



COMPLIANCE REVIEW REPORT

CALIFORNIA COASTAL COMMISSION

Compliance Review Unit
State Personnel Board
January 25, 2022

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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 California Coastal Commission's (CACC's) personnel practices in the areas of examinations, appointments, EEO, PSC's, mandated training, compensation and pay, leave, and policy and processes. The following table summarizes the compliance review findings.

| Area | Severity | Finding |
|------------------------------|---------------|--|
| Examinations | In Compliance | Examinations Complied with Civil Service Laws and Board Rules |
| Appointments | Serious | Probationary Evaluations Were Not Provided for All Appointments Reviewed ¹ |
| Appointments | Technical | Appointment Documentation Was Not Kept for the Appropriate Amount of Time |
| Appointments | Very Serious | Equal Employment Opportunity Questionnaires Were Not Separated from Applications |
| Appointments | Very Serious | Unlawful Appointment |
| Equal Employment Opportunity | In Compliance | Equal Employment Opportunity Program Complied with All Civil Service Laws and Board Rules |
| Personal Services Contracts | Serious | Union Was Not Notified of Personal Services Contract |
| Mandated Training | Very Serious | Ethics Training Was Not Provided for All Filers |
| Mandated Training | Very Serious | Sexual Harassment Prevention Training Was Not Provided for All Supervisors |
| Compensation and Pay | In Compliance | Salary Determinations Complied with Civil Service Laws, Board Rules, and CalHR Policies and Guidelines |

¹ Repeat finding. The April 12, 2019, CACC's Compliance Review Report identified that 11 probationary reports were not provided.

| Area | Severity | Finding |
|----------------------|---------------|--|
| Compensation and Pay | In Compliance | Alternate Range Movements Complied with Civil Service Laws, Board Rules, and/or CalHR Policies and Guidelines |
| Compensation and Pay | In Compliance | Hire Above Minimum Requests Complied with Civil Service Laws, Board Rules, and/or CalHR Policies and Guidelines |
| Compensation and Pay | Very Serious | Incorrect Authorization of Bilingual Pay |
| Compensation and Pay | In Compliance | Pay Differential Authorizations Complied with Civil Service Laws, Board Rules, and CalHR Policies and Guidelines |
| Compensation and Pay | In Compliance | Out of Class Pay Authorizations Complied with Civil Service Laws, Board Rules, and CalHR Policies and Guidelines |
| Leave | In Compliance | Positive Paid Employees' Tracked Hours Complied with Civil Service Laws, Board Rules, and/or CalHR Policies and Guidelines |
| Leave | In Compliance | Administrative Time Off Authorizations Complied with Civil Service Laws, Board Rules, and/or CalHR Policies and Guidelines |
| Leave | In Compliance | Leave Auditing and Timekeeping Complied with Civil Service Laws, Board Rules, and/or CalHR Policies and Guidelines |
| Leave | In Compliance | Service and Leave Transactions 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 | In Compliance | Workers' Compensation Process Complied with Civil Service Laws, Board Rules, and/or CalHR Policies and Guidelines |

| Area | Severity | Finding |
|--------|----------|--|
| Policy | Serious | Performance Appraisals Were Not Provided to All Employees ² |

BACKGROUND

The mission of the CACC is to implement the California Coastal Act of 1976 (Coastal Act) and to protect, conserve, restore, and enhance environmental and human-based resources of the California coast and ocean for environmentally sustainable and prudent use by current and future generations.

The CACC, in partnership with coastal cities and counties, plans and regulates the use of land and water in the coastal zone. Development activities, which are broadly defined by the Coastal Act to include (among others) construction of buildings, divisions of land, and activities that change the intensity of use of land or public access to coastal waters, generally require a coastal permit from either the CACC or the local government.

The staff of the CACC consists 172 authorized positions. The program staff reviews permit applications for coastal development projects and advises local governments on the coastal planning process. Many of these employees are in the Coastal Program Analyst classification series. They are supported by a range of scientific, legal, administrative, and management staff.

The CACC is an independent, quasi-judicial state agency. The CACC is composed of 12 voting members, appointed equally (4 each) by the Governor, the Senate Rules Committee, and the Speaker of the Assembly. Six of the voting members are locally elected officials and six are appointed from the public at large.

Three ex officio (non-voting) members represent the California Natural Resources Agency, the California State Transportation Agency, and the State Lands Commission.

SCOPE AND METHODOLOGY

The scope of the compliance review was limited to reviewing the CACC's examinations, appointments, EEO program, PSC's, mandated training, compensation and pay, leave,

² Repeat finding. The April 12, 2019, CACC's Compliance Review Report identified six performance appraisals were not provided at least once in each twelve-calendar month period.

and policy and processes³. The primary objective of the review was to determine if the CACC'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.

A cross-section of the CACC's examinations were selected for review to ensure that samples of various examination types, classifications, and levels were reviewed. The CRU examined the documentation that the CACC provided, which included examination plans, examination bulletins, job analyses, and scoring results. The CACC did not conduct any permanent withhold actions during the compliance review period.

A cross-section of the CACC's appointments were selected for review to ensure that samples of various appointment types, classifications, and levels were reviewed. The CRU examined the documentation that the CACC provided, which included Notice of Personnel Action (NOPA) forms, Request for Personnel Actions, vacancy postings, certification lists, transfer movement worksheets, employment history records, correspondence, and probation reports. The CACC did not conduct any unlawful appointment investigations during the compliance review period. Additionally, the CACC did not make any additional appointments during the compliance review period.

The CACC's appointments were also selected for review to ensure the CACC applied salary regulations accurately and correctly processed employees' compensation and pay. The CRU examined the documentation that the CACC provided, which included employees' employment and pay history and any other relevant documentation such as certifications, degrees, and/or the appointee's application. Additionally, the CRU reviewed specific documentation for the following personnel functions related to compensation and pay: hire above minimum (HAM) requests, bilingual pay, monthly pay differentials, alternate range movements, and out-of-class assignments. During the compliance review period, the CACC did not issue or authorize red circle rate requests or arduous pay.

The review of the CACC'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.

³ Timeframes of the compliance review varied depending on the area of review. Please refer to each section for specific compliance review timeframes.

The CACC's PSC's were also reviewed.⁴ It was beyond the scope of the compliance review to make conclusions as to whether the CACC's justifications for the contracts were legally sufficient. The review was limited to whether the CACC's practices, policies, and procedures relative to PSC's complied with procedural requirements.

The CACC's mandated training program was reviewed to ensure all employees required to file statements of economic interest were provided ethics training, and that all supervisors, managers, and those in Career Executive Assignments (CEA) were provided sexual harassment prevention training within statutory timelines.

The CRU reviewed the CACC'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 CACC's units in order to ensure they maintained accurate and timely leave accounting records. Part of this review also examined a cross-section of the CACC's employees' employment and pay history, state service records, and leave accrual histories to ensure employees with non-qualifying pay periods did not receive vacation/sick leave and/or annual leave accruals or state service credit. Additionally, the CRU reviewed a selection of the CACC employees who used Administrative Time Off (ATO) in order to ensure that ATO was appropriately administered. Further, the CRU reviewed a selection of the CACC's positive paid employees whose hours are tracked during the compliance review period in order to ensure that they adhered to procedural requirements.

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

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

FINDINGS AND RECOMMENDATIONS

⁴If 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.

