



# **COMPLIANCE REVIEW REPORT**

## **SAN FRANCISCO BAY CONSERVATION AND DEVELOPMENT COMMISSION**

Compliance Review Unit  
State Personnel Board  
October 18, 2021

# TABLE OF CONTENTS

INTRODUCTION .....	1
EXECUTIVE SUMMARY .....	2
BACKGROUND .....	3
SCOPE AND METHODOLOGY .....	3
FINDINGS AND RECOMMENDATIONS .....	5
• EXAMINATIONS .....	5
• APPOINTMENTS .....	6
• EQUAL EMPLOYMENT OPPORTUNITY .....	9
• MANDATED TRAINING .....	10
• COMPENSATION AND PAY .....	12
• LEAVE .....	16
• POLICY AND PROCESSES .....	17
DEPARTMENTAL RESPONSE .....	20
SPB REPLY .....	20

## **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 San Francisco Bay Conservation and Development Commission (SFBCDC)'s personnel practices in the areas of examinations, appointments, EEO, 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 and Those That Were Provided Were Untimely
Equal Employment Opportunity	In Compliance	Equal Employment Opportunity Program Complied With All Civil Service Laws and Board Rules
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
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	In Compliance	Pay Differential Authorizations Complied with Civil Service Laws, Board Rules, and CalHR Policies and Guidelines
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	In Compliance	Workers' Compensation Process Complied with Civil Service Laws, Board Rules, and/or CalHR Policies and Guidelines

Area	Severity	Finding
Policy	In Compliance	Performance Appraisal Policy and Processes Complied with Civil Service Laws and Regulations and CalHR Policies and Guidelines

### **BACKGROUND**

The San Francisco Bay Conservation and Development Commission (SFBCDC) is the state agency with the responsibility to comprehensively protect, conserve, and enable the development of the San Francisco Bay and its shoreline. The SFBCDC carries out this responsibility under the McAteer-Petris Act (Gov. Code, §§ 66600-66682), the Suisun Marsh Protection Act (Pub. Res. Code, §§ 29000-29612), and the policies of the San Francisco Bay Plan. All persons, organizations, and governmental agencies must secure a permit from the SFBCDC to work within its jurisdiction. The SFBCDC employs approximately 40 staff members serving in the Regulatory, Planning, Legal, Administrative Services, and Executive divisions.

The California Coastal Commission performs human resources operations for the SFBCDC.

### **SCOPE AND METHODOLOGY**

The scope of the compliance review was limited to reviewing the SFBCDC’s examinations, appointments, EEO program, PSC’s, mandated training, compensation and pay, leave, and policy and processes<sup>1</sup>. The primary objective of the review was to determine if the SFBCDC’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 SFBCDC’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 SFBCDC provided, which included examination plans, examination bulletins, job analyses, and scoring results. The SFBCDC did not conduct any permanent withhold actions during the compliance review period.

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

A cross-section of the SFBCDC'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 SFBCDC provided, which included Notice of Personnel Action forms, Request for Personnel Actions, vacancy postings, certification lists, transfer movement worksheets, employment history records, correspondence, and probation reports.

The SFBCDC did not conduct any unlawful appointment investigations during the compliance review period. Additionally, the SFBCDC did not make any additional appointments during the compliance review period.

The SFBCDC's appointments were also selected for review to ensure the SFBCDC applied salary regulations accurately and correctly processed employees' compensation and pay. The CRU examined the documentation that the SFBCDC 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, and monthly pay differentials.

During the compliance review period, the SFBCDC did not issue or authorize red circle rate requests, arduous pay, bilingual pay, alternate range movements or out-of-class assignments.

The review of the SFBCDC'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.

The SFBCDC did not execute any PSC's during the compliance review period.

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

The CRU reviewed the SFBCDC'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 SFBCDC'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 SFBCDC'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.

The SFBCDC did not authorize any Administrative Time Off. Additionally, the SFBCDC did not track any temporary intermittent employees by actual time worked during the compliance review period.

