



# **Office of the Independent Performance Auditor**

## **SALARIES AND COMPENSATION PERFORMANCE AND COMPLIANCE AUDIT**

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AUDIT No. 2021-1br

**August 2020**

Independent Performance Auditor, Mary Khoshmashrab, MSBA, CPA

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THE OFFICE OF THE INDEPENDENT PERFORMANCE AUDITOR

August 26, 2020

Chair Steve Vaus  
SANDAG Board of Directors

Audit Committee Chair Bill Baber  
SANDAG Audit Committee

Dear Chair Vaus and Audit Committee Chair Baber:

**Subject: Results - Salaries and Compensation Performance and Compliance Audit for FY 2015-16 to June 30, 2020 and through FY2021 for all planned and projected costs or actions.**

The objective of the engagement was to review past, current, and planned staff pay scales for competitive talent and risk associated with external versus instructional knowledge building and continuity, ensure that good system controls are in place, including written policies and procedures, and determine if applicable laws, regulations, policies and procedures are followed. Additionally, auditors reviewed other compensation such as bonuses, severance packages, and other benefits provided to SANDAG employees for FY 2015-16 to June 30, 2020 and through FY2021 for all planned and projected costs or actions.

The scope of this review is from July 1, 2014 to June 30, 2020; and through FY 2021 on projected cost or actions.

Our audit scope was severely impacted by the lack of data integrity found in key human resources and payroll systems. The OIPA noted the errors in reports pulled from the Ceridian system and SANDAG's human resources and payroll system. The data from Ceridian did not reconcile to SANDAG's Integrated Master Budget Model (IMBM) system, which is used for SANDAG's budgeting and salary schedules.

Testing and analytical procedures were developed to provide an analysis and understanding of the risks identified and potential outcomes. OIPA reviewed, analyzed, and tested business records including payroll disbursement transaction entries, budget and financial reports, board policy and administrative rules and regulations, board meeting minutes, and other relevant documents secured from various departments and independent sources.

The audit was conducted in accordance with the Generally Accepted Government Auditing Standards as required by federal and state governing code and under Assembly Bill 805.

In summary, based on the facts and evidence provided from SANDAG staff, it is the OIPA's opinion that the material findings, disclosed within the report, were a result of significant weaknesses in SANDAG's governance and system of internal controls. Specifically, the OIPA identified that SANDAG has not formalized key policies and procedures to ensure best practices and adherence to federal and state, laws, and regulations that govern public agencies. Most importantly, the reporting lines of the agency's previous internal audit function

was not appropriately aligned to ensure that issues that were identified were presented to the Audit Committee and the Board of Directors.

The OIPA also reported on circumstances that created undue influence threats for the OIPA and/or OIPA staff within the report in the section titled, "Comments – SANDAG's Independent Performance Auditor's Comments on the Response from SANDAG's Management."

With the creation of Assembly Bill 805, much-needed oversight was brought to SANDAG. The readers will find the results of the audit alarming. However, the findings should not be surprising given that SANDAG has gone unwatched from an internal perspective for this length of time.

Moving forward OIPA hopes to support and provide guidance to SANDAG management and staff in developing good system controls, strong and consistent written policies and procedures, and to help ensure adherence to both the policies of the Board and other laws, rules and regulations that govern this public agency.

The auditors ask that the readers keep in mind the great qualities mentioned in the report as they read the results because it's these qualities that justify SANDAG's continued presence. With teamwork and support from the Board and the Executive Director, SANDAG will continue to be seen as an outstanding agency who is envied by other Special Districts and Metropolitan Planning Organizations (MPOs).

**Restricted use:** Though this report is a public report, this report is intended solely for the information and use as determined by the SANDAG Chair and is not intended to be and should not be used by anyone other than the specified parties as determined by the SANDAG Chair.

The OIPA would like to thank the Executive Director, Hasan Ikhata and SANDAG Management and staff. If you have additional questions, please contact me at (619) 595-5323 or mary.khoshmashrab@sandag.org.