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, subd. (a).) 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 with the department or a designated appointing power as directed by the examination announcement. (Gov. Code, § 18934, subd. (a)(1).) 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, September 1, 2020, through May 31, 2021, the CACC conducted six examinations. The CRU reviewed those six examinations, which are listed below:

| Classification | Exam Type | Exam Components | Final File Date | No. of Apps |
|---------------------------------------|-------------|--|-----------------|-------------|
| CEA C, Chief Deputy Director | CEA | Statement of Qualifications ⁵ | 12/7/2020 | 4 |
| Associate Business Management Analyst | Promotional | Education and Experience ⁶ | 10/30/2020 | 1 |

⁵ In a Statement of Qualifications examination, applicants submit a written summary of their qualifications and experience related to a published list of desired qualifications. Raters, typically subject matter experts, evaluate the responses according to a predetermined rating scale designed to assess their ability to perform in a job classification, assign scores and rank the competitors in a list.

⁶ In an Education and Experience examination, one or more raters reviews the applicants' Standard 678 application forms, and scores and ranks them according to a predetermined rating scale that may include years of relevant higher education, professional licenses or certifications, and/or years of relevant work experience.

| Classification | Exam Type | Exam Components | Final File Date | No. of Apps |
|-----------------------------|-----------|--|-----------------|-------------|
| Coastal Program Analyst I | Open | Qualification Appraisal Panel (QAP) ⁷ | Continuous | 112 |
| Coastal Program Analyst II | Open | QAP | Continuous | 18 |
| Coastal Program Analyst III | Open | QAP | Continuous | 21 |
| Coastal Program Manager | Open | QAP | Continuous | 21 |

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| IN COMPLIANCE | FINDING NO. 1 EXAMINATIONS COMPLIED WITH CIVIL SERVICE LAWS AND BOARD RULES |
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The CRU reviewed one CEA, one departmental promotional and four open examinations which the CACC administered in order to create eligible lists from which to make appointments. The CACC published and distributed examination bulletins containing the required information for all examinations. Applications received by the CACC were accepted prior to the final filing date. Applicants were 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. The CRU found no deficiencies in the examinations that the CACC conducted during the compliance review period.

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.) The hiring process for eligible candidates chosen for job interviews shall be competitive and be designed and administered to hire candidates who will be successful. (Cal. Code Regs., tit. 2, § 250, subd. (b).) Interviews shall be conducted using job-related criteria. (*Ibid.*) Persons selected for appointment

⁷ The Qualification Appraisal Panel 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.

shall satisfy the minimum qualifications of the classification to which he or she is appointed or have previously passed probation and achieved permanent status in that same classification. (Cal. Code Regs., tit. 2, § 250, subd. (d).) While persons selected for appointment may meet some or most of the preferred or desirable qualifications, they are not required to meet all the preferred or desirable qualifications. (*Ibid.*) This section does not apply to intra-agency job reassignments. (Cal. Code Regs., tit. 2, § 250, subd. (e).)

During the period under review, September 1, 2020, through May 31, 2021, the CACC made 46 appointments. The CRU reviewed 16 of those appointments, which are listed below:

| Classification | Appointment Type | Tenure | Time Base | No. of Appts. |
|---|--------------------|--------------|-----------|---------------|
| Administrative Assistant II | Certification List | Permanent | Full Time | 1 |
| Associate Business Management Analyst | Certification List | Permanent | Full Time | 1 |
| Associate Governmental Program Analyst | Certification List | Limited Term | Full Time | 1 |
| Coastal Program Analyst I | Certification List | Limited Term | Full Time | 1 |
| Coastal Program Analyst II | Certification List | Permanent | Full Time | 1 |
| Coastal Program Analyst III | Certification List | Permanent | Full Time | 1 |
| Coastal Program Manager | Certification List | Permanent | Full Time | 1 |
| Engineer, Civil | Certification List | Limited Term | Full Time | 1 |
| Environmental Scientist | Certification List | Permanent | Full Time | 1 |
| Management Services Technician | Certification List | Permanent | Full Time | 1 |
| Senior Accounting Officer (Specialist) | Certification List | Permanent | Full Time | 1 |
| Senior Environmental Scientist (Specialist) | Certification List | Permanent | Full Time | 1 |
| Staff Services Analyst (General) | Certification List | Permanent | Full Time | 1 |
| Management Services Technician | Reinstatement | Permanent | Full Time | 1 |
| Coastal Program Manager | Transfer | Permanent | Full Time | 1 |
| Environmental Scientist | Transfer | Permanent | Full Time | 1 |

| | |
|------------------------------|---|
| SEVERITY: SERIOUS | FINDING NO. 2 PROBATIONARY EVALUATIONS WERE NOT PROVIDED FOR ALL APPOINTMENTS REVIEWED |
|------------------------------|---|

Summary: The CACC did not provide 7 probationary reports of performance for 6 of the 16 appointments reviewed by the CRU, as reflected in the

table below. This is the second consecutive time this has been a finding for the CACC.

| Classification | Appointment Type | Number of Appointments | Total Number of Missing Probation Reports |
|--|--------------------|------------------------|---|
| Administrative Assistant II | Certification List | 1 | 1 |
| Coastal Program Analyst III | Certification List | 1 | 1 |
| Coastal Program Manager | Transfer | 1 | 1 |
| Environmental Scientist | Certification List | 1 | 1 |
| Management Services Technician | Certification List | 1 | 1 |
| Senior Accounting Officer (Specialist) | Certification List | 1 | 2 |

Criteria: The service of a probationary period is required when an employee enters or is promoted in the state civil service by permanent appointment from an employment list; upon reinstatement after a break in continuity of service resulting from a permanent separation; or after any other type of appointment situation not specifically excepted from the probationary period. (Gov. Code, § 19171.) During the probationary period, the appointing power shall evaluate the work and efficiency of a probationer in the manner and at such periods as the department rules may require. (Gov. Code, § 19172.) A report of the probationer’s performance shall be made to the employee at sufficiently frequent intervals to keep the employee adequately informed of progress on the job. (Cal. Code Regs., tit. 2, § 599.795.) A written appraisal of performance shall be made to the Department within 10 days after the end of each one-third portion of the probationary period. (*Ibid.*) The Board’s record retention rules require that appointing powers retain all probationary reports for five years from the date the record is created. (Cal. Code Regs., tit. 2, § 26, subd. (a)(3).)

Severity: Serious. The probationary period is the final step in the selection process to ensure that the individual selected can successfully perform the full scope of their job duties. Failing to use the probationary period to assist an employee in improving his or her

performance or terminating the appointment upon determination that the appointment is not a good job/person match is unfair to the employee and serves to erode the quality of state government.

Cause: These errors can be attributed to non-responsive supervisors. The CACC acknowledges that not all probationary employees received the required probationary reports. This is an ongoing challenge and since the audit period, the CACC has implemented an electronic tracking system to track missing reports and escalate the issue to appropriate management sooner.

Corrective Action: The CACC provides it has taken steps to achieve compliance in this area. Within 90 days of the date of this report, the CACC must submit to the SPB written documentation which demonstrates the corrections the department has implemented to ensure conformity with Government Code section 19172.

| | |
|--------------------------------|--|
| SEVERITY: TECHNICAL | FINDING No. 3 APPOINTMENT DOCUMENTATION WAS NOT KEPT FOR THE APPROPRIATE AMOUNT OF TIME |
|--------------------------------|--|

Summary: The CACC failed to retain personnel records such as NOPA's, duty statements, job announcements/bulletins, and applications. Of the 16 appointments reviewed, the CACC did not retain the following: 2 NOPAs, 1 job announcement/bulletin and 2 applications. Importantly, 2 of the 16 appointments reviewed were missing the hired applicant's application.