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

On September 3, 2021, an exit conference was held with the SFBCDC to explain and discuss the CRU's initial findings and recommendations. The CRU received and carefully reviewed the SFBCDC's written response on September 15, 2021, which is attached to this final compliance review report.

## **FINDINGS AND RECOMMENDATIONS**

### **Examinations**

Examinations to establish an eligible list must be competitive and of such character as fairly to test and determine the qualifications, fitness, and ability of competitors to perform the duties of the class of position for which he or she seeks appointment. (Gov. Code, § 18930.) Examinations may be assembled or unassembled, written or oral, or in the form of a demonstration of skills, or any combination of those tests. (*Ibid.*) The Board establishes minimum qualifications for determining the fitness and qualifications of employees for each class of position and for applicants for examinations. (Gov. Code, § 18931, 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, July 1, 2019, through June 30, 2020, the SFBCDC conducted seven examinations. The CRU reviewed seven of those examinations, which are listed below:

Classification	Exam Type	Exam Components	Final File Date	No. of Apps
Associate Landscape Architect	Open	Qualification Appraisal Panel <sup>2</sup> (QAP)	10/18/2019	9
Coastal Program Analyst I	Open	QAP	10/21/2019	50
Coastal Program Analyst I	Open	QAP	2/26/2020	78
Coastal Program Analyst II	Open	QAP	10/21/2019	28
Coastal Program Analyst II	Open	QAP	2/26/2020	12
Coastal Program Analyst III	Promotional	QAP	11/25/2019	20
Coastal Program Manager	Promotional	QAP	11/25/2019	20

<b>IN COMPLIANCE</b>	<b>FINDING No. 1 EXAMINATIONS COMPLIED WITH CIVIL SERVICE LAWS AND BOARD RULES</b>
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The CRU reviewed seven departmental examinations which the SFBCDC administered in order to create eligible lists from which to make appointments. The SFBCDC published and distributed examination bulletins containing the required information for all examinations. Applications received by the SFBCDC 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 SFBCDC 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

<sup>2</sup> 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.

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 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, January 1, 2019, through December 31, 2019, the SFBCDC made 22 appointments. The CRU reviewed eight of those appointments, which are listed below:

Classification	Appointment Type	Tenure	Time Base	No. of Appts.
Associate Governmental Program Analyst	Certification List	Limited Term	Full Time	1
Attorney III	Certification List	Permanent	Full Time	1
Coastal Program Analyst II	Certification List	Limited Term	Full Time	1
Environmental Scientist	Certification List	Limited Term	Full Time	1
Research Data Specialist I	Certification List	Permanent	Full Time	1
Staff Services Manager II (Supervisory)	Certification List	Permanent	Full Time	1
Legal Secretary	Reinstatement	Limited Term	Full Time	1
Office Technician (Typing)	Transfer	Limited Term	Full Time	1

<b>SERIOUS</b>	<b>FINDING NO. 2 PROBATIONARY EVALUATIONS WERE NOT PROVIDED FOR ALL APPOINTMENTS REVIEWED AND THOSE THAT WERE PROVIDED WERE UNTIMELY</b>
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**Summary:** The SFBCDC did not provide four probationary reports of performance for two of the eight appointments reviewed by the CRU. In addition, the SFBCDC did not provide one probationary report of performance in a timely manner, as reflected in the table below.

Classification	Appointment Type	Number of Appointments	Total Number of Missing Probation Reports
Staff Services Manager II (Supervisory)	List Appointment	1	1
Research Data Specialist I	List Appointment	1	3

Classification	Appointment Type	Number of Appointments	Total Number of Late Probation Reports
Staff Services Manager II (Supervisory)	List Appointment	1	1

**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:** The SFBCDC states that a good faith effort is made to inform management of the requirements on probationary evaluations. New supervisors and managers are required to complete California Leadership Academy – Supervisor/Manager Development Program, which addresses the basics of probationary evaluations, and are provided the due dates of probationary evaluations for their employees. However, despite being notified in advance by the Administrative Services Unit, some supervisors and managers fail to provide timely probationary reports.

