



COMPLIANCE REVIEW REPORT

SAN FRANCISCO BAY CONSERVATION

AND DEVELOPMENT COMMISSION

Compliance Review Unit
State Personnel Board
April 17, 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 San Francisco Bay Conservation and Development Commission (BCDC) personnel practices in the areas of examinations, appointments, EEO, PSC’s, mandated training, compensation and pay, leave, and policy and processes. The following table summarizes the compliance review findings.

Area	Severity	Finding
Examinations	Serious	Incomplete Job Analyses for the Examination Process
Appointments	Serious	Probationary Evaluations Were Not Provided for All Appointments Reviewed and Some That Were Provided Were Untimely ¹
Equal Employment Opportunity	In Compliance	Equal Employment Opportunity Program Complied with All Civil Service Laws and Board Rules
Personal Services Contracts	Serious	Unions Were Not Notified of Personal Services Contracts
Mandated Training	Very Serious	Ethics Training Was Not Provided for All Filers
Mandated Training	Very Serious	Sexual Harassment Prevention Training Was Not Provided for All Employees ²
Compensation and Pay	In Compliance	Salary Determinations Complied with Civil Service Laws, Board Rules, and CalHR Policies and Guidelines
Compensation and Pay	In Compliance	Alternate Range Movements Complied with Civil Service Laws, Board Rules, and/or CalHR Policies and Guidelines

¹ Repeat finding. The BCDC’s October 18, 2021, compliance review report identified that the BCDC did not provide four probationary reports of performance for two of the eight appointments reviewed and did not provide one probationary report of performance in a timely manner.

² Repeat finding. The BCDC’s October 18, 2021, compliance review report identified that the BCDC did not provide sexual harassment prevention training to any of its 11 existing supervisors every two years.

Area	Severity	Finding
Compensation and Pay	In Compliance	Hire Above Minimum Requests Complied with Civil Service Laws, Board Rules, and/or CalHR Policies and Guidelines
Compensation and Pay	Very Serious	Incorrect Authorization of Pay Differentials
Leave	In Compliance	Positive Paid Employees' Tracked Hours Complied with Civil Service Laws, Board Rules, and/or CalHR Policies and Guidelines
Leave	In Compliance	Administrative Time Off Authorizations Complied with Civil Service Laws, Board Rules, and/or CalHR Policies and Guidelines
Leave	In Compliance	Leave Auditing and Timekeeping Complied with Civil Service Laws, Board Rules, and/or CalHR Policies and Guidelines
Leave	In Compliance	Service and Leave Transactions Complied with Civil Service Laws, Board Rules, and/or CalHR Policies and Guidelines
Policy	In Compliance	Nepotism Policy Complied with Civil Service Laws, Board Rules, and/or CalHR Policies and Guidelines
Policy	In Compliance	Workers' Compensation Process Complied with Civil Service Laws, Board Rules, and/or CalHR Policies and Guidelines
Policy	In Compliance	Performance Appraisal Policy and Processes Complied with Civil Service Laws and Regulations and CalHR Policies and Guidelines

BACKGROUND

The BCDC is a state planning and regulatory agency with regional authority. Its mission is to protect and enhance the San Francisco Bay (Bay), and to encourage the Bay's responsible and productive use. The BCDC issues permits for filling, dredging, and development projects within the Bay, along the Bay shoreline, and within salt ponds and certain managed wetlands adjacent to the Bay. By statute, the BCDC develops and

implements the federal Coastal Zone Management Act's program for the Bay and exercises authority over federal activities otherwise not subject to state control.

The BCDC leads the ongoing multi-agency regional effort to address the impacts of rising sea level and climate change on the Bay and its shoreline. The BCDC has 49 authorized positions in the following divisions: Executive, Planning, Regulatory, Administration, and Legal.

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

SCOPE AND METHODOLOGY

The scope of the compliance review was limited to reviewing the BCDC's examinations, appointments, EEO program, PSC's, mandated training, compensation and pay, leave, and policy and processes³. The primary objective of the review was to determine if the BCDC'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 BCDC's examinations was selected for review to ensure that samples of various examination types, classifications, and levels were reviewed. The CRU examined the documentation that the BCDC provided, which included examination plans, examination bulletins, job analyses, and scoring results. The BCDC did not conduct any permanent withhold actions during the compliance review period.

