



# **COMPLIANCE REVIEW REPORT**

## **CALIFORNIA TAHOE CONSERVANCY**

Compliance Review Unit  
State Personnel Board  
April 22, 2024

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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 Tahoe Conservancy (CTC) 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
Appointments	In Compliance	Appointments Complied with Civil Service Laws and Board Rules
Equal Employment Opportunity	Very Serious	A Disability Advisory Committee Has Not Been Established
Personal Services Contracts	In Compliance	Personal Services Contracts Complied with Procedural Requirements
Mandated Training	Very Serious	Ethics Training Was Not Provided for All Filers
Compensation and Pay	In Compliance	Salary Determinations Complied with Civil Service Laws, Board Rules, and CalHR Policies and Guidelines
Compensation and Pay	Very Serious	Incorrect Authorization of Hire Above the Minimum Requests
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 Employee's 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

Area	Severity	Finding
Policy	Very Serious	Department's Nepotism Policy Does Not Contain All Required Components
Policy	Very Serious	Injured Employee Did Not Receive Claim Forms Within One Working Day of Notice or Knowledge of Injury
Policy	Serious	Performance Appraisals Were Not Provided to All Employees

**BACKGROUND**

California's ten State conservancies play an integral role in conserving, protecting, and restoring natural resources and providing public recreational opportunities. Established in 1985, the CTC's mission is to lead California's efforts to restore and enhance the extraordinary natural and recreational resources of the Lake Tahoe Basin.

The CTC owns and manages nearly 4,700 parcels of land, totaling approximately 6,500 acres, for the purpose of protecting the natural environment and promoting public recreation and access to Lake Tahoe. The CTC has provided over 170 grants to local governments and nonprofit organizations for projects under the Lake Tahoe Environmental Improvement Program to restore the Lake Tahoe watershed, provide public recreation and access, protect ecologically important lands, improve forest health, and reduce the threat of wildfire.

**SCOPE AND METHODOLOGY**

The scope of the compliance review was limited to reviewing the CTC'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 CTC's personnel practices, policies, and procedures complied with state civil service laws and Board regulations, Bargaining Unit Agreements, CalHR policies and guidelines, CalHR Delegation Agreements, and to recommend corrective action where deficiencies were identified.

The CTC did not conduct any examinations 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 CTC's appointments was selected for review to ensure that samples of various appointment types, classifications, and levels were reviewed. The CRU examined the documentation that the CTC 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 CTC did not conduct any unlawful appointment investigations during the compliance review period. Additionally, the CTC did not make any additional appointments during the compliance review period.

The CTC's appointments were also selected for review to ensure the CTC applied salary regulations accurately and correctly processed employees' compensation and pay. The CRU examined the documentation that the CTC 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 hiring above minimum (HAM) requests, and out-of-class (OOC) assignments. During the compliance review period, the CTC did not issue red circle rate requests, arduous pay, bilingual pay, monthly pay differentials or alternate range movements.

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

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

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

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<sup>2</sup>If 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.

The CRU reviewed the CTC'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 CTC'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 CTC'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 the selection of the CTC employees who used Administrative Time Off (ATO) in order to ensure that ATO was appropriately administered. Further, the CRU reviewed a selection of CTC positive paid employees whose hours are tracked during the compliance review period in order to ensure that they adhered to procedural requirements.

During the compliance review period, the CTC did not have any employees with non-qualifying pay period transactions.

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

The CTC did not request an exit conference to explain and discuss the CRU's initial findings and recommendations. The CRU received and carefully reviewed the CTC's written response on March 5, 2024, which is attached to this final compliance review report.