**Corrective Action:** The SFBCDC provides its internal processes will be expanded to include more monitoring and follow up with supervisors and managers prior to probationary report due dates. Within 90 days of the date of this report, the SFBCDC must submit to the SPB written documentation which demonstrates the corrections the department has implemented to ensure conformity with Government Code section 19172.

### **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 SFBCDC, 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).)

<b>IN COMPLIANCE</b>	<b>FINDING No. 3 EQUAL EMPLOYMENT OPPORTUNITY PROGRAM COMPLIED WITH ALL CIVIL SERVICE LAWS AND BOARD RULES</b>
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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 SFBCDC’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 SFBCDC. The SFBCDC 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.

**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, 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 SFBCDC’s mandated training program that was in effect during the compliance review period, July 1, 2018, through June 30, 2020. The SFBCDC’s ethics training was found to be in compliance, while the SFBCDC’s sexual harassment prevention training was found to be out of compliance.

<b>VERY SERIOUS</b>	<b>FINDING No. 4 SEXUAL HARASSMENT PREVENTION TRAINING WAS NOT PROVIDED FOR ALL SUPERVISORS</b>
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**Summary:** The SFBCDC did not provide sexual harassment prevention training to one of five new supervisors within six months of their appointment. However, the SFBCDC did provide sexual harassment prevention training to all 11 of its existing supervisors every two 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, subs. (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:** The SFBCDC states that it has an automated process in place through a contractor to provide sexual harassment prevention training to all new and existing supervisors, and all supervisors and managers are made aware of the requirement to complete this training within the specified timeline. Despite these efforts, one supervisor failed to complete this course in a timely manner.

**Corrective Action:** The SFBCDC provides it will take steps to engage senior staff in the monitoring process, and supervisors will be held accountable. Within

90 days of the date of this report, the SFBCDC must submit to the SPB documentation demonstrating the corrections the department has implemented to ensure that new supervisors are provided supervisory training within twelve months of appointment as required by Government Code section 19995.4.

## 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 rate<sup>3</sup> 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, January 1, 2019, through December 31, 2019, the SFBCDC made eight appointments. The CRU reviewed four of those appointments to determine if the SFBCDC applied salary regulations accurately and correctly processed employees’ compensation, which are listed below:

Classification	Appointment Type	Tenure	Time Base	Salary (Monthly Rate)
Attorney III	List Appointment	Permanent	Full Time	\$11,815.00
Coastal Program Analyst II	List Appointment	Limited Term	Full Time	\$5,225.00
Environmental Scientist	List Appointment	Limited Term	Full Time	\$6,530.00
Staff Services Manager II (Supervisory)	List Appointment	Permanent	Full Time	\$7,730.00

<sup>3</sup> “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).

IN COMPLIANCE	<b>FINDING No. 5 SALARY DETERMINATIONS COMPLIED WITH CIVIL SERVICE LAWS, BOARD RULES, AND CALHR POLICIES AND GUIDELINES</b>
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The CRU found no deficiencies in the salary determinations that were reviewed. The SFBCDC 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.

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.<sup>4</sup> (Gov. Code, § 19836 subd. (b).)

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<sup>4</sup> 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.