A cross-section of the BCDC'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 BCDC 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 BCDC did not conduct any unlawful appointment investigations or make any additional appointments during the compliance review period.

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

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

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

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

The BCDC'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.

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

⁴If an employee organization requests the SPB to review any personal services contract during the SPB compliance review period or prior to the completion of the final compliance review report, the SPB will not audit the contract. Instead, the SPB will review the contract pursuant to its statutory and regulatory process. In this instance, none of the reviewed PSC's were challenged.

the compliance review period in order to ensure that they adhered to procedural requirements.

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

On March 8, 2024, an exit conference was held with the BCDC to explain and discuss the CRU's initial findings and recommendations. The CRU received and carefully reviewed the BCDC's written response on March 18, 2024, 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, November 1, 2022, through October 31, 2023, the BCDC conducted two examinations. The CRU reviewed all two of those examinations, which are listed below:

Classification	Exam Type	Exam Components	Final File Date	No. of Apps
Bay Development Design Analyst BCDC	Open	Education and Experience ⁵	3/3/2023	2
CEA, Director of Regulatory	CEA	Statement of Qualifications ⁶	3/3/2023	15

SEVERITY: VERY SERIOUS	FINDING NO. 1 INCOMPLETE JOB ANALYSIS FOR THE EXAMINATION PROCESS
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Summary: The BCDC did not provide a complete job analysis for one of the two examinations reviewed. The BCDC provided a job analysis for the examination listed below but they did not include all required components as listed in the Merit Selection Manual (MSM), including a description of how the knowledge, skills, and abilities (KSAs) and tasks were obtained, evidence of how and when the KSAs and tasks were reviewed, SMEs and survey respondents' current classifications, evidence that a representative sample of SMEs participated in the finalization meeting and survey process, and survey cutoff methodology.

Classification	List Active Date	List Expiration Date	No. of Eligibles
Bay Development Design Analyst BCDC	3/22/23	3/22/24	2

Criteria: The MSM, which is incorporated in California Code of Regulations, title 2, section 50, mandates the development and use of a job analysis for the examination process. "Job analysis shall serve as the primary basis for demonstrating and documenting the job-relatedness of examination processes conducted for the establishment of eligible lists within the State's civil service." (MSM, § 2200, p. 2.) The MSM requires that job analyses adhere to the legal and professional standards outlined in the job analysis section of the

⁵ In an Education and Experience examination, one or more raters reviews the applicants' Standard 678 application forms, and scores and ranks them according to a predetermined rating scale that may include years of relevant higher education, professional licenses or certifications, and/or years of relevant work experience.

⁶ In a Statement of Qualifications examination, applicants submit a written summary of their qualifications and experience related to a published list of desired qualifications. Raters, typically subject matter experts, evaluate the responses according to a predetermined rating scale designed to assess their ability to perform in a job classification, assign scores and rank the competitors in a list.

MSM, and that certain elements must be included in the job analysis studies. (*Ibid.*) Those requirements include the following: (1) the job analysis be performed for the job for which the subsequent selection procedure is developed and used; (2) the methodology utilized be described and documented; (3) the job analytics data be presented in writing; (4) the job analytic data be collected from a variety of current sources; (5) the sample size of subject matter expert participants in the data collection activities be representative of the jobs within the classification for which the job analysis is conducted, as well as of sufficient size to yield adequate data; (6) job tasks be specified in terms of importance or criticality, and their frequency of performance, as well as determination of the essential job tasks; (7) job tasks be sufficiently detailed to derive the requisite KSAs; (8) specify the critical KSAs required upon entry for successful job performance; (9) the KSAs be operationally defined; and (10) document linkage between the essential tasks and the important KSAs required upon entry. (MSM, § 2200, pp. 2-3.)

Severity: Very Serious. The examination may not have been job-related or legally defensible.

Cause: The BCDC states that due to the small size of the exam and the limited staff in Human Resources, not all the components of the job analysis were completed.