## **FINDINGS AND RECOMMENDATIONS**

### **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 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, May 1, 2022, through April 30, 2023, the CTC made four appointments. The CRU reviewed all four of those appointments, which are listed below:

Classification	Appointment Type	Tenure	Time Base	No. of Appts.
Associate Environmental Planner	Certification List	Permanent	Full Time	1
Associate Governmental Program Analyst	Certification List	Permanent	Full Time	1
Environmental Program Manager I (Supervisory)	Certification List	Permanent	Full Time	1
Staff Services Analyst	Certification List	Permanent	Full Time	1

<b>IN COMPLIANCE</b>	<b>FINDING NO. 1 APPOINTMENTS COMPLIED WITH CIVIL SERVICE LAWS AND BOARD RULES</b>
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The CTC measured each applicant’s ability to perform the duties of the job by conducting hiring interviews and selecting the best-suited candidates. For each of the four list appointments reviewed, the CTC ordered a certification list of candidates ranked competitively. After properly clearing the certification lists including SROA, the selected candidates were appointed based on eligibility attained by being reachable within the first three ranks of the certification lists.

The CRU found no deficiencies in the appointments that the CTC initiated during the compliance review period. Accordingly, the CRU found that the CTC’s appointments processes and procedures utilized during the compliance review period satisfied civil service laws and Board rules.

**Equal Employment Opportunity**

Each state agency is responsible for an effective EEO program. (Gov. Code, § 19790.) The appointing power for each state agency has the major responsibility for monitoring



the effectiveness of its EEO program. (Gov. Code, § 19794.) To that end, the appointing power must issue a policy statement committed to EEO; issue procedures for filing, processing, and resolving discrimination complaints; and cooperate with the CalHR, in accordance with Civil Code section 1798.24, subdivisions (o) and (p), by providing access to all required files, documents and data necessary to carry out these mandates. (*Ibid.*) In addition, the appointing power must appoint, at the managerial level, an EEO Officer, who shall report directly to, and be under the supervision of, the director of the department to develop, implement, coordinate, and monitor the department’s EEO program. (Gov. Code, § 19795, subd. (a).)

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

<b>SEVERITY: VERY SERIOUS</b>	<b>FINDING NO. 2    A DISABILITY ADVISORY COMMITTEE HAS NOT BEEN ESTABLISHED</b>
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**Summary:**            The CTC does not have an active DAC.

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

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

**Cause:** The CTC states that the shared DAC they were previously participating in became inactive, and they experienced a loss of staff due to contract tracing and many staff working out of class during the COVID emergency response and departure of the Executive Director.

**Corrective Action:** The CTC asserts it has taken steps to ensure compliance in this area. Within 90 days of the date of this report, the CTC must submit to the SPB documentation which demonstrates the corrections the department has implemented to ensure the establishment of a DAC, comprised of members who have disabilities or who have an interest in disability issues.

### **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, May 1, 2022, through April 30, 2023, the CTC had six PSC's that were in effect. The CRU reviewed six of those, which are listed below:

Vendor	Services	Contract Amount	Justification Identified?	Union Notification?
Bender Rosenthal, Inc.	Property Appraisal	\$25,000	Yes	Yes
Bushwackers Tree Service	Hazard Tree Removal Services	\$400,000	Yes	Yes
Haen Constructors	Heavy Equipment Operator	\$15,000	Yes	Yes
Lynn Barnett & Associates	Property Appraisal	\$37,500	Yes	Yes
Sean Gannon Tree Service Inc.	Forest Fuels Reduction Service	\$125,125	Yes	Yes
Tahoe Douglas Fire Protection	Forest Fuel Dollar Pile Burn	\$193,000	Yes	Yes

<b>IN COMPLIANCE</b>	<b>FINDING NO. 3 PERSONAL SERVICES CONTRACTS COMPLIED WITH PROCEDURAL REQUIREMENTS</b>
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The total dollar amount of all the PSC's reviewed was \$930,625. It was beyond the scope of the review to make conclusions as to whether CTC justifications for the contract were legally sufficient. For all PSC's reviewed, the CTC provided specific and detailed factual information in the written justifications as to how each of the contracts met at least one condition set forth in Government Code section 19130, subdivision (b). Additionally, CTC complied with proper notification to all organizations that represent state employees who perform or could perform the type or work contracted as required by California Code of Regulations section 547.60.2. Accordingly, the CTC PSC's complied with civil service laws and board rules.