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, January 1, 2019, through December 31, 2019, the SFBCDC authorized seven HAM requests. The CRU reviewed seven of those authorized HAM requests to determine if the SFBCDC correctly applied Government Code section 19836 and appropriately verified, approved and documented candidates' extraordinary qualifications, which are listed below:

Classification	Appointment Type	Status	Salary Range	Salary (Monthly Rate)
Attorney III	List Appointment	Permanent	\$9,210 - \$11,815	\$11,815
Coastal Program Analyst I	List Appointment	Limited Term	\$4,496 - \$5,629	\$5,629
Coastal Program Analyst II	List Appointment	Limited Term	\$5,223 - \$6,542	\$6,542
Environmental Scientist	List Appointment	Limited Term	\$3,851 - \$7,364	\$7,364

Environmental Scientist	List Appointment	Limited Term	\$3,851 - \$7,364	\$6,530
Research Data Analyst II	List Appointment	Limited Term	\$5,223 - \$6,542	\$5,484
Staff Services Manager II (Supervisory)	List Appointment	Permanent	\$6,722 - \$8,352	\$7,730

<b>IN COMPLIANCE</b>	<b>FINDING NO. 6 HIRE ABOVE MINIMUM REQUESTS COMPLIED WITH CIVIL SERVICE LAWS, BOARD RULES, AND CALHR POLICIES AND GUIDELINES</b>
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The CRU found that the HAM requests the SFBCDC made during the compliance review period, satisfied civil service laws, Board rules and CalHR policies and guidelines.

### 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, January 1, 2019, through December 31, 2019, the SFBCDC issued pay differentials<sup>5</sup> to five employees. The CRU reviewed five of these pay differentials to ensure compliance with applicable CalHR policies and guidelines. These are listed below:

<sup>5</sup> For the purposes of CRU's review, only monthly pay differentials were selected for review at this time.

Classification	Pay Differential	Monthly Amount
Information Technology Associate	8BA	\$343.40
Information Technology Specialist I	8BA	\$414.00
Information Technology Associate	8BA	\$355.30
Bay Development Design Analyst, San Francisco Bay Conservation and Development Commission	8K10	\$250.00
Senior Engineer, San Francisco Bay Conservation and Development Commission	8K10	\$250.00

<b>IN COMPLIANCE</b>	<b>FINDING No. 7 PAY DIFFERENTIAL AUTHORIZATIONS COMPLIED WITH CIVIL SERVICE LAWS, BOARD RULES, AND CALHR POLICIES AND GUIDELINES</b>
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The CRU found no deficiencies in the pay differentials that the SFBCDC 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.

## 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, January 1, 2019, through March 31, 2020, the SFBCDC reported 1 unit comprised of 51 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
January 2020	101	48	48	0
February 2020	101	50	50	0
March 2020	101	51	51	0

<b>IN COMPLIANCE</b>	<b>FINDING NO. 8 LEAVE AUDITING AND TIMEKEEPING COMPLIED WITH CIVIL SERVICE LAWS, BOARD RULES, AND/OR CALHR POLICIES AND GUIDELINES</b>
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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 SFBCDC 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.*)

<b>IN COMPLIANCE</b>	<b>FINDING No. 9 NEPOTISM POLICY COMPLIED WITH CIVIL SERVICE LAWS, BOARD RULES, AND/OR CALHR POLICIES AND GUIDELINES</b>
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The CRU verified that the policy was disseminated to all staff and emphasized the SFBCDC’s commitment to the state policy of recruiting, hiring and assigning employees on the basis of merit. Additionally, the SFBCDC’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 SFBCDC did not employ volunteers during the compliance review period.

<b>IN COMPLIANCE</b>	<b>FINDING No. 10 WORKERS’ COMPENSATION PROCESS COMPLIED WITH CIVIL SERVICE LAWS, BOARD RULES, AND/OR CALHR POLICIES AND GUIDELINES</b>
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The CRU verified that the SFBCDC 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 SFBCDC 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 19 permanent SFBCDC 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 Personnel Analyst	10/31/2019
CEA	10/1/2019
Coastal Program Analyst II	1/16/2019
Coastal Program Analyst II	11/30/2019
Coastal Program Analyst III	4/23/2019
Coastal Program Manager	1/1/2019
Coastal Program Manager	1/31/2019
Coastal Program Manager	10/31/2019
Environmental Scientist	8/1/2019
Environmental Scientist	8/6/2019
Environmental Scientist	11/27/2019
Information Technology Associate	1/31/2019
Information Technology Specialist I	1/31/2019
Management Services Technician	8/1/2019
Research Data Specialist I	11/15/2019
Senior Environmental Scientist (Supervisory)	8/31/2019
Senior Environmental Scientist (Supervisory)	11/1/2019