Respectfully,



MARY E. KHOSHMAHRAB, MSBA, CPA  
Independent Performance Auditor  
Office of the Independent Performance

cc:           Members of the Board of Directors  
              Members of the Audit Committee  
              Hasan Ikhata, Executive Director  
              Senior Leadership Team  
              OIPA Website  
              OIPA Files

Enclosure: Salaries and Compensation Performance and Compliance Audit Fact Sheet  
Report- Salaries and Compensation Performance and Compliance Audit

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## Salaries and Compensation Performance and Compliance Audit

### ***The Office of the Independent Performance Auditors Audit Objectives***

The Office of the Independent Performance Auditor reviewed past, current, and planned staff pay scales for competitive talent and risk associated with external versus instructional knowledge building and continuity. To ensure that good system controls are in place, including written policies and procedures, to determine if applicable laws, regulations, policies and procedures are followed. Additionally, auditors review other compensation such as bonuses, severance packages, and other benefits provided to SANDAG employees for FY 2015-16 to June 30, 2020 and through FY 2021 for all planned and projected costs or actions.

### ***Audit Findings Highlights***

#### **Management Assumed Control of Board of Director's Administrative Rules and Regulations (report page no. 27)**

During the audit, OIPA found a number of errors, abuse, and waste attributable to management assuming ownership of the Board's Administrative Rules and Regulations, a key document responsible for limiting SANDAG Executive Director's authority to administer business and appoint promote, transfer, discipline, and terminate employees of SANDAG. Consequently, SANDAG's management has been responsible for setting the policy, for which, it is supposed to be adhering to.

During the preliminary phase of this review, management stated SANDAG lacked several policies and controls over key human resource functions related to salaries, benefits, and payroll. Yet, a review of the Administrative Rules and Regulations showed that those policies and controls were in place at SANDAG in the past.

#### **Improper High Dollar Payments to Employees Upon Their Resignation from SANDAG (report page no. 36)**

SANDAG, without the Board's knowledge or approval, improperly paid three employees **\$337,598.34** upon their resignation from SANDAG in August 2019. A review showed that SANDAG's Executive Director, under the guidance of General Counsel and without the full Board's knowledge or approval, authorized severance payments totaling **\$227,078.80** to three Directors though they were not entitled to those amounts because they voluntarily resigned from SANDAG. Severance payments should be granted to employees only when the employer discharges or removes the employee without cause.



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## Salaries and Compensation Performance and Compliance Audit

### **Audit Findings Highlights (continued)**

In addition, for one of the employees, the Executive Director, and without the Board's knowledge or approval, also made an exception to Administrative Rules and Regulations of paying one-quarter of an employee's unused sick leave upon resignation. The OIPA found that the Executive Director, under the guidance of General Counsel, agreed to pay the employee an additional **990.94** hours (**62.6%**) of the employee's **1,581.88** hours of unused sick leave. As a result, the employee was paid an additional payment of **\$110,519.54** to which the employee was not entitled.

Also, during the audit, SANDAG authorized a **\$60,000** severance payment to the Chief Operations Officer after the employee *voluntarily resigned* from SANDAG. General Counsel stated that Counsel was of the opinion that factors existed upon which the Chief Operations Officer could have based a claim for constructive discharge or workplace injury, however the OIPA verified that none of the employees who received severance compensation had filed a claim against SANDAG. Further, the full Board was not aware of nor approved payments by a majority vote. As a result, the payments appear to be invalid gifts of public funds to former top-level managers of the agency.

### **SANDAG Paid High Dollar Bonuses and Salary Increases to Former Chief Deputy Executive Director (report page no. 42)**

The OIPA found that SANDAG executive management abused their authority to pay a former Chief Deputy Executive Director **\$112,222.80** in bonuses and salary merit increases from January to December 2018. As shown in Table 2, the employee received three separate bonuses and two merit salary increases in the span of 12 months. Further, the OIPA found:

- SANDAG management lacked a sufficient basis for the payments to the Chief Deputy Executive Director.
- SANDAG management sought the approval of the previous Board Chair and on a separate transaction the Board Vice Chair for the payments, in order to make the payments appear lawful and reasonable, although the ultimate responsibility for the payments had been delegated to the Director of Administration by the Board.
- SANDAG management failed to make the full Board aware of the payouts and intended to conceal the payouts by breaking them into a series of payments.

### **Breach of Fiduciary Duty by SANDAG Management (report page no. 46)**

The OIPA found that SANDAG management failed to inform the Board of its responsibilities to define special compensation and did not disclose benefits paid to management. Also, management failed to inform the Board of its responsibility to separately agendaize, fully discuss, and approve salary and special compensation tables. Management failed to be transparent in presenting budget and financial information to the Board.



