



COMPLIANCE REVIEW REPORT

COACHELLA VALLEY MOUNTAINS CONSERVANCY

Compliance Review Unit
State Personnel Board
November 30, 2021

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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 authorities' 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.

Pursuant to Government Code section 18502, subdivision (c), the SPB and the California Department of Human Resources (CalHR) may "delegate, share, or transfer between them responsibilities for programs within their respective jurisdictions pursuant to an agreement." SPB and CalHR, by mutual agreement, expanded the scope of program areas to be audited to include more operational practices that have been delegated to departments and for which CalHR provides policy direction. Many of these delegated practices are cost drivers to the state and were not being monitored on a statewide basis.

As such, SPB also conducts compliance reviews of appointing authorities' personnel practices to ensure that state departments are appropriately managing the following non-merit-related personnel functions: compensation and pay, leave, and policy and processes. These reviews will help to avoid and prevent potential costly litigation related to improper personnel practices, and deter waste, fraud, and abuse.

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.

It should be noted that this report only contains findings from this hiring authority's compliance review. Other issues found in SPB appeals and special investigations as well as audit and review findings by other agencies such as the CalHR and the California State Auditor are reported elsewhere.

EXECUTIVE SUMMARY

The CRU conducted a routine compliance review of the Coachella Valley Mountains Conservancy (CVMC) personnel practices in the areas of EEO, PSC's, mandated training, leave, and policy and processes. The following table summarizes the compliance review findings.

Area	Severity	Finding
Equal Employment Opportunity	Very Serious	A Disability Advisory Committee Has Not Been Established
Personal Services Contracts	Serious	Unions Were Not Notified of Personal Services Contract
Personal Services Contracts	Serious	Written Justification Was Not Provided for Personal Services Contract
Mandated Training	In Compliance	Mandated Training Complied with Statutory Requirements
Leave	In Compliance	Leave Auditing and Timekeeping Complied with Civil Service Laws, Board Rules, and/or CalHR Policies and Guidelines
Policy	In Compliance	Nepotism Policy Complied with Civil Service Laws, Board Rules, and/or CalHR Policies and Guidelines
Policy	Very Serious	Workers' Compensation Policy Was Not Provided to New Employee by the End of First Pay Period
Policy	In Compliance	Performance Appraisal Policy and Processes Complied with Civil Service Laws and Regulations and CalHR Policies and Guidelines

BACKGROUND

The CVMC was established by the state legislature in 1991 as a public sector land trust with broad powers to protect open space and wildlife within the Coachella Valley and its surrounding mountains. During most of its nearly 30-year history, the CVMC has focused on funding or facilitating the acquisition of land for perpetual conservation, resulting in the acquisition of over 96,000 acres so far. In recent years, the CVMC's work program has expanded significantly to embrace habitat restoration efforts, improved joint land management efforts with partner agencies, enhanced recreational access through trail building, and the purchase of a historic ranch and the implementation of the California Water Action Plan in the Coachella Valley.

The CVMC is governed by a 20-member board that includes local elected officials and appointees of various state agencies. It employs an Executive Director appointed by the board, as well as three civil service employees.

The Department of Parks and Recreation (DPR) performs human resources operations for the CVMC.

SCOPE AND METHODOLOGY

The scope of the compliance review was limited to reviewing the CVMC's examinations, appointments, EEO program, PSC's, mandated training, compensation and pay, leave, and policy and processes¹. The primary objective of the review was to determine if the CVMC's personnel practices, policies, and procedures complied with state civil service laws and Board regulations, Bargaining Unit Agreements, CalHR policies and guidelines, CalHR Delegation Agreements, and to recommend corrective action where deficiencies were identified.

The CVMC did not conduct any examinations, permanent withhold actions, unlawful appointment investigations, and did not make any appointments, including additional appointments, during the compliance review period. Furthermore, during the review period, the CVMC did not issue or authorize any hiring above the minimum requests, red circle rate requests, arduous pay, bilingual pay, monthly pay differentials, alternate range movements, or out-of-class assignments.

¹ Timeframes of the compliance review varied depending on the area of review. Please refer to each section for specific compliance review timeframes.

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

The CVMC's PSC's were also reviewed.² It was beyond the scope of the compliance review to make conclusions as to whether the CVMC's justifications for the contracts were legally sufficient. The review was limited to whether the CVMC's practices, policies, and procedures relative to PSC's complied with procedural requirements.