Criteria: As specified in section 26 of the Board's Regulations, appointing powers are required to retain records related to affirmative action, equal employment opportunity, examinations, merit, selection, and appointments for a minimum period of five years from the date the record is created. These records are required to be readily accessible and retained in an orderly and systematic manner. (Cal. Code Regs., tit. 2, § 26.)

Severity: Technical. Without documentation, the CRU could not verify if the appointments were properly conducted.

Cause: These errors can be attributed to the immediate statewide Covid-19 pandemic lockdown and the concurrent office relocation move. Post

lockdown, the CACC had to quickly switch to a combination of electronic documents while maintaining paper files. Five months later, the Headquarters Office was relocated. The CACC believes the missing documents will resurface as it continues to organize its files in the new office.

Corrective Action: Within 90 days of the date of this report, the CACC must submit to the SPB a written corrective action response which addresses the corrections the department will implement to ensure conformity with the record retention requirements of California Code of Regulations, title 2, section 26. Copies of relevant documentation demonstrating that the corrective action has been implemented must be included with the corrective action response.

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|-----------------------------------|---|
| SEVERITY: VERY SERIOUS | FINDING NO. 4 EQUAL EMPLOYMENT OPPORTUNITY QUESTIONNAIRES WERE NOT SEPARATED FROM APPLICATIONS |
|-----------------------------------|---|

Summary: Out of 16 appointments reviewed, one appointment file included one application where the EEO questionnaire was not separated from the STD 678 employment application.

Criteria: Government Code section 19704 makes it unlawful for a hiring department to require or permit any notation or entry to be made on any application indicating or in any way suggesting or pertaining to any protected category listed in Government Code section 12940, subdivision (a) (e.g., a person’s race, religious creed, color, national origin, ancestry, physical disability, mental disability, medical condition, genetic information, marital status, sex, gender, gender identity, gender expression, age, sexual orientation, or military and veteran status). Applicants for employment in state civil service are asked to voluntarily provide ethnic data about themselves where such data is determined by the CalHR to be necessary to an assessment of the ethnic and sex fairness of the selection process and to the planning and monitoring of affirmative action efforts. (Gov. Code, § 19705.) The EEO questionnaire of the state application form (STD. 678) states, “This questionnaire will be separated from the application prior to the examination and will not be used in any employment decisions.”

Severity: Very Serious. The applicants' protected classes were visible, subjecting the agency to potential liability.

Cause: Staff is adjusting to a variety of new ways in which applications are submitted and filed. The CACC recognizes the severity of inappropriate ethnicity information about candidates and acknowledges that one application was provided to the Compliance Review Unit with the ethnicity questionnaire attached. This was likely the result of providing a document as it was originally submitted by the applicant and not directly from the hiring file. The CACC stated the ethnicity questionnaire is separated before the hard copy application is scanned and transmitted to the hiring manager. Therefore, it is unlikely that hiring supervisors and managers were provided the ethnicity questionnaire as part of the hiring package.

Corrective Action: Within 90 days of the date of this report, the CACC must submit to the SPB a written corrective action response which addresses the corrections the department will implement to ensure that future EEO questionnaires are separated from all applications. Copies of relevant documentation demonstrating that the corrective action has been implemented must be included with the corrective action response.

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| SEVERITY: VERY SERIOUS | FINDING No. 5 UNLAWFUL APPOINTMENTS |
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Summary: The CACC failed to ensure that all appointments are based on merit, and comply with the laws and rules governing equitable administration of the civil service merit system.

The CACC made one appointment utilizing the certification list for the Associate Governmental Program Analyst. The hired candidate did not meet minimum qualifications for the classification.

Further, the CACC made one Environmental Scientist appointment in which a candidate, who did not have limited term eligibility, was hired for a limited term position, contrary to selection rules. Subsequently, the CACC appointed the employee to a permanent Environmental Scientist position approximately one month after the employee's permanent Environmental Scientist list eligibility expired.

Both Environmental Scientist appointments will be allowed to stand pursuant to California Code of Regulations section 243.2, as there was no evidence that either the department or the employee engaged in other than good faith in either appointment and more than one year has elapsed.

Criteria: Pursuant to Government Code section 18931, subdivision (a), the Board shall establish minimum qualifications for determining the fitness and qualifications of employees for each class of position. In accordance with California Code of Regulations, title 2, section 249.4 subdivision (a), appointing powers shall verify that the candidate satisfies the minimum qualifications of the classification before the candidate is appointed.

Article VII, Section 1, subdivision (b), of the California Constitution requires that permanent appointment and promotion shall be made under a general system based on merit ascertained by competitive examination.

Severity: Very Serious. An unlawful appointment provides the employee with an unfair and unearned appointment advantage over other employees whose appointments have been processed in compliance with the requirements of civil service law. Unlawful appointments which are not corrected also create appointment inconsistencies that jeopardize the equitable administration of the civil service merit system.

When an unlawful appointment is voided, the employee loses any tenure in the position, as well as seniority credits, eligibility to take promotional examinations, and compensation at the voided appointment level. If “bad faith” is determined on the part of the appointing power, civil or criminal action may be initiated. Disciplinary action may also be pursued against any officer or employee in a position of authority who directs any officer or employee to take action in violation of the appointment laws. If bad faith is determined on the part of the employee, the employee may be required to reimburse all compensation resulting from the unlawful appointment and may also be subject to disciplinary action.

Cause: This error can be attributed to misinterpretation of minimum qualifications for the Associate Governmental Program Analyst classification.

Corrective Action: Within 90 days of the date of this report, the CACC must submit to the SPB a written corrective action response which addresses the corrections the department will implement to demonstrate that the department will improve its hiring practices to ensure conformity with California Code of Regulations, title 2, section 249.4 subdivision (a). Copies of relevant documentation demonstrating that the corrective action has been implemented must be included with the corrective action response.

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).)

Pursuant to Government Code section 19795, subdivision (a), in a state agency with less than 500 employees, like the CACC, 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).)

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| IN COMPLIANCE | FINDING NO. 6 EQUAL EMPLOYMENT OPPORTUNITY PROGRAM COMPLIED WITH ALL CIVIL SERVICE LAWS AND BOARD RULES |
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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 CACC’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 CACC. The CACC also provided evidence of its efforts to promote EEO in its hiring and employment practices and to increase its hiring of persons with a disability.

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 May 31, 2021, the CACC had seven PSC’s that were in effect. The CRU reviewed one of those, which is listed below:

| Vendor | Services | Contract Date(s) | Contract Amount | Justification Identified? | Union Notification? |
|--------------------------------|---------------------------------------|----------------------|-----------------|---------------------------|---------------------|
| Language Testing International | Language proficiency testing services | 2/1/2021 – 1/31/2022 | \$420 | Yes | No |

| | |
|------------------------------|---|
| SEVERITY: SERIOUS | FINDING No. 7 UNION WAS NOT NOTIFIED OF PERSONAL SERVICES CONTRACT |
|------------------------------|---|

Summary: The CACC did not notify the union prior to entering into the one 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: This error can be attributed to human error and workload issues. Fiscal and Business Services Staff are responsible for notifying appropriate unions when executing personal services contracts. The CACC stated it is unclear whether the union was ever noticed, or if documentation of the notice was misfiled.

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's reviewed during this compliance review involved language proficiency testing services, functions which various rank-and-file civil service classifications may be able to perform. Within 90 days of the date of this report, the CACC 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.

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 supervisors 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 every two years. (Gov. Code, § 12950.1, subds. (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 CACC’s mandated training program that was in effect during the compliance review period, May 31, 2019, through May 31, 2021.