### **Mandated Training**

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

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

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

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 CTC’s mandated training program that was in effect during the compliance review period, May 1, 2022, through April 30, 2023.

<b>SEVERITY: VERY SERIOUS</b>	<b>FINDING NO. 4 ETHICS TRAINING WAS NOT PROVIDED FOR ALL FILERS</b>
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**Summary:** The CTC did not provide ethics training to 7 of 36 existing filers.

**Criteria:** 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:** The CTC states that despite informing staff several times in e-mail and at all-staff meetings, some staff failed to find enough time to complete the training.

**Corrective Action:** The CTC asserts it has taken steps to ensure compliance in this area. Within 90 days of the date of this report, the CTC must submit to the SPB documentation which demonstrates the corrections the department has implemented to ensure conformity with Government Code section 11146.3.

## **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, May 1, 2022, through April 30, 2023, the CTC made four appointments. The CRU reviewed two of those appointments to determine if the CTC applied salary regulations accurately and correctly processed employees' compensation, which are listed below:

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<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).

Classification	Appointment Type	Tenure	Time Base	Salary (Monthly Rate)
Associate Environmental Planner	List	Permanent	Full Time	\$6,387
Environmental Program Manager I (Supervisory)	List	Permanent	Full Time	\$11,598

<b>IN COMPLIANCE</b>	<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 CTC 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 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).)

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, May 1, 2022, through April 30, 2023, the CTC authorized four HAM requests. The CRU reviewed all four of those authorized HAM requests to determine if the CTC correctly applied Government Code section 19836, compensation laws and rules in accordance with CalHR’s policies and guidelines and appropriately verified, approved, and documented candidates’ extraordinary qualifications which are listed below:

Classification	Appointment Type	Status	Salary Range	Salary (Monthly Rate)
Forestry Aide	Non-Testing	Temporary	\$3,157 - \$3,903	\$3,315
Forestry Aide	Non-Testing	Temporary	\$3,157 - \$3,903	\$3,481
Forestry Aide	Non-Testing	Temporary	\$3,157 - \$3,903	\$3,315

<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.

Classification	Appointment Type	Status	Salary Range	Salary (Monthly Rate)
Forestry Aide	Non-Testing	Temporary	\$3,157 - \$3,903	\$3,554

<b>SEVERITY: VERY SERIOUS</b>	<b>FINDING NO. 6 INCORRECT AUTHORIZATION OF HIRE ABOVE THE MINIMUM REQUESTS</b>
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**Summary:** The CRU identified four errors in the CTC’s processing of HAM requests. The CTC approved and issued four HAMs to temporary non-testing entry-level positions. While the CalHR delegation agreement allows for the department’s authorization of HAMs, entry-level classifications are not considered appropriate recipients for HAMs.

**Criteria:** CalHR may authorize payment at any step above the minimum salary limit to classes or positions in order to meet recruiting problems, to obtain a person who has extraordinary qualifications. (Gov. Code, § 19836). Entry level classifications are not considered appropriate for a HAM. (Human Resources Manual Section 1707.)

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

**Cause:** The CTC states that they misunderstood the fact that temporary non-testing classifications are not eligible for HAMs.

**Corrective Action:** The CTC asserts it has taken steps to ensure compliance in this area. Within 90 days of the date of this report, the CTC must submit to the SPB documentation which demonstrates the corrections the department has implemented to ensure conformity with Gov. Code, § 19836.



## Out-of-Class Assignments and Pay

For excluded<sup>5</sup> and most rank-and-file employees, 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.)

