



COMPLIANCE REVIEW REPORT

CALIFORNIA STATE COASTAL CONSERVANCY

Compliance Review Unit
State Personnel Board
September 7, 2017

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INTRODUCTION

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

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

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

EXECUTIVE SUMMARY

The CRU conducted a routine compliance review of California State Coastal Conservancy (SCC) personnel practices in the areas of appointments, EEO, and PSCs, from January 1, 2016 through December 31, 2016, and mandated training from January 1, 2015 through December 31, 2016. The following table summarizes the compliance review findings.

Area	Finding	Severity
Appointments	Probationary Evaluations Were Not Provided for All Appointments Reviewed	Serious
Equal Employment Opportunity	Equal Employment Opportunity Program Complied with Civil Service Laws and Board Rules	In Compliance
Personal Services Contracts	Personal Services Contract Complied with Procedural Requirements	In Compliance

Area	Finding	Severity
Mandated Training	Ethics Training Was Not Provided for All Filers	Very Serious
Mandated Training	Sexual Harassment Prevention Training Was Not Provided for All Supervisors	Very Serious

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

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

BACKGROUND

The SCC is a state agency established in 1976 to protect and improve natural lands and waterways, help people enjoy the outdoors, and sustain local economies along the length of California’s coast and around San Francisco Bay. The SCC works along California’s 1,100-mile coastline and within the watersheds of rivers and streams inland, as well as the nine counties of the San Francisco Bay Area.

With a staff of approximately 70, the SCC is engaged in working with local governments, non-profit organizations, and others, to plan and implement projects that:

- protect the natural and scenic beauty of the coast;
- enhance wildlife habitat;
- help the public get to and enjoy beaches and parklands;
- keep farmland and timberlands in production;
- improve water quality;
- revitalize working waterfronts; and
- prepare communities for the impacts of climate change.

SCOPE AND METHODOLOGY

The scope of the compliance review was limited to reviewing SCC appointments, EEO program, and PSC’s, from January 1, 2016 through December 31, 2016, and mandated training from January 1, 2015 through December 31, 2016. The primary objective of the review was to determine if SCC personnel practices, policies, and procedures complied with state civil service laws and board regulations, and to recommend corrective action where deficiencies were identified.

The SCC did not conduct any examinations during the compliance review period.

A cross-section of SCC 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 SCC provided, which included notice of personnel action (NOPA) forms, vacancy postings, application screening criteria, hiring interview rating criteria, certification lists, transfer movement worksheets, employment history records, correspondence, and probation reports.

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

The SCC PSC's were also reviewed.¹ It was beyond the scope of the compliance review to make conclusions as to whether SCC justifications for the contracts were legally sufficient. The review was limited to whether SCC practices, policies, and procedures relative to PSC's complied with procedural requirements.

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

On June 6, 2017, an exit conference was held with the SCC to explain and discuss the CRU's initial findings and recommendations. The CRU received and carefully reviewed the SCC written response on June 9, 2017, 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,

¹If 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.

reinstatements, promotions, and demotions in strict accordance with the Civil Service Act and Board rules. (Gov. Code, § 19050.) Appointments made from eligible lists, by way of transfer, or by way of reinstatement, must be made on the basis of merit and fitness, which requires consideration of each individual’s job-related qualifications for a position, including his or her knowledge, skills, abilities, experience, and physical and mental fitness. (Cal. Code Regs., tit. 2, § 250, subd. (a).)

During the compliance review period, the SCC made 36 appointments. The CRU reviewed 14 of those appointments, which are listed below:

Classification	Appointment Type	Tenure	Time Base	No. of Appts.
Accountant I (Specialist)	Certification List	Permanent	Full Time	2
Conservancy Project Development Specialist	Certification List	Permanent	Full Time	3
Conservancy Project Development Manager	Certification List	Permanent	Full Time	1
Staff Services Analyst (General)	Certification List	Permanent	Full Time	1
Accountant Trainee	Retired Annuitant	Limited Term	Intermittent	1
Office Technician (Typing)	Retired Annuitant	Limited Term	Intermittent	2
Environmental Services Intern	TAU	Temporary	Intermittent	1
Staff Services Analyst (General)	Transfer	Permanent	Full Time	1
Accountant I (Specialist)	Transfer	Permanent	Full Time	1
Conservancy Project Development Analyst II	Transfer	Permanent	Full Time	1

For each of the seven list appointments, the SCC properly advertised the job vacancies, screened applications, interviewed candidates, cleared the certification lists for SROA and reemployment, and conducted background and reference checks as appropriate.