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## Salaries and Compensation Performance and Compliance Audit

### Audit Findings Highlights (continued)

#### **SANDAG Overbilled Projects for Bonuses Paid to Former Director (report page no. 50)**

The OIPA found SANDAG incorrectly charged projects for fringe and overhead costs for at least one bonus paid to the Chief Deputy Executive Director. The Chief Deputy Executive Director was paid a bonus in the amount of **\$44,200** on November 27, 2018. SANDAG **billed 30 project codes** for a total of **\$101,736.90**. As a result, SANDAG *overbilled* projects for approximately **\$57,537** for fringe and overhead costs. There is increased risk that SANDAG is unfairly using money meant for transportation and criminal justice related projects to recoup costs for large dollar bonuses paid to executive level management. As a result, the cities and the County may not receive funding for their projects and the public could lose trust in SANDAG, its Board, and its employees.

#### **Unapproved Bonuses Reported to CalPERS as Special Compensation (report page no. 51)**

In an audit completed by CalPERS in June 2020, CalPERS found that SANDAG *incorrectly reported* the Chief Deputy Executive Director's bonus of **\$44,200** paid in June 10, 2018 to CalPERS.

According to the report, SANDAG's Employee Handbook contained a bonus plan; CalPERS found the plan was not approved by SANDAG's Board and did not specify the conditions for payment. As a result, CalPERS found the bonus pay was not reportable as special compensation. The OIPA did not verify that SANDAG properly reported bonuses it paid employees from FY 2014-15 to December 2019 in the amount of approximately **\$829,370**.

#### **Mismanagement and Lack of Transparency of SANDAG's Annual Productivity Program Resulted in Disparity of Payments to Employees (report page no. 55)**

The OIPA found significant disparity in the amounts of performance incentives paid to staff and management in FY 2015-16 to FY 2019-20. The OIPA also found SANDAG lacked a system of internal controls to prevent fraud, waste, and abuse of the program and to determine the total amount paid to employees through the program.

A review of SANDAG's compensation program found that the Board had approved approximately **\$7.98 million** in performance incentive payments to staff from FY 2014-15 to FY 2019-20.

#### **Merit Increases, Equity Payouts, Bonuses are not Equitably Distributed to Employees (report page no. 55)**

During our review of bonuses, the OIPA found that **286** bonuses were paid for a total of approximately **\$829,370** from FY 2014-15 to December 2019. A review showed **121** employees received bonuses, which is less than a third of SANDAG's total employees during that. Bonuses paid to employees ranged from **\$250** to **\$44,200**.

The OIPA also found that **42** employees within seven classifications of employees, a classification may contain only one position or a number of positions, accounted for approximately **\$468,039 (56.43%)** of the total bonuses paid for all years reviewed.





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## Salaries and Compensation Performance and Compliance Audit

### **Audit Findings Highlights (continued)**

The use of public funds to pay special compensation such as cash bonuses to government employees who already receive generous pension packages, competitive salaries and other public employee benefits, is not looked upon as a prudent use of public dollars. In fact, it rare and uncommon that public employees at the federal, state, and other local governments such as counties and cities are paid special compensation that SANDAG has paid over the years to a selected number of employees.

#### **Lack of Justification for Awarding Performance Incentive Pays (report page no. 57)**

SANDAG lacks a basis for the amounts that are paid to employee because SANDAG is missing formalized procedures that state the performance evaluation ratings necessary to award a merit increase, bonus, and equity pay and amounts that should be awarded.

OIPA reviewed a sample of employees who received bonuses during the audit period and reviewed employee's performance evaluations to determine whether SANDAG has sufficient support and basis to award bonuses. The results showed that many employee's supervisors and employee's signatures were missing. Further, the results showed that some rating of performances by supervisors were missing and SANDAG management did not document and approve the reasons to support the bonus pay. Lastly, the results showed that the ratings did not corollate to the dollar value of the bonus awarded to staff.

#### **No Evidence of Approvals of Performance Incentive Recommended and Awarded to Employees (report page no. 58)**

OIPA found that management did not document the approval of merit increases, bonuses, or equity adjustments.