During the period under review, May 1, 2022, through April 30, 2023, the CTC issued OOC pay to four employees. The CRU reviewed all four of these 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
Sr. Environmental Planner	R01	Sr. Environmental Scientist (Supervisory)	12/1/2022 - 3/2023
Sr. Environmental Scientist (Specialist)	R10	Sr. Environmental Scientist (Supervisory)	8/1/2022 - 11/30/2022
Associate Environmental Planner	R01	Sr. Environmental Planner	3/2023 - 4/2023
Sr. Environmental Scientist (Supervisory)	S10	Environmental Program Manager I (Specialist)	12/2022 - 3/2023

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<sup>5</sup> “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.

IN COMPLIANCE	<b>FINDING No. 7 OUT OF CLASS PAY 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 OOC pay assignments that the CTC 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 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 the working days of a month. When counting 189 days, every day worked, including partial days<sup>6</sup> worked and paid absences<sup>7</sup>, are counted. (Cal. Code Regs., tit. 2, § 265.1, subd. (b).) The hours worked in one day are not limited by this rule. (*Ibid.*) The 12-consecutive 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).)

<sup>6</sup> For example, two hours or ten hours count as one day.

<sup>7</sup> For example, vacation, sick leave, compensating time off, etc.

For student assistants, graduate student assistants, youth aides, and seasonal classifications a maximum work-time limit of 1,500 hours within 12 consecutive months may be used rather than the 189-day calculation. (Cal. Code Regs., tit. 2, § 265.1, subd. (d).)

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 CTC had one positive paid employee whose hours were tracked. The CRU reviewed the positive paid appointment to ensure compliance with applicable laws, regulations, policies, and guidelines, which are listed below:

Classification	Tenure	Time Frame	Time Worked
Sr. Environmental Planner	Retired Annuitant	Intermittent	583 hours

<b>IN COMPLIANCE</b>	<b>FINDING NO. 8</b>	<b>POSITIVE PAID EMPLOYEE’S TRACKED HOURS COMPLIED WITH CIVIL SERVICE LAWS, BOARD RULES, AND/OR CALHR POLICIES AND GUIDELINES</b>
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The CRU found no deficiencies in the positive paid employee’s records reviewed during the compliance review period. The CTC 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, February 1, 2022, through January 31, 2023, the CTC authorized 70 ATO transactions. The CRU reviewed 27 of these ATO transactions to ensure compliance with applicable laws, regulations, and CalHR policy and guidelines, which are listed below:

Classification	Time Frame	Amount of Time on ATO
Accounting Admin I Supervisor	12/21/22 – 12/23/22 & 12/30/22	28 hours
Associate Environmental Planner	12/29/22	4 hours
Associate Environmental Planner	12/27/22	4 hours
Associate Environmental Planner/Natural Sciences	12/12/22	10 hours
Associate Environmental Planner/Natural Sciences	9/16/22 – 10/14/22 & 12/12/22	170 hours
Associate Governmental Program Analyst	12/30/22	4 hours
Attorney III	1/6/23	4 hours
Data Research Analyst II	7/12, 7/14, 7/25, 7/26 & 7/27/22	25.5 hours
Environmental Planner	8/2/22 – 8/4/22 & 8/8/22 – 8/10/22	27 hours
Environmental Program Manager II	12/23/22	4 hours
Environmental Scientist	12/22/22	4 hours
Forester II (Supervisory)	12/29/22	4 hours
Graduate Legal Assistant	11/16/22 – 11/18/22	16 hours
Information Technology Manager I	11/22/22 – 11/23/22	8 hours
Information Technology Specialist I	12/23/22	4 hours
Information Technology Specialist II	12/23/22	4 hours
Office Assistant	12/27/22	4 hours
Public Land Manager Specialist III	10/12/22 & 12/13/22	11 hours
Sr. Environmental Planner	12/8/22, 12/9/22, 12/12/22 & 12/23/22	28 hours
Sr. Environmental Scientist	1/5/23	4 hours
Sr. Environmental Scientist	12/30/22 & 1/6/23	9 hours
Sr. Environmental Scientist	12/26/22	4 hours
Sr. Environmental Scientist (Supervisory)	12/12/22	4 hours
Sr. Environmental Scientist (Supervisory)	12/29/22	4 hours
Staff Services Analyst	12/12/22	4 hours
Staff Services Manager I	12/12/22	8 hours
Staff Services Manager II	12/23/22	2 hours