Corrective Action: The BCDC asserts it has taken steps to ensure compliance in this area. Within 90 days of the date of this report, the BCDC must submit to the SPB documentation which demonstrates that prior to administering any future examinations, the BCDC will create and develop each examination based upon a job analysis that meets the requirements of the Merit Selection Manual (Cal. Code Regs., tit. 2, § 50).

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, October 1, 2022, through September 30, 2023, the BCDC made 30 appointments. The CRU reviewed 12 of those appointments, which are listed below:

Classification	Appointment Type	Tenure	Time Base	No. of Appts.
Bay Development Design Analyst, BCDC	Certification List	Limited Term	Full Time	1
Coastal Program Analyst I	Certification List	Limited Term	Full Time	1
Coastal Program Analyst II	Certification List	Limited Term	Full Time	1
Coastal Program Analyst III	Certification List	Limited Term	Full Time	1
Environmental Program Manager I (Supervisory)	Certification List	Permanent	Full Time	1
Environmental Scientist	Certification List	Permanent	Full Time	1
Research Data Specialist I	Certification List	Permanent	Full Time	1
Senior Engineer, BCDC	Certification List	Permanent	Full Time	1
Senior Environmental Scientist (Supervisory)	Certification List	Permanent	Full Time	1
Senior Environmental Scientist (Specialist)	Certification List	Permanent	Full Time	1
Senior Landscape Architect	Certification List	Permanent	Full Time	1
Environmental Scientist	Transfer	Limited Term	Full Time	1

SEVERITY: SERIOUS	FINDING NO. 2 PROBATIONARY EVALUATIONS WERE NOT PROVIDED FOR ALL APPOINTMENTS REVIEWED AND SOME THAT WERE PROVIDED WERE UNTIMELY
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Summary: The BCDC did not provide 3 probationary reports of performance for 1 of the 12 appointments reviewed by the CRU. In addition, the BCDC did not provide one probationary report of performance in a

timely manner, as reflected in the table below. This is the second consecutive time this has been a finding for the BCDC.

Classification	Appointment Type	No. of Appointments	Total No. of Missing Probation Reports
Environmental Scientist	Certification List	1	3
Environmental Program Manager I (Supervisory)	Certification List	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 BCDC states that supervisors are provided with the due dates of probationary evaluations for their employees; however, despite being aware of the requirement, notified in advance of the dates, and

sent reminders, some supervisors failed to provide timely probationary reports.

Corrective Action: The BCDC asserts it has taken steps to ensure compliance in this area. Within 90 days of the date of this report, the BCDC must submit to the SPB documentation which demonstrates conformity with the probationary requirements of Government Code section 19172 and California Code of Regulations, title 2, section 599.795.

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).)

IN COMPLIANCE	FINDING NO. 3 EQUAL EMPLOYMENT OPPORTUNITY PROGRAM COMPLIED WITH ALL CIVIL SERVICE LAWS AND BOARD RULES
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After reviewing the policies, procedures, and programs necessary for compliance with the EEO program's role and responsibilities according to statutory and regulatory guidelines, the CRU determined that the BCDC'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 BCDC. The BCDC also provided evidence of its efforts to promote EEO in its hiring and employment practices and to increase its hiring of persons with a disability.

Personal Services Contracts

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

For cost-savings PSC’s, a state agency is required to notify SPB of its intent to execute such a contract. (Gov. Code, § 19131.) For subdivision (b) contracts, the SPB reviews the adequacy of the proposed or executed contract at the request of an employee organization representing state employees. (Gov. Code, § 19132.)