The CRU reviewed three retired annuitant appointments. The individuals submitted their applications and were eligible to be hired as retired annuitants, not to exceed 960 hours in a fiscal year.

The CRU reviewed one TAU appointment. When there is no employment list from which a position maybe filled, the appointing power, with the consent of the department, may

fill the position by temporary appointment. (Gov. Code, §19058.) No person may serve in one or more positions under temporary appointment longer than nine months in a 12 consecutive month period. The SCC complied with the rules and laws governing TAU appointments.

The CRU reviewed three transfer appointments. A transfer of an employee from a position under one appointing power to a position under another appointing power may be made if the transfer is to a position in the same class or in another class with substantially the same salary range and designated as appropriate by the executive officer. (Cal. Code Regs., tit. 2, § 425.) The SCC verified the eligibility of candidates to transfer to their appointed class.

However, the SCC did not provide probation reports for three of the list appointments as described in finding one.

FINDING NO. 1 – Probationary Evaluations Were Not Provided for all Appointments Reviewed

Summary: The SCC did not prepare six probationary reports of performance for three of the 14 appointments reviewed by the CRU, as reflected in the table below.

Classification	Appointment Type	No. of Prepared Probation Reports	No. of Missing Probation Reports
Conservancy Project Development Specialist	Certification List	1	2
Conservancy Project Development Specialist	Certification List	1	2
Conservancy Project Development Specialist	Certification List	1	2
Total		3	6

Criteria: The service of a probationary period is required when an employee enters in the state civil service by permanent appointment from an employment list. (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 CalHR may require. (Gov. Code § 19172.) CalHR’s regulatory scheme provides that “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.” (Code Reg., tit. 2, § 599.795.) Specifically, 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, however, require that appointing powers retain all probationary reports. (Code Reg., titl. 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 SCC states this finding was due to more than one probationary report being combined into one final probationary report. The SCC declares it was unaware that this practice was not allowable. Further, the SCC states that in May 2017, the CalHR class instructors stated that combining probationary reports were acceptable.² Subsequently, the SCC states it understands three probationary reports must be provided during the probationary period.

Action: The SCC has submitted a corrective action plan for ensuring compliance in meeting the probationary requirements of Government Code section 19172; therefore, no further action is required at this time.

² The above referenced instructors for the “Best Practices for the Probationary Period” class were consulted for comment. The instructors state that trainees are consistently advised that “departments are responsible for conducting timely probation reports consistent with the applicable regulations...[T]he standard for challenging a Notice of Rejection During the Probationary Period before the State Personnel Board (SPB) is different than the regulatory mandates pertaining to probation reports...[D]epartments should regularly complete probation reports in a timely manner because it is not only required under the regulations but it further serves the underlying intent and purpose of the probationary process....”

Equal Employment Opportunity

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

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

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

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

FINDING NO. 2 – Equal Employment Opportunity Program Complied With All Civil Service Laws and Board Regulations

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 SCC 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 Officer of the SCC. In addition, the SCC has an established DAC which reports to the Executive Officer on issues affecting persons with disabilities. The SCC also provided evidence of its efforts to promote EEO in its hiring and employment practices, to increase its hiring of persons with disabilities, and to offer upward mobility opportunities for its entry-level staff. Accordingly, the SCC EEO program complied with civil service laws and board rules.