#### **Paid Bonuses Does Not Reconcile to Approved Bonuses Amounts (report page no. 59)**

During FY 2014-15 to FY 2019-20, the OIPA found SANDAG paid **\$14,500** more in bonuses than was approved based on a review of the support for approved performance incentive pay and payroll records. During the review, OIPA requested evidence of the bonuses that were authorized by human resources and paid by payroll. Yet, payroll provided several versions of the performance incentive pay documents from human resources they used to make the payments.

#### **Insufficient Methodology in Utilizing Comparable Salary Surveys (report page no. 60)**

The OIPA found that salary comparison surveys used by SANDAG did not rely on comparable governmental agencies of the same size or functions. Rather, they relied in part on private and out-of-state governments. In addition, OIPA found that SANDAG did not include all of its positions in its salary comparison surveys. For example, we found that critical positions, such as the Chief Economist and Clerk of the Board, were missing from the analysis. Also, the analysis did not include consideration of special compensation or benefits paid to retain critical positions.



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## Salaries and Compensation Performance and Compliance Audit

### **Audit Findings Highlights (continued)**

#### **SANDAG Lacks Complete Job Duty Statements (report page no. 61)**

The OIPA found that SANDAG does not consistently create and use duty statements for positions within the agency. Further, staff reported being hired without reviewing their job duties, and/or being provided with job descriptions that do not match the duties that they regularly perform.

#### **Reorganization Resulted in Increased Salary and Benefit Costs to SANDAG (report page no. 64)**

- SANDAG is top heavy with management for an organization of its size. Also, the agency significantly added to the number of top-level managers within the organization without justification which resulted in salary costs for executive management increasing by **\$897,303** to **\$1,390,825 per year** going forward.
- Several top-level managements received unjustified raises after their positions were retitled, and though their job duties did not change. In total, the additional amount that SANDAG must pay for executive level employees' salaries increases is **\$312,854 per year** going forward.
- SANDAG also set newly promoted top-level management salaries far exceeding the minimum salary required for those positions, without justification. In total, the additional amount that SANDAG must pay for executive level employees' salaries increased by **\$193,919**, of which **\$115,609** was unjustified, per year going forward.

#### **SANDAG Lacks Fair, Objective, and Competitive Hiring Practices (report page no. 74)**

During the review, the OIPA found that the Executive Director and Senior Leadership Team appointed employees to high-level Executive and Management level positions without openly advertising and competitive recruitment. The OIPA found that SANDAG does not consistently score candidates or document the results of the interviews because SANDAG lacks formalized procedures to conduct interviews. The Director also stated that while scoring of candidates was not documented, interviewers sometimes orally ranked candidates. Because of the lack of consistency of processes for selecting candidates and the lack of documentation surrounding interview results, the OIPA could not determine which positions within SANDAG were filled by appointment rather than a competitive recruitment process.

#### **SANDAG Management Forced Employees Into At-Will Employment Contracts Violating Employee Rights (report page no. 77)**

The OIPA found that the Executive Director changed the status of SANDAG's regular employees' status from full-time to at-will without authority because the change of employees' status is under the purview of the Board of Directors. Further, the change of status does not apply equally to all regular employees within the organization. As a result, some SANDAG employees can be fired without cause and without the right to appeal, while SANDAG must find cause to terminate others. Consequently, there is a disparity among staff.

## WHAT IS GREAT ABOUT SANDAG

As auditors, we are often seen as the “bearer of bad news” or the messengers of the “what’s not being done correctly, deficiently, or lacking”. However, as an auditor it would be unfair or biased if we failed to mention the positive or great things that are identified during this audit. OIPA identified many great things about SANDAG with a few that OIPA felt were important and worthy of mentioning.

First, SANDAG’s purpose and the value that SANDAG, as a special district, brings to the San Diego Region. The responsibilities as mentioned in the background section of this report are why SANDAG must succeed and continue to benefit all cities, partners, stakeholders, and citizens of this region.

Second, SANDAG staff. In most organizations, the management team is responsible for helping setting an organization’s culture, tone, and hierarchy of major performance goals and other objectives and from there, the employees of an organization bring actions to these defined expectations, while at the same time, management walks their talk. During OIPA’s time here at SANDAG, both during this audit and before, the OIPA found SANDAG staff to be the real body and soul of this organization. Staff have shown their commitment to the purpose, mission, and goals of SANDAG through action.