During the period under review, November 1, 2022, through October 31, 2023, the BCDC had seven PSC’s that were in effect. The CRU reviewed six of those, which are listed below:

Vendor	Services	Contract Amount	Justification Identified?	Union Notification?
Catalyst	Wetlands & Adaption Project Facilitation and Process Support	\$39,936	Yes	No
Environmental Science Associates	Environmental Assessment	\$144,880	Yes	No

Vendor	Services	Contract Amount	Justification Identified?	Union Notification?
Greenbelt Alliance	Development of the Bay Adapt: Regional Strategy for a Rising Bay	\$330,000	Yes	Yes
Mithun	Development of the Regional Shoreline Adaptation Plan	\$480,00	Yes	Yes
Point Reyes Bird Observatory dba Point Blue Conservation Science	Bay Plan Policy Development	\$9,999	Yes	Yes
Resource Legacy Fund	Administer Environmental Justice Advisor Program	\$74,000	Yes	Yes

SEVERITY: SERIOUS	FINDING NO. 4 UNIONS WERE NOT NOTIFIED OF PERSONAL SERVICES CONTRACTS
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Summary: The BCDC did not notify unions prior to entering into two of the six PSC's reviewed.

Criteria: Before a state agency executes a contract or amendment to a contract for personal services conditions specified within Government Code section 19130, subdivision (b), the agency shall notify all organizations that represent state employees who perform or could perform the type of work that is called for within the contract, unless exempted under Government Code section 19132, subdivision (b)(1). (Cal. Code Regs., tit. 2, § 547.60.2.)

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

Cause: The BCDC states that there appeared to be no applicable unions to notify for the two PSC's identified and they were unaware of the California Code of Regulations section 547.60.2 requirement to notify all employee organizations in these instances.

Corrective Action: Departments are responsible for notifying all organizations that represent state employees who perform or could perform the type of work to be contracted prior to executing a PSC. The PSC's reviewed during this compliance review involved several services and functions which various rank-and-file civil service classifications perform. The BCDC asserts it has taken steps to ensure compliance in this area. Within 90 days of the date of this report, the BCDC must submit to the SPB documentation which demonstrates the corrections the department has implemented to ensure conformity with the requirements of California Code of Regulations section 547.60.2.

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 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.*)

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 BCDC’s mandated training program that was in effect during the compliance review period, November 1, 2021, through October 31, 2023. The BCDC’s supervisory training was found to be in compliance, while the BCDC’s ethics training and sexual harassment prevention training were found to be out of compliance.

SEVERITY: VERY SERIOUS	FINDING NO. 5 ETHICS TRAINING WAS NOT PROVIDED FOR ALL FILERS
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Summary: The BCDC did not provide ethics training to 16 of 92 existing filers. In addition, the BCDC did not provide ethics training to 3 of 15 new filers within 6 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 BCDC states that although they have an automated filing system, not all commissioners, board members, and staff completed their assigned training timely. Additionally, the COVID-19 pandemic

and competing demands caused a gap in monitoring training compliance.

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

SEVERITY: VERY SERIOUS	FINDING NO. 6 SEXUAL HARASSMENT PREVENTION TRAINING WAS NOT PROVIDED FOR ALL EMPLOYEES
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Summary: The BCDC did not provide sexual harassment prevention training to 2 of 9 existing supervisors every 2 years. In addition, the BCDC did not provide sexual harassment prevention training to 5 of 27 existing non-supervisors every 2 years. This is the second consecutive time this has been a finding for the BCDC.

Criteria: Each department must provide its supervisors two hours of sexual harassment prevention training every two years and non-supervisory employees one hour of sexual harassment prevention training every two years. New employees 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 employees 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 BCDC states that all employees are notified and reminded of the sexual harassment prevention training requirement and deadline. However, not all employees completed their training in a timely manner. Furthermore, some staff were unable to find and submit their certificates.

Corrective Action: The BCDC asserts it has taken steps to ensure compliance in this area. Within 90 days of the date of this report, the BCDC must submit to the SPB documentation which demonstrates the corrections the department has implemented to ensure that all employees are provided sexual harassment prevention training in accordance with Government Code section 12950.1.