The CVMC's mandated training program was reviewed to ensure all employees required to file statements of economic interest were provided ethics training, and that all employees were provided sexual harassment prevention training within statutory timelines.

The CRU reviewed the CVMC's monthly internal audit process to verify all leave input into any leave accounting system was keyed accurately and timely and ensure the department certified that all leave records have been reviewed and corrected if necessary. The CRU selected a small cross-section of the CVMC's units in order to ensure they maintained accurate and timely leave accounting records.

During the compliance review period, the CVMC did not have any employees with non-qualifying pay period transactions and did not authorize Administrative Time Off. Additionally, the CVMC did not track any temporary intermittent employees by actual time worked during the compliance review period.

Moreover, the CRU reviewed the CVMC's policies and processes concerning nepotism, workers' compensation, and performance appraisals. The review was limited to whether the CVMC's policies and processes adhered to procedural requirements.

On November 10, 2021, an exit conference was held with the CVMC to explain and discuss the CRU's initial findings and recommendations. The CRU received and carefully reviewed the CVMC's written response on November 19, 2021, which is attached to this final compliance review report.

²If an employee organization requests the SPB to review any personal services contract during the SPB compliance review period or prior to the completion of the final compliance review report, the SPB will not audit the contract. Instead, the SPB will review the contract pursuant to its statutory and regulatory process. In this instance, none of the reviewed PSC's were challenged.

FINDINGS AND RECOMMENDATIONS

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; and cooperate with the CalHR, in accordance with Civil Code section 1798.24, subdivisions (o) and (p), by providing access to all required files, documents and data necessary to carry out these mandates. (*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, subd. (a).)

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	FINDING NO. 1 A DISABILITY ADVISORY COMMITTEE HAS NOT BEEN ESTABLISHED
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Summary: The CVMC does not have an active 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 CVMC states that this finding arises from a misunderstanding of the respective roles of the CVMC and the DPR, who handle most of the CVMC's personnel matters.

Corrective Action: Within 90 days of the date of this report, the CVMC must submit to the SPB a written corrective action response which shows the corrections the department implemented to ensure the establishment of a DAC, comprised of members who have disabilities or who have an interest in disability issues. Copies of relevant documentation demonstrating that the corrective action has been implemented, including the new DAC roster, agenda, and meeting minutes, must be included with the corrective action response.

Personal Services Contracts

A PSC includes any contract, requisition, or purchase order under which labor or personal services is a significant, separately identifiable element, and the business or person performing the services is an independent contractor that does not have status as an employee of the state. (Cal. Code Regs., tit. 2, § 547.59.) The California Constitution has an implied civil service mandate limiting the state's authority to contract with private entities to perform services the state has historically or customarily performed. Government Code section 19130, subdivision (a), however, codifies exceptions to the civil service mandate where PSC's achieve cost savings for the state. PSC's that are of a type enumerated in subdivision (b) of Government Code section 19130 are also permissible. Subdivision (b) contracts include, but are not limited to, private contracts for a new state function, services that are not available within state service, services that are incidental to a contract for the purchase or lease of real or personal property, and services that are of an urgent, temporary, or occasional nature.

For cost-savings PSC's, a state agency is required to notify SPB of its intent to execute such a contract. (Gov. Code, § 19131.) For subdivision (b) contracts, the SPB reviews

the adequacy of the proposed or executed contract at the request of an employee organization representing state employees. (Gov. Code, § 19132.)

During the period under review, September 1, 2020, through August 31, 2021, the CVMC had one PSC that was in effect. The CRU reviewed that PSC, which is listed below:

Vendor	Services	Contract Dates	Contract Amount	Justification Identified?	Union Notification?
Thomas MacManus	Appraisal Review	12/18/20 - 12/30/20	\$850.00	No	No

SEVERITY: SERIOUS	FINDING NO. 2 UNIONS WERE NOT NOTIFIED OF PERSONAL SERVICES CONTRACT
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Summary: The CVMC did not notify union(s) prior to entering into the PSC reviewed.

Criteria: The contract shall not be executed until the state agency proposing to execute the contract has notified all organizations that represent state employees who perform the type of work to be contracted. (Gov. Code, § 19132, subd. (b)(1).)