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| SEVERITY: VERY SERIOUS | FINDING NO. 8 ETHICS TRAINING WAS NOT PROVIDED FOR ALL FILERS |
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Summary: The CACC did not provide ethics training to 3 of 123 existing filers. In addition, the CACC did not provide ethics training to 6 of 27 new filers within six months of their appointment.

Criteria: New filers must be provided ethics training within six months of appointment. Existing filers must be trained at least once during each

consecutive period of two calendar years commencing on the first odd-numbered year thereafter. (Gov. Code, § 11146.3, subd. (b).)

Severity: Very Serious. The department does not ensure that its filers are aware of prohibitions related to their official position and influence.

Cause: These errors can be attributed to a lack of consequences for filers who miss the deadline. The CACC provides information regarding the ethics training requirements to all employees who are required to file. Staff follow up with employees prior to the deadline but are not always successful in obtaining certificates of completion timely.

Corrective Action: Within 90 days of this report, the CACC must submit to the SPB a written correction action response which addresses the corrections the department will implement to demonstrate conformity with Government Code section 11146.3. Copies of relevant documentation demonstrating that the corrective action has been implemented must be included with the corrective action response.

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| SEVERITY: VERY SERIOUS | FINDING NO. 9 SEXUAL HARASSMENT PREVENTION TRAINING WAS NOT PROVIDED FOR ALL SUPERVISORS |
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Summary: The CACC did not provide sexual harassment prevention training to 1 of 45 existing supervisors every 2 years.

Criteria: Each department must provide its supervisors two hours of sexual harassment prevention training every two years. New supervisors must be provided sexual harassment prevention training within six months of appointment. (Gov. Code, § 12950.1, subds. (a) and (b); Gov. Code, § 19995.4.)

Severity: Very Serious. The department does not ensure that all new and existing supervisors are properly trained to respond to sexual harassment or unwelcome sexual advances, requests for sexual favors, and other verbal or physical harassment of a sexual nature. This limits the department's ability to retain a quality workforce, impacts employee morale and productivity, and subjects the department to litigation.

Cause: One existing supervisor was unable to complete the sexual harassment prevention training by the deadline. The CACC places a high priority on preventing harassment or bullying in the workplace and has provided training not only to supervisors, but to every employee. Announcements are made during staff meetings regarding the importance of this legally mandated training. Additionally, supervisors are sent reminders of due dates via emails throughout the year.

Corrective Action: Within 90 days of the date of this report, the CACC must submit to the SPB a written corrective action response which addresses the corrections the department will implement to ensure that supervisors are provided sexual harassment prevention training in accordance with Government Code section 12950.1. Copies of relevant documentation demonstrating that the corrective action has been implemented must be included with the corrective action response.

Compensation and Pay

Salary Determination

The pay plan for state civil service consists of salary ranges and steps established by CalHR. (Cal. Code Regs., tit. 2, § 599.666.) Several salary rules dictate how departments calculate and determine an employee's salary rate⁸ upon appointment depending on the appointment type, the employee's state employment and pay history, and tenure.

Typically, agencies appoint employees to the minimum rate of the salary range for the class. Special provisions for appointments above the minimum exist to meet special recruitment needs and to accommodate employees who transfer into a class from another civil service class and are already receiving salaries above the minimum.

During the period under review, September 1, 2020, through May 31, 2021, the CACC made 46 appointments. The CRU reviewed 13 of those appointments to determine if the CACC applied salary regulations accurately and correctly processed employees' compensation, which are listed below:

⁸ "Rate" is any one of the salary rates in the resolution by CalHR which establishes the salary ranges and steps of the Pay Plan (Cal. Code Regs., tit. 2, section 599.666).

| Classification | Appointment Type | Tenure | Time Base | Salary (Monthly Rate) |
|---|--------------------|--------------|-----------|-----------------------|
| Associate Business Management Analyst | Certification List | Permanent | Full Time | \$5,628 |
| Associate Governmental Program Analyst | Certification List | Limited Term | Full Time | \$5,149 |
| Coastal Program Analyst I | Certification List | Limited Term | Full Time | \$4,496 |
| Coastal Program Analyst II | Certification List | Permanent | Full Time | \$5,604 |
| Coastal Program Analyst III | Certification List | Permanent | Full Time | \$6,201 |
| Coastal Program Manager | Certification List | Permanent | Full Time | \$7,988 |
| Environmental Scientist | Certification List | Permanent | Full Time | \$5,160 |
| Management Services Technician | Certification List | Permanent | Full Time | \$3,298 |
| Senior Environmental Scientist (Specialist) | Certification List | Permanent | Full Time | \$6,857 |
| Staff Services Analyst (General) | Certification List | Permanent | Full Time | \$4,339 |
| Management Services Technician | Reinstatement | Permanent | Full Time | \$3,640 |
| Coastal Program Manager | Transfer | Permanent | Full Time | \$8,352 |
| Environmental Scientist | Transfer | Permanent | Full Time | \$6,857 |

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| IN COMPLIANCE | FINDING NO. 10 | SALARY DETERMINATIONS COMPLIED WITH CIVIL SERVICE LAWS, BOARD RULES, AND CALHR POLICIES AND GUIDELINES |
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The CRU found no deficiencies in the salary determinations that were reviewed. The CACC appropriately calculated and keyed the salaries for each appointment and correctly determined employees' anniversary dates ensuring that subsequent merit salary adjustments will satisfy civil service laws, Board rules and CalHR policies and guidelines.

Alternate Range Movement Salary Determination (within same classification)

If an employee qualifies under established criteria and moves from one alternate range to another alternate range of a class, the employee shall receive an increase or a decrease equivalent to the total of the range differential between the maximum salary rates of the alternate ranges. (Cal. Code Regs., tit. 2, § 599.681.) However, in many instances, the CalHR provides salary rules departments must use when employees move between alternate ranges. These rules are described in the alternate range criteria. (CalHR Pay Scales). When no salary rule or method is cited in the alternate range criteria, departments must default to Rule 599.681.

During the period under review, September 1, 2020, through May 31, 2021, the CACC employees made two alternate range movements within a classification. The CRU reviewed those two alternate range movements to determine if the CACC applied salary regulations accurately and correctly processed each employee’s compensation, which are listed below:

| Classification | Prior Range | Current Range | Time Base | Salary (Monthly Rate) |
|----------------------------------|-------------|---------------|-----------|-----------------------|
| Attorney | Range B | Range C | Full Time | \$6,946 |
| Information Technology Associate | Range C | Range D | Full Time | \$6,327 |

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| IN COMPLIANCE | FINDING NO. 11 | ALTERNATIVE RANGE MOVEMENTS COMPLIED WITH CIVIL SERVICE LAWS, BOARD RULES, AND CALHR POLICIES AND GUIDELINES |
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The CRU determined that the alternate range movements the CACC made during the compliance review period, satisfied civil service laws, Board rules and CalHR policies and guidelines.