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 rate⁷ 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, October 1, 2022, through September 30, 2023, the BCDC made 30 appointments. The CRU reviewed five of those appointments to determine if the BCDC applied salary regulations accurately and correctly processed employees’ compensation, which are listed below:

Classification	Appointment Type	Tenure	Time Base	Salary (Monthly Rate)
Environmental Scientist	Certification List	Permanent	Full Time	\$7,926
Research Data Specialist I	Certification List	Permanent	Full Time	\$7,587
Senior Environmental Scientist (Supervisory)	Certification List	Permanent	Full Time	\$10,030
Senior Landscape Architect	Certification List	Permanent	Full Time	\$10,910

⁷ “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)
Environmental Scientist	Transfer	Limited Term	Full Time	\$7,029

IN COMPLIANCE	FINDING NO. 7 SALARY DETERMINATIONS COMPLIED WITH CIVIL SERVICE LAWS, BOARD RULES, AND CALHR POLICIES AND GUIDELINES
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The CRU found no deficiencies in the salary determinations that were reviewed. The BCDC appropriately calculated and keyed the salaries for each appointment and correctly determined employees' anniversary dates ensuring that subsequent merit salary adjustments will satisfy civil service laws, Board rules and CalHR policies and guidelines.

Alternate Range Movement Salary Determination (within same classification)

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

During the period under review, October 1, 2022, through September 30, 2023, the BCDC employees made two alternate range movements within a classification. The CRU reviewed all two of those alternate range movements to determine if the BCDC applied salary regulations accurately and correctly processed each employee's compensation, which are listed below:

Classification	Prior Range	Current Range	Time Base	Salary (Monthly Rate)
Coastal Program Analyst I	A	B	Full Time	\$5,541
Coastal Program Analyst I	A	B	Full Time	\$4,510

IN COMPLIANCE	FINDING NO. 8 ALTERNATIVE RANGE MOVEMENTS COMPLIED WITH CIVIL SERVICE LAWS, BOARD RULES, AND CALHR POLICIES AND GUIDELINES
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The CRU determined that the alternate range movements the BCDC made during the compliance review period, satisfied civil service laws, Board rules and CalHR policies and guidelines.

Hiring Above Minimum Requests

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

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

If the provisions of this section 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.⁸ (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

⁸ 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.

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, October 1, 2022, through September 30, 2023, the BCDC authorized six HAM requests. The CRU reviewed five of those authorized HAM requests to determine if the BCDC 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)
Coastal Program Analyst I	Certification List	New To State	\$4,295-\$4,880	\$4,880
Environmental Scientist	Certification List	New To State	\$5,037-\$6,250	\$6,250
Environmental Scientist	Certification List	New To State	\$6,375-\$7,926	\$7,926
Senior Engineer, BCDC	Certification List	New To State	\$10,589-\$13,228	\$13,228
Senior Environmental Scientist (Supervisory)	Certification List	New To State	\$10,030-\$12,469	\$12,469

IN COMPLIANCE	FINDING NO. 9 HIRE ABOVE MINIMUM REQUESTS COMPLIED WITH CIVIL SERVICE LAWS, BOARD RULES, AND CALHR POLICIES AND GUIDELINES
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The CRU found that the HAM requests the BCDC 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, October 1, 2022, through September 30, 2023, the BCDC authorized four pay differentials.⁹ The CRU reviewed all four of these pay differentials to ensure compliance with applicable CalHR policies and guidelines. These are listed below:

Classification	Pay Differential	Monthly Amount
Information Technology Associate	13	5%
Information Technology Specialist II	13	5%
Legal Secretary	141	1 Step Increase
Senior Engineer, BCDC	433	5.5%

SEVERITY: VERY SERIOUS	FINDING NO. 10	INCORRECT AUTHORIZATION OF PAY DIFFERENTIALS
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Summary: The CRU found one error in the four pay differentials reviewed:

⁹ For the purposes of CRU's review, only monthly pay differentials were selected for review at this time.

Classification	Area	Description of Finding	Criteria
Legal Secretary	Recruitment and Retention Pay	Pay differential 141 contains two tiers of pay and is based on the amount of qualifying pay periods served. The employee did not receive tier 2 of the pay differential and remained in tier 1 even though they met the criteria for tier 2 resulting in the employee being undercompensated.	Pay Differential 141

Criteria: A pay differential may be appropriate 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. 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. (CalHR Classification and Pay Manual Section 230.)

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

Cause: The BCDC states that pay differential 141 was not correctly applied due to human resources staff experiencing significant transition and a lack of proper monitoring of pay differentials.