Severity: Serious. Unions must be notified of impending personal services contracts in order to ensure they are aware contracts are being proposed for the type of work that their members could perform.

Cause: The CVMC states that the DPR uses a divergent interpretation of the applicable requirements for union notification than the SPB does. It is the CVMC's understanding that the DPR believes no union notification was required for the PSC reviewed since there were no bargaining unit employees who undertake the work involved.

SPB Reply: The executed PSC was for a technical review of a real estate appraisal. There are existing state classifications (Property Appraiser/Investigator series) which perform this type of work. Therefore, pursuant to Government Code section 19132, subd. (b)(1), the appropriate union should have been notified.

Corrective Action: It is the contracting department's responsibility to identify and notify any unions whose members could potentially perform the type of

work to be contracted prior to executing the PSC. The PSC reviewed during this compliance review involved appraisal review services, a function which various rank-and-file civil service classifications perform. Within 90 days of the date of this report, the CVMC must submit to the SPB a written corrective action response which addresses the corrections the department will implement to ensure conformity with the requirements of Government Code section 19132. Copies of relevant documentation demonstrating that the corrective action has been implemented must be included with the corrective action response.

SEVERITY: SERIOUS	FINDING NO. 3 WRITTEN JUSTIFICATION WAS NOT PROVIDED FOR PERSONAL SERVICES CONTRACT
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Summary: The CVMC did not prepare or retain written justification why the contract satisfied Government Code section 19130, subdivision (b).

Criteria: Whenever an agency executes a personal services contract under Government Code section 19130, subdivision (b), the agency shall document, with specificity and detailed factual information, the reasons why the contract satisfies one or more of the conditions specified in Government Code section 19130, subdivision (b). (Cal. Code Reg., tit. 2, § 547.60, subd. (a).) The agency shall maintain the written justification for the duration of the contract and any extensions of the contract or in accordance with the record retention requirements of section 26, whichever is longer. (Cal. Code Reg., tit. 2, § 547.60, subd. (b).)

Severity: Serious. Without specific written justification detailing why a PSC satisfies one or more conditions specified in Government Code section 19130, the CRU could not determine whether the department’s PSC’s complied with current procedural requirements.

Cause: The CVMC states that this appears to be an error by the their staff which was not caught during management review.

Corrective Action: Within 90 days of the date of this report, the CVMC must submit to the SPB a written corrective action response which addresses the corrections the department will implement to ensure conformity with Government Code section 19130, subdivision (b), and California

Code of Regulations, title 2, section 547.60, subdivision (a). Copies of relevant documentation demonstrating that the corrective action has been implemented must be included with the corrective action response.

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.)

Additionally, new employees must be provided sexual harassment prevention training within six months of appointment. Thereafter, each department must provide its supervisors two hours of sexual harassment prevention training and non-supervisors one hour of sexual harassment prevention training every two years. (Gov. Code, § 12950.1, subs. (a) and (b); Gov. Code, § 19995.4.)

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 CVMC’s mandated training program that was in effect during the compliance review period, September 1, 2019, through August 31, 2021.

IN COMPLIANCE	FINDING NO. 4	MANDATED TRAINING COMPLIED WITH STATUTORY REQUIREMENTS
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The CVMC provided ethics training to its one existing filer, “at least once during each consecutive period of two calendar years, commencing on the first odd-numbered year

thereafter.” In addition, the CVMC provided sexual harassment prevention training to its one existing supervisor every two years. The CVMC did not employ any new filers to complete ethics training, nor any new supervisors to complete sexual harassment prevention training within six months of appointment. Thus, the CVMC complied with mandated training requirements within statutory timelines.

Leave

Leave Auditing and Timekeeping

Departments must keep complete and accurate time and attendance records for each employee and officer employed within the agency over which it has jurisdiction. (Cal. Code Regs., tit. 2, § 599.665.)