Hiring Above Minimum Requests

The CalHR may authorize payment at any step above the minimum limit to classes or positions to meet recruiting problems, or to obtain a person who has extraordinary qualifications. (Gov. Code, § 19836.) For all employees new to state service, departments are delegated to approve HAMs for extraordinary qualifications. (Human Resources Manual Section 1707.) Appointing authorities may request HAMs for current state employees with extraordinary qualifications. (*Ibid.*) Delegated HAM authority does not apply to current state employees. (*Ibid.*)

Extraordinary qualifications may provide expertise in a particular area of a department’s program. (*Ibid.*) This expertise should be well beyond the minimum qualifications of the class. (*Ibid.*) Unique talent, ability or skill as demonstrated by previous job experience may also constitute extraordinary qualifications. (*Ibid.*) The scope and depth of such experience should be more significant than its length. (*Ibid.*) The degree to which a candidate exceeds minimum qualifications should be a guiding factor, rather than a determining one. (*Ibid.*) The qualifications and hiring rates of state employees already in the same class should be carefully considered, since questions of salary equity may arise if new higher entry rates differ from previous ones. (*Ibid.*) Recruitment difficulty is a factor

to the extent that a specific extraordinary skill should be difficult to recruit, even though some applicants are qualified in the general skills of the class. (*Ibid.*)

If the provisions of this section are in conflict with the provisions of a memorandum of understanding reached pursuant to Government Code section 3517.5, the memorandum of understanding shall be controlling without further legislative action.⁹ (Gov. Code, § 19836, subd. (b).)

Appointing authorities may request and approve HAMs for former legislative employees who are appointed to a civil service class and received eligibility for appointment pursuant to Government Code section 18990. (Human Resources Manual Section 1707.) The salary received upon appointment to civil service shall be in accordance with the salary rules specified in the California Code of Regulations. (*Ibid.*) A salary determination is completed comparing the maximum salary rate of the former legislative class and the maximum salary rate of the civil service class to determine applicable salary and anniversary regulation. (*Ibid.*) Typically, the legislative employees are compensated at a higher rate of pay; therefore, they will be allowed to retain the rate they last received, not to exceed the maximum of the civil service class. (*Ibid.*)

Appointing authorities may request/approve HAMs for former exempt employees appointed to a civil service class. (Human Resources Manual Section 1707.) The salary received upon appointment to civil service shall be competitive with the employee's salary in the exempt appointment. (*Ibid.*) For example, an employee appointed to a civil service class which is preceded by an exempt appointment may be appointed at a salary rate comparable to the exempt appointment up to the maximum of the salary range for the civil service class. (*Ibid.*)

During the period under review, September 1, 2020, through May 31, 2021, the CACC authorized eight HAM requests. The CRU reviewed six of those authorized HAM requests to determine if the CACC correctly applied Government Code section 19836 and appropriately verified, approved and documented candidates' extraordinary qualifications, which are listed below:

⁹ Except that if the provisions of the memorandum of understanding requires the expenditure of funds, the provisions shall not become effective unless approved by the Legislature in the annual Budget Act.

| Classification | Appointment Type | Status | Salary Range | Salary (Monthly Rate) |
|--|------------------|--------------|-------------------|-----------------------|
| Administrative Assistant II | New to the State | Permanent | \$5,149 – \$6,446 | \$6,446 |
| Associate Governmental Program Analyst | New to the State | Limited Term | \$5,149 – \$6,446 | \$5,676 |
| Coastal Program Analyst I | New to the State | Limited Term | \$3,635 – \$4,130 | \$3,750 |
| Engineer, Civil | New to the State | Limited Term | \$5,540 – \$6,606 | \$7,344 |
| Environmental Scientist | New to the State | Limited Term | \$3,851 – \$4,768 | \$7,364 |
| Management Services Technician | New to the State | Permanent | \$3,054 – \$3,825 | \$4,132 |

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| IN COMPLIANCE | FINDING NO. 12 | HIRE ABOVE MINIMUM REQUESTS COMPLIED WITH CIVIL SERVICE LAWS, BOARD RULES, AND CALHR POLICIES AND GUIDELINES |
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The CRU found that the HAM requests the CACC made during the compliance review period, satisfied civil service laws, Board rules and CalHR policies and guidelines.

Bilingual Pay

A certified bilingual position is a position where the incumbent uses bilingual skills on a continuous basis and averages 10 percent or more of the total time worked. According to the Pay Differential 14, the 10 percent time standard is calculated based on the time spent conversing, interpreting, or transcribing in a second language and time spent on closely related activities performed directly in conjunction with the specific bilingual transactions.

Typically, the department must review the position duty statement to confirm the percentage of time performing bilingual skills and verify the monthly pay differential is granted to a certified bilingual employee in a designated bilingual position. The position, not the employee, receives the bilingual designation and the department must verify that the incumbent successfully participated in an Oral Fluency Examination prior to issuing the additional pay.

During the period under review, September 1, 2020, through May 31, 2021, the CACC issued bilingual pay to two employees. The CRU reviewed those two bilingual pay

authorizations to ensure compliance with applicable CalHR policies and guidelines. These are listed below:

| Classification | Bargaining Unit | Time Base | No. of Appts. |
|--|-----------------|-----------|---------------|
| Associate Governmental Program Analyst | R01 | Full Time | 1 |
| Coastal Program Analyst II | R01 | Full Time | 1 |

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| SEVERITY: VERY SERIOUS | FINDING NO. 13 | INCORRECT AUTHORIZATION OF BILINGUAL PAY |
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Summary: The CRU found one error in the CACC’s authorization of bilingual pay:

| Classification | Description of Finding(s) | Criteria |
|----------------------------|---|--|
| Coastal Program Analyst II | Department failed to supply supporting documentation demonstrating the need for bilingual services. | Government Code section 7296 and Pay Differential 14 |

Criteria: For any state agency, a “qualified” bilingual employee, person, or interpreter is someone who CalHR has tested and certified, someone who was tested and certified by a state agency or other approved testing authority, and/or someone who has met the testing or certification standards for outside or contract interpreters as proficient in both the English language and the non-English language to be used. (Gov. Code, § 7296, subd. (a)(3).) An individual must be in a position that has been certified by the department as a position which requires the use of bilingual skills on a continuing basis averaging 10 percent of the time spent either conversing, interpreting or transcribing in a second language and time spent on closely related activities performed directly in conjunction with specific bilingual transactions. (Pay Differential 14.)

Severity: Very Serious. Failure to comply with the state civil service pay plan by incorrectly applying compensation rules in accordance with CalHR’s policies and guidelines results in civil service employees receiving incorrect and/or inappropriate pay.

Cause: This error is due to inexperienced staff who had no prior experience authorizing bilingual pay. Therefore, the CACC was unaware of the correct form that was required to document the authorization.

SPB Reply: While there is a form to document the need for a bilingual employee, the CACC did not provide that or any other documentation which would support the need for an employee with bilingual skills.

Corrective Action: Within 90 days of the date of this report, the CACC 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 7296. Copies of relevant documentation demonstrating that the corrective action has been implemented must be included with the corrective action response.

Pay Differentials

A pay differential is special additional pay recognizing unusual competencies, circumstances, or working conditions applying to some or all incumbents in select classes. A pay differential may be appropriate in those instances when a subgroup of positions within the overall job class might have unusual circumstances, competencies, or working conditions that distinguish these positions from other positions in the same class. Typically, pay differentials are based on qualifying pay criteria such as: work locations or shift assignments; professional or educational certification; temporary responsibilities; special licenses, skills or training; performance-based pay; incentive-based pay; or, recruitment and retention. (Classification and Pay Manual Section 230.)

California State Civil Service Pay Scales Section 14 describes the qualifying pay criteria for the majority of pay differentials. However, some of the alternate range criteria in the pay scales function as pay differentials. Generally, departments issuing pay differentials should, in order to justify the additional pay, document the following: the effective date of the pay differential, the collective bargaining unit identifier, the classification applicable to the salary rate and conditions along with the specific criteria, and any relevant documentation to verify the employee meets the criteria.