Corrective Action: The BCDC asserts it has taken steps to ensure compliance in this area. Within 90 days of the date of this report, the BCDC must submit to the SPB documentation which demonstrates the corrections the department has implemented to ensure conformity with Pay Differential 141 and ensure that employees are compensated correctly and that transactions are keyed accurately.

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 days¹⁰ worked and paid absences¹¹, 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).)

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

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.

¹⁰ For example, two hours or ten hours count as one day.

¹¹ For example, vacation, sick leave, compensating time off, etc.

At the time of the review, the BCDC had 33 positive paid employees whose hours were tracked. The CRU reviewed four of those positive paid appointments to ensure compliance with applicable laws, regulations, policies and guidelines, which are listed below:

Classification	Tenure	Time Frame	Time Worked
Associate Governmental Program Analyst	Retired Annuitant	7/1/22-6/30/23	623.25 Hours
Student Assistant	Temporary	6/1/23-8/31/23	422 Hours
Student Assistant	Temporary	6/1/23-8/31/23	407 Hours
Student Assistant	Temporary	6/1/23-8/31/23	414 Hours

IN COMPLIANCE	FINDING NO. 11	POSITIVE PAID EMPLOYEES' TRACKED HOURS COMPLIED WITH CIVIL SERVICE LAWS, BOARD RULES, AND/OR CALHR POLICIES AND GUIDELINES
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The CRU found no deficiencies in the positive paid employees reviewed during the compliance review period. The BCDC 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, August 1, 2022, through July 31, 2023, the BCDC authorized 10 ATO transactions. The CRU reviewed eight 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
Coastal Program Analyst II	8/2/22-8/5/22	5 Days
Coastal Program Analyst I	9/26/22	2 Hours
Bay Development Design Analyst, BCDC	12/7/22-12/9/22	24 Hours
Environmental Science	8/10/22, 10/21/22	4 Hours

Classification	Time Frame	Amount of Time on ATO
Senior Environmental Science	8/5/22	8 Hours
Environmental Science	11/16/22-11/18-22, 11/21/22	32 Hours
Senior Environmental Science (Specialist)	9/14/22, 9/15/22	10 Hours
Associate Landscape Architect (Specialist)	10/14/22	2 Hours

IN COMPLIANCE	FINDING NO. 12	ADMINISTRATIVE TIME OFF AUTHORIZATIONS COMPLIED WITH CIVIL SERVICE LAWS, BOARD RULES, AND/OR CALHR POLICIES AND GUIDELINES
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The CRU found no deficiencies in the ATO transactions reviewed during the compliance review period. The BCDC 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, May 2, 2023, through August 1, 2023, the BCDC reported 1 unit comprised of 54 active employees. The pay period 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
May 2023	101	54	54	0

IN COMPLIANCE	FINDING NO. 13	LEAVE AUDITING AND TIMEKEEPING COMPLIED WITH CIVIL SERVICE LAWS, BOARD RULES, AND/OR CALHR POLICIES AND GUIDELINES
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The CRU reviewed employee leave records from one leave period to ensure compliance with applicable laws, regulations and CalHR policy and guidelines. Based on our review, the CRU found no deficiencies. The BCDC kept complete and accurate time and attendance records for each employee and officer employed within the department and utilized a monthly internal audit process to verify all leave input into any leave accounting system was keyed accurately and timely.

State Service

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

Generally, an employee who has 11 or more working days of service in a monthly pay period shall be considered to have a complete month, a month of service, or continuous service.¹² (Cal. Code Regs., tit. 2, § 599.608.) Full time and fractional employees who work less than 11 working days in a pay period will have a non-qualifying month and will not receive state service or leave accruals for that month.