This was recognized immediately, when OIPA began the organizational wide risk assessment process. Several SANDAG staff, who were not randomly selected, volunteered to participate in this process and, the survey outcomes supported that staff desires change and has a deep passion for SANDAG and how they contribute to SANDAG’s success. SANDAG staff, as with other public organizations, can materially impact the success of defined performance goals and measures of major projects. And, in the end is the determining factor for an organization’s continued existence.

With this understanding, OIPA ask that the readers keep in mind the great qualities mentioned above as they read this report, because it’s these qualities that justify SANDAG’s continued presence. With teamwork and support from the Board and the Executive Director, SANDAG will continue to be seen as an outstanding agency who is envied by other Special Districts and Metropolitan Planning Organizations (MPOs).

## BACKGROUND

While the San Diego Association of Governments (SANDAG) was initially organized as a joint powers authority, it was vested with taxing authority pursuant Senate Bill 1703, the San Diego Regional Transportation Consolidation Act (Consolidation Act”), Public Utilities Code (PUC) section 132350 et seq. PUC Section 132350.2 defines the “consolidated entity” as “the authority resulting from the consolidation of SANDAG and the transit boards’ responsibilities as set forth herein.” As such, the Consolidation Act transformed what was a JPA into a new statutorily created public entity with expanded powers, including the power to levy taxes. While the name has remained unchanged, the nature of SANDAG post-Consolidation Act is wholly changed.

PUC section 132360.6 provides the “consolidated agency” SANDAG with its taxing authority: “The consolidated agency may use the authority for the retail transactions and use tax provided under Sections 132301 and 132302 to fund and finance infrastructure needs identified in the regional comprehensive plan developed in accordance with this article.” Sections 132301 and 132302 are both part of the Commission Act (PUC Section 132000 et seq.). Under the Commission Act, “The Board of Directors of the San Diego Association of Governments shall serve as the San Diego County Regional Transportation Commission.” (PUC 132051) PUC Sections 132301 and 132302 authorize the Commission to impose a transaction and use tax within specified parameters, and PUC 132360.6 vests that same authority in the “consolidated agency” SANDAG.

The governance of SANDAG was further clarified by Assembly Bill 361 (Kehoe) last amended in 2003. Section 1. (a) states the Legislature finds and declares that it is critical that the people of San Diego County be aware of the structure of governance that oversees implementation of regional issues and that at a future date, to be determined, that the people concur, through a public vote on the future structure and responsibilities of the agency.

According to the California State Controller’s Office (SCO), SANDAG was ranked the 15th of top 250 special districts with the largest total revenues. SANDAG is listed as a Transportation Planning Agency entity type, and an independent district type.

According to the SCO, SANDAG is an Independent Special District. Further, SANDAG’s entity type is further refined by the California Local Agency Formation Commissions (LAFCO). According to LAFCO’s definition of special district, SANDAG meets all the criteria, further supporting that SANDAG is an Independent Special District. Specifically, LAFCO states a special district is a separate local government that delivers a limited number of public services to a geographically limited area. Special districts have four distinguishing characteristics. Special districts:

- Are a form of government.
- Have governing boards.
- Provide services and facilities.
- Have defined boundaries.

According to California Government Code Section 56044, "Independent district" or "independent special district" includes any special district having a legislative body all of whose members are elected by registered voters or landowners within the district, or whose members are appointed to fixed terms, and excludes any special district having a legislative body consisting, in whole or in part, of ex officio members who are officers of a county or another local agency or who are appointees of those officers other than those who are appointed to fixed terms. "Independent special district" does not include any district excluded from the definition of district contained in Sections 56036 and 56036.6.

- (a) "District" or "special district" are synonymous and mean an agency of the state, formed pursuant to general law or special act, for the local performance of governmental or proprietary functions within limited boundaries and in areas outside district boundaries when authorized by the commission pursuant to Section 56133.
- (b) "District" or "special district" includes a county service area, but excludes all of the following:
  - (1) The state.
  - (2) A county.
  - (3) A city.
  - (4) A school district or a community college district.
  - (5) An assessment district or special assessment district.
  - (6) An improvement district.
  - (7) A community facilities district formed pursuant to the Mello-Roos Community Facilities Act of 1982 (Chapter 2.5 (commencing with Section 53311) of Part 1 of Division 2 of Title 5).
  - (8) A permanent road division formed pursuant to Article 3 (commencing with Section 1160) of Chapter 4 of Division 2 of the Streets and Highways Code.
  - (9) An air pollution control district or an air quality maintenance district.
  - (10) A zone of any special district.