<b>IN COMPLIANCE</b>	<b>FINDING NO. 9 ADMINISTRATIVE TIME OFF AUTHORIZATIONS COMPLIED WITH CIVIL SERVICE LAWS, BOARD RULES, AND/OR CALHR POLICIES AND GUIDELINES</b>
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The CRU found no deficiencies in the ATO transactions reviewed during the compliance review period. The CTC 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, November 1, 2022, through January 31, 2023, the CTC reported one unit comprised of 49 active employees. The pay periods and timesheets reviewed by the CRU are summarized below:

Timesheet Leave Period	Unit Reviewed	No. of Employees	No. of Timesheets Reviewed	No. of Missing Timesheets
November 2022	001	49	49	0
December 2022	001	47	47	0
January 2023	001	45	45	0

IN COMPLIANCE	<b>FINDING NO. 10 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 CTC 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 hire, transfer, and promote all employees on the basis of merit and fitness in accordance with civil service statutes, rules and regulations. Nepotism is expressly prohibited in the state workplace because it is antithetical to California’s merit based civil service. (Cal. Code Regs., tit. 2, § 87.) (*Ibid.*) All appointing powers shall adopt an anti-nepotism policy that includes the following components: (1) a statement that the appointing power is committed to merit-based hiring and that nepotism is antithetical to a merit-based civil service system; (2) a definition of “nepotism” as an employee’s use of influence or power to hire, transfer, or promote an applicant or employee because of a personal relationship; (3) a definition of “personal relationship” as persons related by blood, adoption, current or former marriage, domestic partnership or cohabitation; (4) a statement that prohibits participation in the selection of an applicant for employment by anyone who has a personal relationship with the applicant, as defined in section 83.6; (5) a statement that prohibits the direct or first-line supervision of an employee with whom the supervisor has a personal relationship, as defined in section 83.6; (6) a process for addressing issues of direct supervision when personal relationships between employees exist. (*Ibid.*)

<b>SEVERITY: VERY SERIOUS</b>	<b>FINDING NO. 11 DEPARTMENT’S NEPOTISM POLICY DOES NOT CONTAIN ALL REQUIRED COMPONENTS</b>
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**Summary:** The CTC’s nepotism policy does not contain all required components. Specifically, the CTC’s nepotism policy does not include “Former Marriage” and “Domestic Partnership” in their definition of a personal relationship, which is required by regulation.

**Criteria:** It is the policy of the State of California to hire, transfer, and promote all employees on the basis of merit and fitness in accordance with civil service statutes, rules, and regulations. (Human Resources Manual Section 1204). All department nepotism policies shall include six specific components which emphasize that nepotism is antithetical to merit-based civil service and include definitions and prohibitions integral to upholding the merit system. (Cal. Code Regs., tit. 2, § 87.)

**Severity:** Very Serious. Nepotism is expressly prohibited in the state workplace because it is antithetical to California's merit-based civil service. Departments must take proactive steps to ensure that the hiring, transferring, and promoting of all employees is done on the basis of merit and fitness in accordance with civil service statutes. Maintaining a current written nepotism policy that addresses all requirements outlined in civil service statute, rules and regulations, and its dissemination to all staff, is the cornerstone for achieving these outcomes.

**Cause:** The CTC states the cause as human error and not being aware of the updated requirements for the components of a nepotism policy.

**Corrective Action:** Within 90 days of the date of this report, the CTC must submit to the SPB a written corrective action response which includes an updated nepotism policy which contains requirements outlined in Human Resources Manual section 1204, and documentation demonstrating that it has been distributed to all staff.

### 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 CTC did not employ volunteers during the compliance review period.