Departments are directed to create a monthly internal audit process to verify all leave input into any leave accounting system is keyed accurately and timely. (Human Resources Manual Section 2101.) Departments shall create an audit process to review and correct leave input errors on a monthly basis. The review of leave accounting records shall be completed by the pay period following the pay period in which the leave was keyed into the leave accounting system. (*Ibid.*) If an employee’s attendance record is determined to have errors or it is determined that the employee has insufficient balances for a leave type used, the attendance record must be amended. (*Ibid.*) Attendance records shall be corrected by the pay period following the pay period in which the error occurred. (*Ibid.*) Accurate and timely attendance reporting is required of all departments and is subject to audit. (*Ibid.*)

During the period under review, March 1, 2021, through May 31, 2021, the CVMC reported one unit comprised of three active employees. The pay periods and timesheets reviewed by the CRU are summarized below:

Timesheet Leave Period	Unit Reviewed	Number of Employees	Number of Timesheets Reviewed	Number of Missing Timesheets
March 2021	3850	3	3	0
April 2021	3850	3	3	0
May 2021	3850	3	3	0

IN COMPLIANCE	FINDING NO. 5 LEAVE AUDITING AND TIMEKEEPING COMPLIED WITH CIVIL SERVICE LAWS, BOARD RULES, AND/OR CALHR POLICIES AND GUIDELINES
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The CRU reviewed employee leave records from three different leave periods to ensure compliance with applicable laws, regulations and CalHR policy and guidelines. Based on our review, the CRU found no deficiencies. The CVMC kept complete and accurate time and attendance records for each employee and officer employed within the department and utilized a monthly internal audit process to verify all leave input into any leave accounting system was keyed accurately and timely.

Policy and Processes

Nepotism

It is the policy of the State of California to recruit, hire and assign all employees on the basis of merit and fitness in accordance with civil service statutes, rules and regulations. (Human Resources Manual Section 1204.) Nepotism is expressly prohibited in the state workplace because it is antithetical to California’s merit based civil service. (*Ibid.*) Nepotism is defined as the practice of an employee using his or her influence or power to aid or hinder another in the employment setting because of a personal relationship. (*Ibid.*) Personal relationships for this purpose include association by blood, adoption, marriage and/or cohabitation. (*Ibid.*) All department nepotism policies should emphasize that nepotism is antithetical to a merit-based personnel system and that the department is committed to the state policy of recruiting, hiring and assigning employees on the basis of merit. (*Ibid.*)

IN COMPLIANCE	FINDING NO. 6 NEPOTISM POLICY COMPLIED WITH CIVIL SERVICE LAWS, BOARD RULES, AND/OR CALHR POLICIES AND GUIDELINES
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The CRU verified that the policy was disseminated to all staff and emphasized the CVMC’s commitment to the state policy of recruiting, hiring and assigning employees on the basis of merit. Additionally, the CVMC’s nepotism policy was comprised of specific and sufficient components intended to prevent favoritism, or bias, based on a personal relationship from unduly influencing employment decisions.

Workers' Compensation

Employers shall provide to every new employee, either at the time of hire or by the end of the first pay period, written notice concerning the rights, benefits, and obligations under workers' compensation law. (Cal. Code Regs., tit. 8, § 9880, subd. (a).) This notice shall include the right to predesignate their personal physician or medical group; a form that the employee may use as an optional method for notifying the employer of the name of employee's "personal physician," as defined by Labor Code section 4600. (Cal. Code Regs., tit. 8, § 9880, subd. (c)(7) & (8).) Additionally, within one working day of receiving notice or knowledge that the employee has suffered a work related injury or illness, employers shall provide a claim form and notice of potential eligibility for benefits to the injured employee. (Labor Code, § 5401, subd. (a).)

Public employers may choose to extend workers' compensation coverage to volunteers that perform services for the organization. (Human Resources Manual Section 1415.) Workers' compensation coverage is not mandatory for volunteers as it is for employees. (*Ibid.*) This is specific to the legally uninsured state departments participating in the Master Agreement. (*Ibid.*) Departments with an insurance policy for workers' compensation coverage should contact their State Compensation Insurance Fund office to discuss the status of volunteers. (*Ibid.*)

In this case, the CVMC did not employ volunteers during the compliance review period.

SEVERITY: VERY SERIOUS	FINDING NO. 7	WORKERS' COMPENSATION POLICY WAS NOT PROVIDED TO NEW EMPLOYEE BY THE END OF FIRST PAY PERIOD
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Summary: The CVMC did not provide specific notice to its new employee to inform them of their rights and responsibilities under California's Workers' Compensation Law.

Criteria: Employers shall provide to every new employee at the time of hire or by the end of the first pay period written notice concerning the rights, benefits, and obligations under Workers' Compensation law. (Cal. Code of Regs., tit. 8, § 9880.)