The OIPA verified that SANDAG is not included on the list of either Sections 56036 or 56036.6.

SANDAG is governed by a Board of Directors (Board) composed of the mayors, council members, and county supervisors from each of the region's 18 cities and County. Supplementing these voting members are advisory members representatives from Imperial County, the U.S. Department of Defense, California Department of Transportation (Caltrans), Metropolitan Transit System, North County Transit District, San Diego County Water Authority, San Diego Unified Port District, San Diego

Regional Airport Authority, Imperial County Southern California Tribal Chairmen's Association, and Mexico.

Most matters are decided by a simple tally vote; however, under some circumstances, the Board may take a weighted vote based on population that can supersede the tally vote. Each of the 19 local jurisdictions has one tally vote. The weighted vote is proportional to each jurisdiction's population as a percentage of San Diego County as a whole. Pursuant to PUC Section 132351.2, each agency must have at least one vote, there are no fractional votes, and no agency may have more than 50 votes. The weighted vote distribution must equal 100 votes in total and is calculated based on California Department of Finance population figures each year.

The agency oversees a program budget of approximately \$1.3 billion annually, of which approximately \$48.6 million are project costs for the Overall Work Program (OWP), \$65.2 million are for regional operations and the annual portion of the capital program is project to be \$859.2 million. Caltrans District 11 will receive approximately \$309.7 million in pass through funding from SANDAG. The SANDAG financial outlook is tied to the health of the regional, state, national, and global economy. How the overall economy in the world fares can have ripple effects on sales tax receipts and other sources of revenue that the agency depends on to carry out its projects and programs. Sales tax-based sources, such as Transportation Development Act and TransNet, are a significant source of funding for both the Capital Program and the OWP.

To support their oversight responsibilities for SANDAG, the Board has established six Policy Advisory Committees (PACs) that meet on a regular basis and consider policy recommendations for the Board. The PACs are the Audit Committee, Borders Committee, Executive Committee, Public Safety Committee, Regional Planning Committee, and Transportation Committee.

In fiscal year (FY) 2019-20, SANDAG had approximately 390 authorized and budgeted full-time employees and approximately 33 temporary, interns, part-time and seasonal employees for which approximately \$35.5 million was allocated for salaries and \$17 million was allocated for employee benefits.

SANDAG contracts with the California Public Employees Retirement System (CalPERS) for pension benefits for employees. Employees are responsible for paying the member's share of the retirement benefit. For employees hired prior to October 27, 2012 who receive the 2.7% at 55 years benefit, the employee contribution is 8 percent of annual salary. For employees hired after October 27, 2012 who receive the 2% at 60 years benefit, the employee contribution rate is 7 percent. For employees hired on or after January 1, 2013 who receive the 2% at 62 years benefit, the employee contribution rate is 6.75 percent.

## Creation of the Office of the Independent Performance Auditor

Prior to the creation of the Office the Independent Performance Auditor (OIPA) the internal auditor reported to the Executive Director, who was also responsible for granting prior internal auditors salary increases and bonuses. As such, an independent review of SANDAG, from a holistic internal perspective, has not previously been completed.

On January 1, 2018, a new California Assembly Bill (AB 805) required the creation of the SANDAG Audit Committee, and an independent performance auditor (IPA) position. The Audit Committee is responsible for making recommendations to the SANDAG Board of Directors regarding the hiring and oversight of the work of the SANDAG independent performance auditor, the SANDAG annual audit plan, the firm to perform the SANDAG annual financial statement audits, and internal control guidelines for the agency.

The Audit Committee also is responsible for monitoring the implementation of any corrective actions arising from the audits. Prior to the creation of the Audit Committee and OIPA, SANDAG had only 1.5 full time auditing positions which reported directly to management. Further, most audit reviews completed were non-audit reviews of the organization.