<b>SEVERITY: VERY SERIOUS</b>	<b>FINDING NO. 12 INJURED EMPLOYEE DID NOT RECEIVE CLAIM FORM WITHIN ONE WORKING DAY OF NOTICE OR KNOWLEDGE OF INJURY</b>
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**Summary:** The workers' compensation claim form reviewed by the CRU was not provided to the employee within one working day of notice or knowledge of injury.

**Criteria:** An employer shall provide a claim form and notice of potential eligibility for workers' compensation benefits to its employee within one working day of notice or knowledge that the employee has suffered a work-related injury or illness. (Cal. Lab. Code, § 540.1, subd. (a).)

**Severity:** Very Serious. An injured employee was not provided with the required form within the 24-hour time period. Providing the form within 24 hours of injury prevents any delay in treatment to which the employee is entitled. A work-related injury can result in lost time beyond the employee's work shift at the time of injury and/or result in additional medical treatment beyond first aid.

**Cause:** The CTC states that it was unclear that the injury was work related, which lead to a misunderstanding between the injured employee and HR.

**Corrective Action:** Within 90 days of the date of this report, the CTC must submit to the SPB a written corrective action response which addresses the corrections the department will implement to ensure conformity with Labor Code, section 540.1. Copies of relevant documentation



demonstrating that the corrective action has been implemented must be included with the corrective action response.

### Performance Appraisals

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

The CRU selected 11 permanent CTC employees to ensure that the department was conducting performance appraisals on an annual basis in accordance with applicable laws, regulations, policies, and guidelines.

<b>SEVERITY:</b> <b>SERIOUS</b>	<b>FINDING NO. 13 PERFORMANCE APPRAISALS WERE NOT PROVIDED TO ALL EMPLOYEES</b>
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**Summary:** The CTC did not provide annual performance appraisals to 9 of 11 employees reviewed after the completion of the employee’s probationary period.

**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 employees are apprised of work performance issues and/or goals in a systematic manner.

**Cause:** The CTC states that a lack of available time and heavy workloads for some supervisors contributed to the nine employees not receiving performance appraisals.

**Corrective Action:** The CTC asserts it has taken steps to ensure compliance in this area. Within 90 days of the date of this report, the CTC must submit

to the SPB documentation which demonstrates the corrections the department has implemented to ensure conformity with Government Code section 19992.2 and California Code of Regulations, title 2, section 599.798.

### **DEPARTMENTAL RESPONSE**

The CTC's response is attached as Attachment 1.

### **SPB REPLY**

Based upon the CTC written response, the CTC 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.



March 5, 2024

Ms. Suzanne M. Ambrose  
Executive Director  
State Personnel Board  
801 Capitol Mall  
Sacramento, CA 95814

**Subject:** Response to the State Personnel Board Draft Report “Compliance Review Report”

Dear Ms. Ambrose:

The California Tahoe Conservancy (CTC) would like to thank the State Personnel Board’s Compliance Review Unit for their hard work and patience during the CTC’s review period. The CTC respects the process and understands the importance of the review, we take all findings seriously and strive to improve our processes to ensure compliance.

The CTC reviewed the February 2024 draft audit report and provides the following response and causes to the findings:

**FINDING NO. 2 A Disability Advisory Committee Has Not Been Established:** The report noted that CTC does not have an active DAC.

**Cause:** The CTC participated in a shared DAC until the COVID emergency response. The host of that shared DAC decided to no longer provide that service, leaving CTC without a DAC. The CTC also experienced a loss of staff to contract tracing and the departure of our Executive Director resulting in many staff working out of class during the COVID emergency response, making the establishment of a new DAC infeasible for a short period.

**Response:** The CTC recognizes the importance of an active DAC committee and plans to join a new shared DAC in conjunction with other smaller departments within California Natural Resources Agency (CNRA). We anticipate participation in the shared DAC to commence by mid-2024. We will invite all employees to serve on the shared committee. If joining a shared DAC becomes impossible in the desired timeframe, CTC will establish its own DAC.