Severity: Very Serious. The department does not ensure that its employees are aware of policies and procedures concerning worker's compensation.

Cause: The CVMC states that this finding arises from a misunderstanding of the respective roles of the CVMC and the DPR. It appears that the CVMC did not review the package the DPR provided to them to determine whether it was complete prior to distributing it.

Corrective Action: Within 90 days of the date of this report, the CVMC must submit to the SPB a written corrective action response which addresses the corrections the department will implement to ensure conformity with California Code of Regulations, title 8, section 9880. Copies of relevant documentation demonstrating that the corrective action has been implemented must be included with the corrective action response.

Performance Appraisals

According to Government Code section 19992.2, subdivision (a), appointing powers must “prepare performance reports.” Furthermore, California Code of Regulations, title 2, section 599.798, directs supervisors to conduct written performance appraisals and discuss overall work performance with permanent employees at least once in each twelve calendar months after the completion of the employee’s probationary period.

The CRU selected three permanent CVMC employees to ensure that the department was conducting performance appraisals on an annual basis in accordance with applicable laws, regulations, policies and guidelines.

IN COMPLIANCE	FINDING NO. 8 PERFORMANCE APPRAISAL POLICY AND PROCESSES COMPLIED WITH CIVIL SERVICE LAWS, BOARD RULES, AND CALHR POLICIES AND GUIDELINES
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The CRU found no deficiencies in the three performance appraisals selected for review. Accordingly, the CVMC performance appraisal policy and processes satisfied civil service laws, Board rules, policies and guidelines.

DEPARTMENTAL RESPONSE

The CVMC’s response is attached as Attachment 1.

SPB REPLY

Based upon the CVMC's written response, the CVMC will comply with the corrective actions specified in these report findings. Within 90 days of the date of this report, a written corrective action response including documentation demonstrating implementation of the corrective actions specified, must be submitted to the CRU.



MEMORANDUM

Date: November 19, 2021

To: Alton Ford, Compliance Review Manager, Policy and Compliance Review Division,
California State Personnel Board

From: Jim Karpiak, Executive Director, Coachella Valley Mountains Conservancy

Subject: Departmental Response to Draft Compliance Review Report, Coachella Valley
Mountains Conservancy

The Coachella Valley Mountains Conservancy (the "Conservancy") has reviewed the draft SPB report received on November 9 and has the following responses describing the specific causes for the four findings of non-compliance:

Finding 1. Equal Employment Opportunity/Failure to establish Disability Advisory Committee ("DAC"):

This finding arises from a misunderstanding of the respective roles of the Conservancy and the Department of Parks and Recreation ("DPR"), which handles most of the Conservancy's personnel matters. The Conservancy historically did not have a DAC because in 2006, SPB determined it was exempt from the requirement due to the Conservancy's small size. In 2016, when it came to our attention that we were no longer exempt, we discussed creating a DAC and recruited two staff members to serve on it. We then contacted DPR to see whether the DPR DAC could handle our Conservancy, either by itself or with the participation of the two Conservancy employees. Unfortunately, it appears that the DPR and the Conservancy never resolved the question, and we lost track of it in the press of business.

Finding 2. Personal Service Contracts/Lack of notice to unions for one contract.

This arises from a divergent interpretation of the applicable requirements for notification by DPR than SPB uses. DPR is our agent for processing contracts and handles the processing of contracts once the Conservancy staff drafts them, including notifying bargaining units. In this case, we submitted the contract to DPR, which returned it after having certified compliance with the applicable requirements for union notification. According to DPR, they review contracts but



are not required to submit them all to the union where there are no bargaining unit employees who undertake the work involved. It is our understanding that DPR believes no union notification was required for this contract.

Finding 3. Personal Services Contracts/No justification included.

This appears to be an error by the Conservancy staff that was not caught during management review.

Finding 7. Policy/Workers comp policy not provided to new employee

This finding also arises from a misunderstanding of the respective roles of the Conservancy and the DPR. Our agreement with DPR specifies that DPR is to provide the package of materials for new employees. We typically get the package from DPR and then Conservancy management distributes it to the new employee. It appears that the Conservancy did not review the package to determine whether it was complete prior to distributing it.

Please feel free to call me at (760) 776-5026 if you need additional information.