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 Reg., 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 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 compliance review period, the SCC had one PSC that was in effect and subject to the Department of General Services (DGS) approval. The CRU reviewed the one PSC, which is listed below:

Vendor	Services	Contract Dates	Contract Amount	Justification Identified?
Tempo Software	Electronic Timesheet Services	08/2016-03/2018	\$16,800.00	Yes

FINDING NO. 3 – Personal Services Contract Complied with Procedural Requirements

When a state agency requests approval from the DGS for a subdivision (b) contract, the agency must include with its contract transmittal a written justification that includes specific and detailed factual information that demonstrates how the contract meets one or more conditions specified in Government Code section 19131, subdivision (b). (Cal. Code Reg., tit. 2, § 547.60.)

The total dollar amount of the PSC reviewed was \$16,800.00. It was beyond the scope of the review to make conclusions as to whether SCC's justification for the contract was legally sufficient. For the one PSC reviewed, the SCC provided specific and detailed factual information in the written justification as to how the contract met at least one condition set forth in Government Code section 19131, subdivision (b). Accordingly, the SCC PSC 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 California Department of Human Resources (CalHR). (Gov. Code, § 19995.4, subd. (b).) The training addresses such topics as the role of the supervisor, techniques of supervision, performance standards, and sexual harassment and abusive conduct prevention. (Gov. Code, §§ 12950.1, subds. (a), (b), & (c), & 19995.4, subd. (b).) The training must be successfully completed within the term of the employee's probationary period or within six months of the initial appointment, unless it is demonstrated that to do so creates additional costs or that the training cannot be completed during this time period due to limited availability of supervisory training courses. (Gov. Code, § 19995.4, subd. (c).) As to the sexual harassment and abusive-conduct prevention component,

the training must thereafter be provided to supervisors once every two years. (Gov. Code, § 12950.1.)

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

The Board may conduct reviews of any appointing power's personnel practices to ensure compliance with civil service laws and Board regulations. (Gov. Code, § 18661, subd. (a).) In particular, the Board may audit personnel practices related to such matters as selection and examination procedures, appointments, promotions, the management of probationary periods, and any other area related to the operation of the merit principle in state civil service. (*Ibid.*) Accordingly, the CRU reviews documents and records related to training that appointing powers are required by the afore-cited laws to provide its employees.

The CRU reviewed the SCC's mandated training program that was in effect during the compliance review period. While the SCC supervisory training was found to be in compliance, the ethics and sexual harassment prevention training were found to be out of compliance.

FINDING NO. 4 – Ethics Training Was Not Provided for All Filers

Summary: The SCC did not provide ethics training to two of 48 existing filers. However, the SCC provided ethics training to 11 of 11 new filers within six months of their appointment.

Criteria: New filers must be provided ethics training within six months of appointment. Existing filers must be trained at least once during each consecutive period of two calendar years commencing on the first odd-numbered year thereafter. (Gov. Code, § 11146.3, subd. (b).)

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

Cause: The SCC states that one of the filers was on a Leave of Absence during the compliance review period; and therefore unable to complete the training.

Action: The SCC must take appropriate steps to ensure that filers are provided ethics training within the time periods prescribed.

It is therefore recommended that no later than 60 days after the SPB's Executive Officer's approval of these findings and recommendations, the SCC must establish a plan to ensure compliance with ethics training mandates and submit to the SPB a written report of compliance.

FINDING NO. 5 – Sexual Harassment Prevention Training Was Not Provided for All Supervisors

Summary: The SCC did not provide sexual harassment prevention training to three of 12 existing supervisors every two years. The SCC had no new supervisors during the review period.

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, subd. (a).)

Severity: Very Serious. The department does not ensure its 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 SCC states that it was under the assumption the training needed to be completed with CalHR, and they do not offer enough classes and/or the classes are full. However, SCC is now aware that this training can be obtained from other vendors.

Action: The SCC must take appropriate steps to ensure that its supervisors are provided sexual harassment prevention training within the time periods prescribed.

It is therefore recommended that no later than 60 days after the SPB's Executive Officer's approval of these findings and recommendations, the SCC must establish a plan to ensure compliance with sexual harassment training mandates and submit to the SPB a written report of compliance.

DEPARTMENTAL RESPONSE

The SCC written response is attached as Attachment 1.