During the period under review, September 1, 2020, through May 31, 2021, the CACC issued pay differentials¹⁰ to three employees. The CRU reviewed those three pay

¹⁰ For the purposes of CRU's review, only monthly pay differentials were selected for review at this time.

differentials to ensure compliance with applicable CalHR policies and guidelines. These are listed below:

| Classification | Pay Differential | Monthly Amount |
|----------------------------------|------------------|----------------|
| Information Technology Associate | 13 | 5% |
| Information Technology Associate | 13 | 5% |
| Information Technology Associate | 13 | 5% |

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| IN COMPLIANCE | FINDING NO. 14 | PAY DIFFERENTIAL AUTHORIZATIONS COMPLIED WITH CIVIL SERVICE LAWS, BOARD RULES, AND CALHR POLICIES AND GUIDELINES |
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The CRU found no deficiencies in the pay differentials that the CACC authorized during the compliance review period. Pay differentials were issued correctly in recognition of unusual competencies, circumstances, or working conditions in accordance with applicable rules and guidelines.

Out-of-Class Assignments and Pay

For excluded¹¹ and most rank and file employees, out-of-class (OOC) work is defined as performing, more than 50 percent of the time, the full range of duties and responsibilities allocated to an existing class and not allocated to the class in which the person has a current, legal appointment. (Cal. Code Regs., tit. 2, § 599.810, subd. (a)(2).) A higher classification is one with a salary range maximum that is any amount higher than the salary range maximum of the classification to which the employee is appointed. (Cal. Code Regs., tit. 2, § 599.810, subd. (a)(3).)

According to the Classification and Pay Guide, OOC assignments should only be used as a last resort to accommodate temporary staffing needs. All civil service alternatives should be explored first before using OOC assignments. However, certain MOU provisions and the California Code of Regulations, title 2, section 599.810 allow for short-term OOC assignments to meet temporary staffing needs. Should OOC work become necessary, the assignment would be made pursuant to the applicable MOU provisions or salary regulations. Before assigning the OOC work, the department should have a plan to correct the situation before the time period outlined in applicable law, policy or MOU expires. (Classification and Pay Guide Section 375.)

¹¹ “Excluded employee” means an employee as defined in Government Code section 3527, subdivision (b) (Ralph C. Dills Act) except those excluded employees who are designated managerial pursuant to Government Code section 18801.1.

During the period under review, September 1, 2020, through May 31, 2021, the CACC issued OOC pay to two employees. The CRU reviewed those two OOC assignments to ensure compliance with applicable MOU provisions, salary regulations, and CalHR policies and guidelines. These are listed below:

| Classification | Bargaining Unit | Out-of-Class Classification | Time Frame |
|--------------------------------|-----------------|--|-----------------------|
| Legal Secretary | R04 | Associate Governmental Program Analyst | 8/11/2020 – 7/12/2021 |
| Management Services Technician | R01 | Staff Services Analyst (General) | 6/8/2020 – 10/12/2020 |

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| IN COMPLIANCE | FINDING NO. 15 | OUT OF CLASS PAY AUTHORIZATIONS COMPLIED WITH CIVIL SERVICE LAWS, BOARD RULES, AND CALHR POLICIES AND GUIDELINES |
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The CRU found no deficiencies in the OOC pay assignments that the CACC authorized during the compliance review period. OOC pay was issued appropriately to employees performing, more than 50 percent of the time, the full range of duties and responsibilities allocated to an existing class and not allocated to the class in which the person has a current, legal appointment.

Leave

Positive Paid Employees

Actual Time Worked (ATW) is a method that can be used to keep track of a Temporary Authorization Utilization (TAU) employee's time to ensure that the Constitutional limit of 9 months in any 12 consecutive months is not exceeded. The ATW method of counting time is used in order to continue the employment status for an employee until the completion of an examination, for seasonal type work, while attending school, or for consulting services.

An employee is appointed TAU-ATW when he/she is not expected to work all of the working days of a month. When counting 189 days, every day worked, including partial days¹² worked and paid absences¹³, are counted. (Cal. Code Regs., tit. 2, § 265.1, subd. (b).) The hours worked in one day is not limited by this rule. (*Ibid.*) The 12-consecutive

¹² For example, two hours or ten hours count as one day.

¹³ For example, vacation, sick leave, compensating time off, etc.

month timeframe begins by counting the first pay period worked as the first month of the 12-consecutive month timeframe. (*Ibid.*) The employee shall serve no longer than 189 days in a 12 consecutive month period. (*Ibid.*) A new 189-days working limit in a 12-consecutive month timeframe may begin in the month immediately following the month that marks the end of the previous 12-consecutive month timeframe. (*Ibid.*)

It is an ATW appointment because the employee does not work each workday of the month, and it might become desirable or necessary for the employee to work beyond nine calendar months. The appointing power shall monitor and control the days worked to ensure the limitations set forth are not exceeded. (Cal. Code Regs., tit. 2, § 265.1, subd. (f).)

For student assistants, graduate student assistants, youth aides, and seasonal classifications a maximum work-time limit of 1500 hours within 12 consecutive months may be used rather than the 189-day calculation. (Cal. Code Regs., tit. 2, § 265.1, subd. (d).)

Generally, permanent intermittent employees may work up to 1500 hours in any calendar year. (Applicable Bargaining Unit Agreements.) However, Bargaining Unit 6 employees may work up to 2000 hours in any calendar year.

Additionally, according to Government Code section 21224, retired annuitant appointments shall not exceed a maximum of 960 hours in any fiscal year (July-June), regardless of the number of state employers, without reinstatement, loss or interruption of benefits.

At the time of the review, the CACC had five positive paid employees whose hours were tracked. The CRU reviewed those five positive paid appointments to ensure compliance with applicable laws, regulations, policies and guidelines, which are listed below:

| Classification | Tenure | Time Frame | Time Worked |
|----------------------------------|-------------------|--------------|-------------|
| Chief Counsel, CEA | Retired Annuitant | Intermittent | 12 hours |
| Coastal Program Analyst II | Permanent | Intermittent | 438 hours |
| Coastal Program Analyst III | Retired Annuitant | Intermittent | 232 hours |
| Environmental Program Manager II | Retired Annuitant | Intermittent | 332.5 hours |
| Management Services Technician | Retired Annuitant | Intermittent | 177 hours |

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| IN COMPLIANCE | FINDING NO. 16 | POSITIVE PAID EMPLOYEES' TRACKED HOURS COMPLIED WITH CIVIL SERVICE LAWS, BOARD RULES, AND/OR CALHR POLICIES AND GUIDELINES |
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The CRU found no deficiencies in the positive paid employees reviewed during the compliance review period. The CACC provided sufficient justification and adhered to applicable laws, regulations and CalHR policy and guidelines for positive paid employees.