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

For each qualifying monthly pay period, the employee shall be allowed credit for vacation with pay on the first day of the following monthly pay period. (Cal. Code Regs., tit. 2, § 599.608.) When computing months of total state service to determine a change in the

¹² Government Code sections 19143, 19849.9, 19856.1, 19858.1, 19859, 19861, 19863.1, and 19997.4 and California Code of Regulations, title 2, sections 599.609, 599.682, 599.683, 599.685, 599.687, 599.737, 599.738, 599.739, 599.740, 599.746, 599.747, 599.776.1, 599.787, 599.791, 599.840 and 599.843 provide further clarification for calculating state time.

monthly credit for vacation with pay, only qualifying monthly pay periods of service before and after breaks in service shall be counted. (Cal. Code Regs., tit. 2, § 599.739.) Portions of non-qualifying monthly pay periods of service shall not be counted nor accumulated. (*Ibid.*) On the first day following a qualifying monthly pay period, excluded employees¹³ shall be allowed credit for annual leave with pay. (Cal. Code Regs., tit. 2, § 599.752.)

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

During the period under review, October 1, 2022, through September 30, 2023, the BCDC had one employee with a non-qualifying pay period transaction. The CRU reviewed the one transaction to ensure compliance with applicable laws, regulations and CalHR policy and guidelines, which is listed below:

Type of Transaction	Time base	No. Reviewed
Non-Qualifying Pay Period	Full Time	1

IN COMPLIANCE	FINDING NO. 14	SERVICE AND LEAVE TRANSACTIONS COMPLIED WITH CIVIL SERVICE LAWS, BOARD RULES, AND/OR CALHR POLICIES AND GUIDELINES
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The CRU determined that the BCDC ensured the employee with a non-qualifying pay period did not receive vacation/sick leave, annual leave, and/or state service accruals. The CRU found no deficiencies in this area.

Policy and Processes

Nepotism

It is the policy of the State of California to 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

¹³ As identified in Government Code sections 19858.3, subdivisions (a), (b), or (c), or as it applies to employees excluded from the definition of state employee under Government Code section 3513, subdivision (c), or California Code of Regulations, title 2, section 599.752, subdivision (a), and appointees of the Governor as designated by the Department and not subject to section 599.752.1.

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.*)

IN COMPLIANCE	FINDING NO. 15	NEPOTISM POLICY COMPLIED WITH CIVIL SERVICE LAWS, BOARD RULES, AND/OR CALHR POLICIES AND GUIDELINES
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The CRU verified that the policy was disseminated to all staff and emphasized the BCDC’s commitment to the state policy of hiring, transferring, and promoting employees on the basis of merit. Additionally, the BCDC’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 COMPLIANCE	FINDING NO. 16	WORKERS' COMPENSATION PROCESS COMPLIED WITH CIVIL SERVICE LAWS, BOARD RULES, AND/OR CALHR POLICIES AND GUIDELINES
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The CRU verified that the BCDC 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 BCDC 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 10 permanent BCDC employees to ensure that the department was conducting performance appraisals on an annual basis in accordance with applicable laws, regulations, policies and guidelines.

IN COMPLIANCE	FINDING NO. 17	PERFORMANCE APPRAISAL POLICY AND PROCESSES COMPLIED WITH CIVIL SERVICE LAWS, BOARD RULES, AND CALHR POLICIES AND GUIDELINES
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The CRU found no deficiencies in the performance appraisals selected for review. Accordingly, the BCDC performance appraisal policy and processes satisfied civil service laws, Board rules, policies and guidelines.

DEPARTMENTAL RESPONSE

The BCDC's written response is attached as Attachment 1.

SPB REPLY

Based upon the BCDC's written response, the BCDC 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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State of California | Gavin Newsom – Governor | info@bcdc.ca.gov | www.bcdc.ca.gov

March 15, 2024

State Personnel Board
Compliance Review Unit

Re: Compliance Review Response

Dear State Personnel Board:

The San Francisco Bay Conservation & Development Commission (BCDC) was found to be non-compliant in the areas of Examinations, Appointments, Personal Services Contracts, and Mandated Training, and Pay Differentials. The report received from the State Personnel Board (SPB) Compliance Review Unit to both the BCDC and the CA Coastal Commission's Human Resources Office on March 6, 2024, indicated the following findings:

Examinations

Finding No. 1: Incomplete job analysis for the examination process.

