC does not have an established DAC, as described in finding three.

FINDING NO. 3 – A Disability Advisory Committee Has Not Been Established

Summary: The BCDC does not have an established DAC.

Criteria: Each state agency must establish a separate committee of employees who are individuals with a disability, or who have an interest in disability issues, to advise the head of the agency on issues of concern to employees with disabilities. (Gov. Code, § 19795, subd. (b)(1).) The department must invite all employees to serve on the committee and take appropriate steps to ensure that the final committee is comprised of members who have disabilities or who have an interest in disability issues. (Gov. Code, § 19795, subd. (b)(2).)

Severity: Very Serious. The agency head does not have direct information on issues of concern to employees or other persons with disabilities and input to correct any underrepresentation. The lack of a DAC may limit an agency's ability to recruit and retain a qualified workforce, impact productivity, and subject the agency to liability.

Cause: The BCDC states that, in 2015 and 2016, the department had departures of some key members of the DAC team that caused it to be disbanded.

Action: The BCDC must continue to take appropriate steps to ensure the establishment of a DAC, comprised of members who have disabilities or who have an interest in disability issues. The BCDC must submit to the CRU a written report of compliance, including the DAC roster, agenda, and meeting minutes, no later than 60 days from the date of the SPB Executive Officer's approval of these findings and recommendations.

Mandated Training

Each member, officer, or designated employee of a state agency who is required to file a statement of economic interest (referred to as “filers”) because of the position he or she holds with the agency is required to take an orientation course on the relevant ethics statutes and regulations that govern the official conduct of state officials. (Gov. Code, §§ 11146 & 11146.1.) State agencies are required to offer filers the orientation course on a semi-annual basis. (Gov. Code, § 11146.1.) New filers must be trained within six months of appointment and at least once during each consecutive period of two calendar years, commencing on the first odd-numbered year thereafter. (Gov. Code, § 11146.3.)

Upon the initial appointment of any employee designated in a supervisory position, the employee shall be provided a minimum of 80 hours of training, as prescribed by the California Department of Human Resources (CalHR). (Gov. Code, § 19995.4, subd. (b).) The training addresses such topics as the role of the supervisor, techniques of supervision, performance standards, and sexual harassment and abusive conduct prevention. (Gov. Code, §§ 12950.1, subds. (a), (b), & (c), & 19995.4, subd. (b).) The training must be successfully completed within the term of the employee’s probationary period or within six months of the initial appointment, unless it is demonstrated that to do so creates additional costs or that the training cannot be completed during this time period due to limited availability of supervisory training courses. (Gov. Code, § 19995.4, subd. (c).) As to the sexual harassment and abusive-conduct prevention component, the training must thereafter be provided to supervisors once every two years. (Gov. Code, § 12950.1.)

Within 12 months of the initial appointment of an employee to a management or career executive assignment (CEA) position, the employee shall be provided leadership training and development, as prescribed by CalHR. (Gov. Code, §§ 19995.4, subds. (d) & (e).) For management employees the training must be a minimum of 40 hours and for CEAs the training must be a minimum of 20 hours. (*Ibid.*) Thereafter, for both categories of appointment, the employee must be provided a minimum of 20 hours of leadership training on a biannual basis. (*Ibid.*)

The Board may conduct reviews of any appointing power’s personnel practices to ensure compliance with civil service laws and Board regulations. (Gov. Code, § 18661, subd. (a).) In particular, the Board may audit personnel practices related to such matters as selection and examination procedures, appointments, promotions, the management of probationary periods, and any other area related to the operation of the merit principle in state civil service. (*Ibid.*) Accordingly, the CRU reviews documents and

records related to training that appointing powers are required by the afore-cited laws to provide its employees.

The CRU reviewed the BCDC's mandated training program that was in effect during the compliance review period.

FINDING NO. 4 – Mandated Training Complied with Statutory Requirements

The BCDC provided ethics training to its 13 new filers within six months of appointment and semiannual ethics training to its 23 existing filers during two-year calendar year period commencing in 2014. The BCDC also provided supervisory training to its three new supervisors within 12 months of appointment. In addition, the BCDC provided sexual harassment prevention training its four new supervisors within six months of appointment, and sexual harassment prevention training to its eight existing supervisors every two years. Thus, the BCDC complied with mandated training requirements within statutory timelines.

DEPARTMENTAL RESPONSE

The BCDC's written response is attached as Attachment 1.

SPB REPLY

Based upon the BCDC written response, the BCDC will comply with the CRU recommendations and findings, and provide the CRU with a corrective action plan with the supporting documentation stated for finding three.

It is further recommended that the BCDC comply with the afore-stated recommendations and submit to the CRU a written report of compliance within 60 days of the Executive Officer's approval.

San Francisco Bay Conservation and Development Commission

455 Golden Gate Avenue, Suite 10600, San Francisco, California 94102 tel 415 352 3600 fax 415 352 3606

November 18, 2016

SUBJECT: Departmental Response to SPB Compliance Review Report

Dear Mr. Alton Ford,

Thank you very much for your Compliance Review Report stating that the State Personnel Board found no deficiencies in BCDC's examinations, appointments, and mandated training.

In 2015 and 2016 we had departures of some key members of our DAC team that caused it to be disbanded. Pursuant to your suggestion, on November 18, 2016, all BCDC employees received an e-mail from our Human Resources Liaison inviting them to participate in the Disability Advisory Committee.

After we receive responses from staff, I am confident that BCDC will be in compliance within your suggested timeframe. Let me know if you have any questions or concerns.

Sincerely,



SHARON LOUIE
DIRECTOR, ADMINISTRATIVE AND
TECHNOLOGY SERVICES

CC Lawlun Leung, Human Resources Liaison
Melanie Wong, Personnel Officer