Administrative Time Off

ATO is a form of paid administrative leave status initiated by appointing authorities for a variety of reasons. (Human Resources Manual Section 2121.) Most often, ATO is used when an employee cannot come to work because of a pending investigation, fitness for duty evaluation, or when work facilities are unavailable. (*Ibid.*) ATO can also be granted when employees need time off for reasons such as blood or organ donation, extreme weather preventing safe travel to work, states of emergency, voting, and when employees need time off to attend special events. (*Ibid.*)

During the period under review, March 1, 2020, through March 1, 2021, the CACC placed 14 employees on ATO. The CRU reviewed 12 of these ATO appointments to ensure compliance with applicable laws, regulations, and CalHR policy and guidelines, which are listed below:

| Classification | Time Frame | Amount of Time on ATO |
|-----------------------------------|-------------------------|-----------------------|
| Attorney III | 10/1/2020 – 2/1/2020 | 20 hours |
| Attorney III | 8/1/2020 – 11/1/2020 | 40 hours |
| Coastal Program Analyst II | 9/1/2020 – 11/1/2020 | 52.6 hours |
| Coastal Program Analyst II | 9/24/2020 – 9/25/2020 | 12 hours |
| Coastal Program Analyst II | 11/1/2020 – 2/31/2020 | 152 hours |
| Coastal Program Manager | 8/1/2020 – 3/4/2021 | 64 hours |
| Coastal Program Manager | 1/7/2021 – 1/15/2021 | 56 hours |
| Environmental Scientist | 8/19/2020 – 8/31/2020 | 44 hours |
| Environmental Scientist | 12/10/2020 – 12/24/2020 | 12 hours |
| Information Officer III CEA | 9/1/2020 | 4 hours |
| Management Services Technician | 8/20/2020 | 8 hours |
| Supervising Environmental Planner | 8/20/2020 – 8/27/2020 | 48 hours |

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| IN COMPLIANCE | FINDING NO. 17 | ADMINISTRATIVE TIME OFF AUTHORIZATIONS COMPLIED WITH CIVIL SERVICE LAWS, BOARD RULES, AND/OR CALHR POLICIES AND GUIDELINES |
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The CRU found no deficiencies in the ATO transactions reviewed during the compliance review period. The CACC provided the proper documentation justifying the use of ATO and adhered to applicable laws, regulations and CalHR policy and guidelines.

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, December 2, 2020, through March 1, 2021, the CACC reported 7 units comprised of 176 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 |
|------------------------|---------------|---------------------|-------------------------------|------------------------------|
| December 2020 | 104 | 14 | 14 | 0 |
| January 2021 | 105 | 16 | 16 | 0 |
| February 2021 | 106 | 23 | 23 | 0 |

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| IN COMPLIANCE | FINDING NO. 18 | LEAVE AUDITING AND TIMEKEEPING COMPLIED WITH CIVIL SERVICE LAWS, BOARD RULES, AND/OR CALHR POLICIES AND GUIDELINES |
|----------------------|-----------------------|---|

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 CACC 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.

State Service

The state recognizes two different types of absences while an employee is on pay status; paid or unpaid. The unpaid absences can affect whether a pay period is considered to be a qualifying or non-qualifying pay period for state service and leave accruals.

Generally, an employee who has 11 or more working days of service in a monthly pay period shall be considered to have a complete month, a month of service, or continuous service.¹⁴ (Cal. Code Regs., tit. 2, § 599.608.) Full time and fractional employees who work less than 11 working days in a pay period will have a non-qualifying month and will not receive state service or leave accruals for that month.

Hourly or daily rate employees working at a department in which the full-time workweek is 40 hours who earn the equivalent of 160 hours of service in a monthly pay period or accumulated pay periods shall be considered to have a complete month, a month of service, or continuous service. (Cal. Code Regs., tit. 2, § 599.609.)

For each qualifying monthly pay period, the employee shall be allowed credit for vacation with pay on the first day of the following monthly pay period. (Cal. Code Regs., tit. 2, § 599.608.) When computing months of total state service to determine a change in the monthly credit for vacation with pay, only qualifying monthly pay periods of service before and after breaks in service shall be counted. (Cal. Code Regs., tit. 2, § 599.739.) Portions of non-qualifying monthly pay periods of service shall not be counted nor accumulated. (*Ibid.*) On the first day following a qualifying monthly pay period, excluded employees¹⁵ shall be allowed credit for annual leave with pay. (Cal. Code Regs., tit. 2, § 599.752.)

¹⁴ Government Code sections 19143, 19849.9, 19856.1, 19858.1, 19859, 19861, 19863.1, and 19997.4 and California Code of Regulations, title 2, sections 599.609, 599.682, 599.683, 599.685, 599.687, 599.737, 599.738, 599.739, 599.740, 599.746, 599.747, 599.776.1, 599.787, 599.791, 599.840 and 599.843 provide further clarification for calculating state time.

¹⁵ As identified in Government Code sections 19858.3, subdivisions (a), (b), or (c), or as it applies to employees excluded from the definition of state employee under Government Code section 3513, subdivision (c), or California Code of Regulations, title 2, section 599.752, subdivision (a), and appointees of the Governor as designated by the Department and not subject to section 599.752.1.

Permanent intermittent employees also earn leave credits on the pay period following the accumulated accrual of 160 hours worked. Hours worked in excess of 160 hours in a monthly pay period, are not counted or accumulated towards leave credits.

During the period under review, September 1, 2020, through May 31, 2021, the CACC had two employees with non-qualifying pay period transactions. The CRU reviewed three transactions to ensure compliance with applicable laws, regulations and CalHR policy and guidelines, which are listed below:

| Type of Transaction | Time base | Number Reviewed |
|---------------------------|-----------|-----------------|
| Non-Qualifying Pay Period | Full Time | 1 |
| Non-Qualifying Pay Period | 3/5 Time | 2 |

| | | |
|----------------------|---------------------------|---|
| IN COMPLIANCE | FINDING NO. 19 | SERVICE AND LEAVE TRANSACTIONS COMPLIED WITH CIVIL SERVICE LAWS, BOARD RULES, AND/OR CALHR POLICIES AND GUIDELINES |
|----------------------|---------------------------|---|

The CRU determined that the CACC ensured employees with non-qualifying pay periods did not receive vacation/sick leave, annual leave, and/or state service accruals. The CRU found no deficiencies in this area.

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. 20 | NEPOTISM POLICY COMPLIED WITH CIVIL SERVICE LAWS, BOARD RULES, AND/OR CALHR POLICIES AND GUIDELINES |
|----------------------|---------------------------------|--|

The CRU verified that the policy was disseminated to all staff and emphasized the CACC’s commitment to the state policy of recruiting, hiring and assigning employees on the basis of merit. Additionally, the CACC’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 (State Fund) office to discuss the status of volunteers. (*Ibid.*)

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

| | | |
|----------------------|---------------------------------|--|
| IN COMPLIANCE | FINDING NO. 21 | WORKERS’ COMPENSATION PROCESS COMPLIED WITH CIVIL SERVICE LAWS, BOARD RULES, AND/OR CALHR POLICIES AND GUIDELINES |
|----------------------|---------------------------------|--|

The CRU verified that the CACC provides notice to their employees to inform them of their rights and responsibilities under California’s Workers’ Compensation Law. Furthermore, the CRU verified that when the CACC received workers’ compensation

claims, they properly provided claim forms within one working day of notice or knowledge of injury.

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 46 permanent CACC employees to ensure that the department was conducting performance appraisals on an annual basis in accordance with applicable laws, regulations, policies and guidelines. These are listed below:

| Classification | Date Performance Appraisals Due |
|--|---------------------------------|
| Associate Governmental Program Analyst | 12/31/2020 |
| Associate Governmental Program Analyst | 8/31/2020 |
| Associate Governmental Program Analyst | 6/30/2020 |
| Associate Personnel Analyst | 7/31/2020 |
| Attorney III | 5/1/2020 |
| Attorney III | 9/19/2020 |
| Coastal Program Analyst II | 12/31/2020 |
| Coastal Program Analyst II | 11/30/2020 |
| Coastal Program Analyst II | 12/31/2020 |
| Coastal Program Analyst II | 8/31/2020 |
| Coastal Program Analyst II | 3/1/2020 |
| Coastal Program Analyst II | 3/31/2020 |
| Coastal Program Analyst II | 5/1/2020 |
| Coastal Program Analyst II | 5/1/2020 |
| Coastal Program Analyst II | 3/1/2020 |
| Coastal Program Analyst II | 12/31/2020 |
| Coastal Program Analyst II | 5/1/2020 |
| Coastal Program Analyst II | 12/31/2020 |
| Coastal Program Analyst II | 12/31/2020 |
| Coastal Program Analyst III | 12/31/2020 |
| Coastal Program Analyst III | 10/25/2020 |