This audit was conducted by the following OIPA staff:

Audit Lead: Michelle Ludwick, CGAP, Principal Management Internal Auditor

Staff: Lloyd Carter, Principal Management Internal Auditor  
Ronald Ong, Intern  
Michael Ryan, Intern

## Reorganization of SANDAG's Organizational Structure

In July 2019, the Executive Director initiated a comprehensive reorganization of SANDAG in an effort to establish an internal leadership team to ensure appropriate oversight and management of the agency and a department structure to improve its operational effectiveness. The Executive Director's vision was to organize around three distinct alignments – planning, doing, and supporting.

A memo from the Executive Director to file, dated February 14, 2020, stated that given the scope, complexity and size of the organization, the Executive Director determined that the traditional hierarchal structure of one Chief Deputy Executive Director no longer provided adequate executive leadership to SANDAG.

According to documents reviewed, the Executive Director observations of SANDAG's current hierarchal structure resulted in:

- a lack of coordination between divisions
- decision making being "delegated" to the top of the organization
- lack of resiliency, and flexibility, and accountability
- emphasis on maintaining the status quo
- workforce disconnected from achieving SANDAG's objectives
- SANDAG's human resource and budget practices were not nimble

The Executive Director identified the need to create the Senior Leadership Team to serve in the capacity of Chief Deputy Executive Directors. Each Chief Deputy Executive Director would have a specific responsibility for one of the alignments (planning, doing, supporting) as well as the charge to act in full coordination and cooperation exercising the Executive Director's full delegation of authority. The three newly created Chief Deputy Executive Director positions are as follows:

<b><u>Former Position</u></b>	➔	<b><u>Retitled Position</u></b>
Chief Deputy Executive Director	➔	Chief Operations Officer
Department Director of Operations	➔	Chief Planning and Innovation Officer
Department Director of Mobility Management & Project Implementation	➔	Chief Capital Program and Regional Services Officer

Prior to the reorganization, SANDAG's organizational chart, showed the agency had approximately 417 employees, including 32 temporary, intern, part-time, and seasonal staff during FY 2018-19. At that time SANDAG had two executive level positions - Executive Director and Chief Deputy Executive Director, and an Executive Team totaling 10 employees [1 Executive Director, 1 Chief Deputy Executive Director, and 8 Department Directors].

Figure 1 shows the eight departments and their respective number of employees. The number of employees in each department ranged from 11 to 106 employees.

**Figure 1 – SANDAG's Organizational Structure Prior to the Reorganization In September 2019**



## SANDAG's Position Classification Manual

SANDAG's Position Classification Manual dated July 2016, provides background information and guidance regarding the classification standards for positions at SANDAG. The document describes the fundamental concepts SANDAG uses to determine the appropriate classifications within the organization.

A position classification is a system of identifying and describing the different kinds of work in an organization and then grouping similar positions together by job titles, salary grade, and qualification requirements for recruitment and selection purposes. Position classification establishes the basis for a fair and equitable pay system.



A review of SANDAG's Position Classification Manual found that SANDAG should have four levels within the within the supervisory and management classifications.

1. Supervisor Level
2. Principal/Manager Level
3. Director Level
4. Department Director Level

### **SANDAG's Performance Incentive Program**

According to the Employee Handbook Section 7.4 - Merit/Pay Increases, the goal of a pay-for-performance based system is to improve employee and organizational performance by rewarding individual employees' effort and contributions. Employees who meet or exceed their goals and objectives, as demonstrated in their annual performance evaluation, may receive a payment for performance.

According to the Department of Organizational Effectiveness, employees can receive a number of different types of pays for performance, such as:

1. Merit Pay – A percentage increase to an employee's base salary.
2. Bonus – A onetime payment to an employee that does not increase their base salary.
3. Equity Adjustment – An adjustment to an employee's base salary based on a comparison between the employee's current compensation and the market.

SANDAG has established a 4-point rating scale for evaluating the achievement of goals and objectives and an 8-point rating scale for evaluating the demonstration of competencies. SANDAG established a 4-point rating scale used by managers and executives to evaluate the achievement goals which defines the following ratings: 4. Exceeds expectations, 3. Meets Expectations, 2. Needs Improvement, 1. Unacceptable. The 8-point system was not defined by SANDAG.

### **Responsibilities to Govern SANDAG**

The responsibility of SANDAG'S board, as it relates to a system of internal controls, is further clarified in California Government Code 12422.5 which required the State Controller's Office to develop Internal Guidelines for California local governments, SANDAG'S Board Policies 017-Delegation of Authority and 041-Internal Control Standards.