Classification	Date Performance Appraisals Due
Staff Services Manager I	5/15/2019
Staff Services Manager II (Managerial)	7/16/2019

<b>IN COMPLIANCE</b>	<b>FINDING No. 11 PERFORMANCE APPRAISAL POLICY AND PROCESSES COMPLIED WITH CIVIL SERVICE LAWS, BOARD RULES, AND CALHR POLICIES AND GUIDELINES</b>
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The CRU found no deficiencies in the performance appraisals selected for review. Accordingly, the SFBCDC performance appraisal policy and processes satisfied civil service laws, Board rules, policies and guidelines.

### **DEPARTMENTAL RESPONSE**

The SFBCDC's response is attached as Attachment 1.

### **SPB REPLY**

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

# San Francisco Bay Conservation and Development Commission

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September 15, 2021

State Personnel Board  
Compliance Review Unit  
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[Amrita.Gill@spb.ca.gov](mailto:Amrita.Gill@spb.ca.gov)

RE: SFBCDC Departmental Response

Dear State Personnel Board:

The San Francisco Bay Conservation & Development Commission (BCDC) were found to be non-compliant in the areas of Appointments and Mandated Training. Per the report received via email from SPB's Compliance Review Unit to both the BCDC and the CA Coastal Commission's Human Resources Office on August 25, 2021, "Probationary evaluations were not provided for all appointments reviewed and those that were provided were untimely". In addition, per the report, "Sexual Harassment Prevention Training was not provided for all supervisors."

- 1) Appointments
  - a) Missing
    - i) Staff Services Manager II (Supervisory) – List Appointment
    - ii) Research Data Specialist I – List Appointment
  - b) Late
    - i) Staff Services Manager II (Supervisory) – List Appointment

Cause: The BCDC Administrative Services Unit makes a good faith effort to inform management of the requirements on probationary evaluations. New supervisors and managers are required to complete California Leadership Academy – Supervisor/Manager Development Program, which addresses the basics of probationary evaluations, and are provided the due dates of probationary evaluations for their employees. However, despite being notified in advance by the Administrative Services Unit, some supervisors and managers fail to provide timely probationary reports.

Corrective Action: The BCDC will expand their internal processes to include more monitoring and follow up with supervisors and managers prior to probationary report due dates. Within 90 days of the date of this report, the BCDC will submit to the SPB relevant documentation demonstrating that the corrective action has been implemented.



## 2) Mandated Training

Cause: Sexual Harassment Prevention Training is provided to all new and existing supervisors, and all supervisors and managers are made aware of the requirement to complete this training within the time frame specified in Gov. Code, § 12950.1, subds. (a) and (b); Gov. Code § 19995.4. The BCDC contracts with the CA Natural Resources Agency to provide an online, self-paced course to its employees, with a beginning and end date to complete. Despite these efforts, one supervisor failed to complete this course in a timely manner. This supervisor was 20 days late in completion; however, she did complete it.

Corrective Action: The BCDC will engage Senior Staff as part of the monitoring process to assist in following up with supervisors and managers prior to deadlines. In addition, supervisors will be held accountable in their annual reviews/probationary reports if they fail to complete mandated training with the appropriate time frame. Within 90 days of the date of this report, the BCDC will submit to the SPB relevant documentation demonstrating that the corrective action has been implemented.

If you have any additional questions, you may contact me at [Corinne.Young@coastal.ca.gov](mailto:Corinne.Young@coastal.ca.gov).

Sincerely,

DocuSigned by:  
*Corinne Young*  
87DFDACE038045F...

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