| Classification | Date Performance Appraisals Due |
|--|---------------------------------|
| Coastal Program Analyst III | 12/31/2020 |
| Coastal Program Analyst III | 2/29/2020 |
| Coastal Program Analyst III | 5/1/2020 |
| Coastal Program Analyst III | 10/31/2020 |
| Coastal Program Analyst III | 12/31/2020 |
| Coastal Program Manager | 6/28/2020 |
| Coastal Program Manager | 7/30/2020 |
| Coastal Program Manager | 12/1/2020 |
| Coastal Program Manager | 8/30/2020 |
| Coastal Program Manager | 12/31/2020 |
| Environmental Program Manager I/Sup | 7/15/2020 |
| Environmental Scientist | 7/31/2020 |
| Information Officer II | 5/31/2020 |
| Information Technology Associate | 7/1/2020 |
| Information Technology Supervisor II | 11/8/2020 |
| Management Services Technician | 10/30/2020 |
| Management Services Technician | 10/30/2020 |
| Personnel Supervisor II | 8/1/2020 |
| Research Data Supervisor II | 3/1/2020 |
| Senior Accounting Officer (Specialist) | 7/1/2020 |
| Senior Engineer, San Francisco Bay Conservation and Development CACC | 8/31/2020 |
| Senior Environmental Scientist (Specialist) | 8/1/2020 |
| Senior Environmental Scientist (Specialist) | 4/1/2020 |
| Staff Services Analyst (General) | 5/22/2020 |
| Staff Services Analyst (General) | 8/1/2020 |

| | | |
|------------------------------|---------------------------|--|
| SEVERITY: SERIOUS | FINDING NO. 22 | PERFORMANCE APPRAISALS WERE NOT PROVIDED TO ALL EMPLOYEES |
|------------------------------|---------------------------|--|

Summary: The CACC did not provide annual performance appraisals to 22 of 46 employees reviewed after the completion of the employee's probationary period. This is the second consecutive time this has been a finding for the CACC.

Criteria: Appointing powers shall prepare performance reports and keep them on file as prescribed by department rule. (Gov. Code, § 19992.2, subd. (a).) Each supervisor, as designated by the appointing power, shall make an appraisal in writing and shall discuss with the employee overall work performance at least once in each twelve calendar months following the end of the employee's probationary period. (Cal. Code Regs., tit. 2, § 599.798.)

Severity: Serious. The department does not ensure that all of its employees are apprised of work performance issues and/or goals in a systematic manner.

Cause: CACC's Human Resources has provided training and resources to managers; but, has been unable to secure compliance. Human Resources' staff continue to work with management to emphasize the importance of mandatory performance appraisals providing notifications via emails and announcements during management meetings.

Corrective Action: Within 90 days of the date of this report, the CACC 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 19992.2 and California Code of Regulations, title 2, section 599.798. Copies of relevant documentation demonstrating that the corrective action has been implemented must be included with the corrective action response.

DEPARTMENTAL RESPONSE

The CACC's response is attached as Attachment 1.

SPB REPLY

Based upon the CACC's written response, the CACC 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.

CALIFORNIA COASTAL COMMISSION
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Suzanne M. Ambrose
Executive Officer
State Personnel Board
801 Capital Mall
Sacramento, CA 95818

December 10, 2021

Subject: Response to State Personnel Board draft Compliance Review Report

Dear Ms. Ambrose:

The California Coastal Commission would like to thank the State Personnel Board staff for their professionalism and thoroughness in completing the compliance review. We reviewed the November 2021 draft report and provide the following response:

Finding No. 2 Probationary evaluations were not provided to all appointments reviewed.

Response: The Coastal Commission acknowledges that not all probationary employees received the required probationary reports. We have found this to be an on-going challenge and since the audit period, we have implemented an electronic tracking system to make it easier to track missing reports and escalate the issue to appropriate management.

Cause: The error can be attributed to non-responsive supervisors.

Finding No. 3 Appointment documentation was not kept for the appropriate amount of time.

Response: The Coastal Commission was not able to locate some of the documents requested by the Compliance Review Unit. During the period under review, the COVID pandemic caused the Coastal Commission to lockdown all offices without warning. The Coastal Commission had to quickly switch to a combination of electronic documents while maintaining paper files. Then five months later, the Headquarters Office was relocated, which entailed boxing all records and documents while continuing strict social distancing guidelines and then unpacking and refiling the entire Human Resources office. We believe that the missing documents will surface as we continue to organize our files in the new office.

Cause: The error can be attributed to the pandemic lock down and concurrent office move.

Finding No. 4 Equal Opportunity Questionnaires were not separated from applications.

Response: The Coastal Commission recognizes the severity of inappropriately providing ethnicity information about candidates and acknowledge that an application was provided to the Compliance Review Unit with the ethnicity questionnaire attached. This was likely the result of providing a document as it was originally submitted by the applicant and not directly from the hiring file. Hiring supervisors and managers were provided with scanned versions of the applications that were received as hardcopies and it is unlikely that the ethnicity questionnaire was scanned. Going forward, the Coastal Commission will redouble efforts to prevent any such errors.

Cause: Staff is adjusting to a variety of new ways in which applications are submitted and filed.

Finding No. 5 Unlawful Appointments

Response: Human Resources staff reviewed work experience on an employment application and determined that the experience described met the Minimum Qualifications of the Associate Governmental Project Analyst classification. SPB informed us that we had misinterpreted the Minimum Qualifications. The Coastal Commission has already complied with the Corrective Action Plan to void the unlawful appointment.

Cause: Misinterpretation of Minimum Qualifications.

Finding No. 7 Union was not notified of personal services contract.

Response: Fiscal and Business Services staff is responsible for notifying appropriate unions when executing personal services contracts. It is unclear whether the union was never noticed, or if documentation of the notice was misfiled.

Cause: This error can be attributed to human error and workload issues.

Finding No. 8 Ethics training was not provided to all filers.

Response: The Coastal Commission provides information regarding the ethics training requirements to all employees who are required to file. Human Resources staff follows up with employees with several reminders prior to the deadline but are not always successful in obtaining completion certificates timely.

Cause: This error can be attributed to a lack of consequences for filers who miss the deadline.

Finding No. 9 Sexual Harassment Prevention Training was not provided for all supervisors.

Response: The Coastal Commission places a high priority on preventing harassment or bullying in the workplace and has provided training not only to supervisors, but to every employee even prior to the change in the requirements. Supervisors are sent reminders of

training due dates and reminded of the importance of this legally mandated training via emails and announcements during Senior Staff meetings.

Cause: One supervisor was not able to complete the training by the deadline.

Finding No. 13 Incorrect Authorization of bilingual pay.

Response: The Coastal Commission staff had no prior experience in authorizing bilingual pay. We were unaware of the correct form that was required to document the authorization.

Cause: Inexperience of staff.

Finding No. 22 Performance appraisals were not provided to all employees.

Response: Human Resources staff continues to work with management to emphasize the importance of mandatory performance appraisals providing notifications via emails and announcements during Senior Staff meetings.

Cause: Human Resources provides training and resources to managers but has been unable to secure compliance.

The Coastal Commission will continue to look for new approaches to address training requirements and to ensure Human Resources policies are understood and fully implemented by staff.

Sincerely

DocuSigned by:

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Alison Dettmer
Chief Deputy Director