**FINDING NO. 4 Ethics Training Was Not Provided for All Filers:** The report noted that the CTC did not provide ethics training to 7 of 36 existing filers.

**Cause:** The CTC informed employees of the ethics training requirement via email 3 times and at all-staff meetings events on 2 occasions. Several employees failed to complete their training before their deadline on December 31, 2023. The reason given was that they did not find enough time to complete the training.

**Response:** The CTC acknowledges 7 of 36 existing files did not complete ethics training within the prescribed timeframe. We plan to increase the number of ethics training email reminders from 3 to 6, beginning at 12 months from the hard deadline for each employee and occurring every 2 months. The IT Department will develop an automated reminder system so that each employee receives custom reminders based on their deadline. Reminders will be copied to the relevant supervisor.

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*Executive Director*

**JANE FREEMAN**  
*Deputy Director*

If a staff member does not complete their ethics training by 2 months before it is due, their supervisor will assign dedicated time each week for the employee to complete the training.

**FINDING NO. 6 Incorrect Authorization of Hire Above the Minimum Requests:** The report identified four HAM's that were approved for temporary non-testing entry level positions.

**Cause:** The CTC has delegated authority to offer a HAM. It was a misunderstanding that temporary non-testing classifications are not eligible.

**Response:** The CTC has stopped offering HAMs awaiting new guidelines from CalHR. We have also adjusted our processes to prevent HAMs from being offered to temporary non-testing classifications.

**FINDING NO. 11 Department's nepotism Policy Does Not Contain All Required Components:** The report noted CTC's nepotism policy did not contain all required components.

**Cause:** The CTC acknowledges the missing requirements in our Nepotism Policy. Specifically, the CTC's nepotism policy does not include "Former Marriage" and "Domestic Partnership" in their definition of a personal relationship, which is required by regulation.

This error is attributed to human error and not being aware of the updated requirements for the components of a Nepotism Policy.

**Response:** The CTC's nepotism policy was compliant when it was developed in 2020. We were not aware of the necessary change to the definition of a personal relationship. The CTC will amend its nepotism policy to include "Former Marriage" and "Domestic Partnership" in our definition of a personal relationship.

**FINDING NO. 12 Injured Employee Did Not Receive Claim Form Within One Working Day of Notice or Knowledge of Injury:** The report noted the worker's compensation form was not provided to the employee within one working day of the notice or knowledge of injury.

**Cause:** It was a misunderstanding between the injured employee and the HR. Once it was clarified, worker's compensation paperwork was provided to the employee. In the situation in question, it was unclear in the notice that the injury was work related, and the form was provided when it became clear that the injury may have been work related. The CTC has reminded staff to provide a claim form immediately, or within one working day, upon notice or knowledge of an injury.

**Response:** The CTC acknowledges the misunderstanding and has a process in place to provide employees with a claim form within one working day of notice or knowledge of injury.

**FINDING NO. 13 Performance Appraisals Were Not Provided to All Employees:** The report noted CTC did not provide annual performance appraisals to 9 of 11 employees.

**Cause:** The CTC acknowledges 9 employees performance appraisals were not conducted during the prescribed performance appraisal timeframe. This error can be attributed to the supervisors' lack of time and heavy workload.

**Response:** The CTC requires all supervisors to write and file annual performance appraisals. The CTC will provide orientation for all supervisors starting in early 2024 to refresh their knowledge of the performance appraisal process, making the requirements and schedule clear. CTC will monitor the performance appraisal process to ensure all appraisals are completed and filed.

CTC will continue to educate and train staff on all requirements to ensure complete compliance. CTC again thanks the SPB Compliance Review team. Should you have any questions or need additional information, please contact Human Resources Manager, Stefanie Melendez at (530)318-8584 or [stefanie.melendez@tahoe.ca.gov](mailto:stefanie.melendez@tahoe.ca.gov) .

Sincerely,

*Jason Vasques*

Jason Vasques  
Executive Director