SPB REPLY

Based upon the SCC written response, the SCC will comply with the CRU recommendations and findings, and provide the CRU with corrective action plans for findings four and five, which were out of compliance. The SCC submitted a corrective action plan for finding one.

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



June 8, 2017

Suzanne Ambrose
Executive Officer
State Personnel Board
801 Capitol Mall
Sacramento, CA 95818

Subject: Response to the State Personnel Board Draft Report "COMPLIANCE REVIEW REPORT"

Dear Ms. Ambrose:

The State Coastal Conservancy (SCC) would like to thank the State Personnel Board's Compliance Review Unit (CRU) for undertaking the 2016 SCC Compliance Review. The SCC regards the audit process with a high degree of respect and views these reports as a productive, collaborative learning experience with SPB to make adjustments as necessary to ensure compliance. The SCC and our Human Resources (HR) office strives to be in full compliance with established requirements, training, tracking systems, best practices and reminders.

The SCC has reviewed the May 2017 draft audit report and provides the following response to the findings:

FINDING NO. 1 – Probationary Evaluations Were Not Provided for all Appointments Reviewed. The report noted the SCC did not prepare, complete, and/or retain six probationary reports of performance for three of the 14 appointments.

Response: This finding was due to more than one probationary reports being combined into one final probationary report. The SCC was unaware that this practice was not allowable. As stated in our exit conference, the HR Officer attended the CalHR class entitled, "Best Practices for the Probationary Period", in May 2017. The class instructors stated that combining probationary

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reports was “ok”. We clearly understand that this practice is not “ok” and all three probationary reports must be provided to all employees.

The SCC's HR office has put in place a tracking system with managers and supervisor to ensure they prepare a written appraisal of performance each one-third of the probationary period moving forward to ensure that each probationary employee receives three reports of their performance. Reminder emails will be sent to managers and supervisors with a “cc” copy to the second line manager two weeks prior to due date. In cases where a manager or supervisor is non-compliant, the HR office will issue a monthly report of non-compliance to our Executive Officer for their action. The HR office will monitor the compliance and consult with the Executive Officer to determine whether further changes in process are required.

FINDING NO. 4 – Ethics Training Was Not Provided for All Filers. The report noted the SCC did not provide ethics training to two of the 48 existing filers.

Response: One of the two filers noted as non-compliant was actually on a Leave of Absence (LOA) during the compliance review period of January 1, 2016 to December 31, 2016 and unable to complete the training.

The SCC HR office will put in place a tracking system to ensure compliance with all training requirements. We will initiate follow-up procedures to employees and their supervisor's for failing to complete the required courses. In addition, we will follow-up with managers, supervisors, exempt staff, and their supervisors who fail to take the required training, unless a health or other critical factor prevents the employee from completing the training, which will be noted in our records. Conservancy Executive Staff are committed to ensuring that all required training is taken on a timely basis.

FINDING NO. 5 – Sexual Harassment Prevention Training Was Not Provided for All Supervisors. The reports noted the SCC did not provide sexual harassment prevention training to three of the 12 supervisors every two years.

Response: The SCC was under the assumption that this training needed to be completed with CalHR and they do not offer enough classes and/or the classes are full. However, we have come to find out that this training can be obtain from other vendors.

The SCC HR office will put in place a tracking system to ensure compliance with all training requirements. We will initiate follow-up procedures to employees and their supervisors for failing to complete the required courses. Any employee who is planning a retirement date will also be instructed to complete the training if it is due prior to the date of their retirement. In addition, we will follow up with managers, supervisors, exempt staff and their supervisors who fail to take the required training, unless a health or other critical factor prevents the employee from completing the training, which will be noted in our records. Conservancy Executive Staff are committed to ensuring that all required training is taken on a timely basis.

SCC would like to once again thank the SPB Compliance Review team, we appreciated the exit conference and responding to the report. We are hopeful that the proposed changes will positively affect outcomes at the next compliance review.

Sincerely,

A handwritten signature in blue ink, appearing to read 'Sam Schuchat', with a stylized flourish at the end.

Sam Schuchat,
Executive Officer

cc: Regine Serrano, Chief of Administration