Cause: BCDC acknowledges that the job analysis conducted for the Bay Development Design Analyst, Bay Conservation and Development classification was incomplete. This is a department specific classification that is used for one position at BCDC. As such, there was only one Subject Matter Expert (SME) to work with. The tasks from the classification specifications and the duty statement were rated by the SME to validate that the exam was job related. However, due to the small size of the exam and the limited staff in Human Resources, not all the components of the job analysis were completed.

Corrective Action: BCDC will follow the State's merit-based practices as outlined in the Selection Manual for future examinations. For assistance when conducting job analysis on small classifications, we will reach out to CalHR's Selection unit.

Appointments

Finding No. 2: Probationary evaluations were not provided for all appointments reviewed and some that were provided were untimely.

Cause: BCDC makes a good faith effort to inform management of the requirements regarding probationary evaluations. New supervisors are required to complete California Leadership Academy – Supervisor Development Program, which addresses the basics of probationary evaluations. Upon onboarding new staff, the supervisors are provided the due dates of probationary evaluations for their employees. Then, they are reminded again near the due



dates. However, despite being aware of the requirement, notified in advance of the dates, and reminded near the deadlines, some supervisors fail to provide timely probationary reports.

Corrective Action: BCDC has and will continue to expand their internal processes to include more monitoring and follow up with supervisors and managers prior to probationary report due dates. At the time of onboarding, the supervisor will receive an email with the probation report due dates and a calendar reminder for each. The Executive Director will be notified as supervisors fail to meet these deadlines. Within 90 days of the date of this report, BCDC will submit to the SPB relevant documentation demonstrating that the corrective action has been implemented.

Personal Services Contract

Finding No. 4: Unions were not notified of Personal Services Contracts.

Cause: The Contracts Analyst routinely notifies applicable unions of impending personal services contracts unless exempted by Government Code 19132, subdivision (b)(1), as demonstrated by the four notifications that were reviewed. However, there appeared to be no applicable unions for two of the personal services contracts and BCDC was unaware that in accordance with the California Code of Regulations Title 2, Section 547.60.2, "If the contracting state agency is unable to determine which employee organization(s) is or are appropriate to be notified, or determines that no represented employees perform or could perform the type of work that is called for within the contract, the contracting state agency shall notify all employee organizations representing each of the bargaining units within state civil service."

Corrective Action: BCDC will continue to notify applicable unions unless exempted or notify all unions if unable to determine which unions should be notified. This step will be reflected on the checklist used to process new contracts.

Mandated Training

Finding No. 5: Ethics training was not provided for all filers.

Cause: BCDC uses an automated filing system, known as eDisclosure. This system emails filers the requirement to complete training upon their appointment and every two years thereafter. However, not all commissioners, board members, and staff completed their assigned training timely. The COVID-19 pandemic and competing demands caused a gap in the monitoring of training compliance.

Corrective Action: BCDC will send reminders for those with the status of not yet completed ahead of the deadline and closely monitor progress. The analyst will send a deficiency list to the Executive Director as the deadline nears, who will follow up with those that have not yet completed the training.

Mandated Training

Finding No. 6: Sexual Harassment Prevention training was not provided for all employees.

Cause: All employees are notified and reminded of the mandated sexual harassment prevention training and deadline by which to complete the training. However, not all employees complete their training in a timely manner. Furthermore, some staff were unable to find and submit their certificates.

Corrective Action: BCDC will be requiring recertification every January in odd and even years to streamline the tracking process and ensure certificates are received. Senior Staff will be designated as part of the monitoring process to assist in following up with staff prior to deadlines. 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.

Pay Differentials

Finding No.10: Incorrect authorization of pay differentials.

Cause: BCDC acknowledges that Pay Differential 141 was not correctly applied. BCDC recognizes the importance of providing accurate pay to employees. Due to the limited human resources staff, which experienced significant transition, and the need to manually monitor pay differentials to determine they are applied appropriately, this was missed.

Corrective Plan: The transaction to apply the correct pay differential will be corrected. Human Resources staff will add applicable pay differentials to the list of transactions to be tracked.

Should you have any questions, please email me at Reylina.Ruiz@bcdc.ca.gov or call me directly at (415) 352-3638.

Sincerely,



Reylina Ruiz