According to the SCO's 2015 Internal Control Guidelines, the California Government Code Section 12422.51 requires the SCO to develop internal control guidelines applicable to each local agency. The intent of the legislation is to assist local agencies in establishing a system of internal control to safeguard assets and prevent and detect financial errors and fraud. However, there is no requirement that the tools developed must be used in the form provided.

A local agency includes a city, county, city and county, special district or any other local government entity, except a school district. In this document, these entities are referred to as local governments.

The California Society of Certified Public Accountants took a lead role in developing the internal control guidelines based on standards adopted by the American Institute of Certified Public Accountants (AICPA). The State Controller's Office worked closely with the California Society of Certified Public Accountants and received valuable input from organizations representing the interests of local governments, (i.e. League of California Cities, California State Association of Counties, California Special Districts Association, California State Association of County Auditors, and California Common Sense) to complete the internal control guidelines.

Although Government Code section 12422.5 specifically cites the AICPA standards, the internal control guidelines incorporate or reference other internal control standards and practical guidance (i.e. U.S. Government Accountability Office, Office of Management and Budget, Committee of Sponsoring Organizations of the Treadway Commission (COSO) Internal Control Standards, Institute of Internal Auditors [IIA], Government Finance Officers Association Best Practices, etc.). For additional information on Internal Controls please refer to the following:

GAO - <http://www.gao.gov/greenbook/overview>  
GAO - <http://www.gao.gov/products/GAO-01-1008G>  
GAO - <http://www.gao.gov/yellowbook/overview>  
OMB - <http://www.whitehouse.gov/omb>  
COSO - <http://www.coso.org/IC.htm>

A local government's policies and procedures should include some or all of the following elements:

### ***Organization's Integrity and Ethical Values***

1. Develop, widely distribute, and practice a code of conduct.
2. Establish the values and operating style for the organization and communicate to all employees through various methods, such as by example, the code of conduct, policies, and procedures.
3. Consistently communicate to management personnel the importance of integrity and ethical values.
4. Ensure that the board and management receive and update their ethics training as required by AB 1234.

### ***Governing Board's Oversight Responsibilities***

1. Identifies and accepts its oversight responsibilities.
2. Ensures that management has the skills, knowledge, and experience necessary for their job duties.
3. Applies skepticism and is objective in evaluating management and when making decisions.
4. Ensures the completion of periodic risk assessments.

5. Follows up on the status of audit findings.
6. Establishes an audit committee.

***Assignment of Authority and Responsibility***

1. Consider the structure of the organization in terms of its size and the nature of its operation.
2. Establish reporting lines to enable execution of authorities, responsibilities, and flow of information to manage the activities of the organization.
3. Use appropriate processes and technology to assign responsibility and segregate duties as necessary at all levels of the organization.
  - a. The governing board should retain authority over significant decisions and review management assignments and any limitations of management's authority and responsibilities.
  - b. Management should establish directives, guidance, and control to enable management and other personnel to understand and carry out their internal control responsibilities.
  - c. Personnel should understand the organization's operational style and the code of conduct and carry out management's plan of action to achieve the objectives.

***Process for Attracting, Developing, and Retaining Employees***

1. Establish policies and practices reflecting expectations of competence.
2. Evaluate competence across the organization.
3. Provide the mentoring and training needed to attract, develop, and retain sufficient and competent personnel.
  - a. Attract – Seek out candidates who fit the organization's needs and possess the competence for the position.
  - b. Develop – Enable individuals to develop competencies appropriate for assigned roles and responsibilities. Establish expectations and tailor training based on roles and needs.
  - c. Mentor – Guide employee performance toward expected standards of conduct and competence and align the employee's skills and expertise with the organization's objectives.
  - d. Evaluate – Measure the performance of employees in relation to achievement of objectives and demonstration of expected conduct.
  - e. Retain – Provide incentives to motivate and reinforce expected performance.
4. Develop contingency plans to ensure that candidates for succession are trained and coached for assuming the target role so that internal controls do not lapse.

**Accountability for Performance**

1. Establish mechanisms to communicate and hold individuals accountable for performance of internal control responsibilities across the organization and implement corrective actions as necessary.
2. Establish performance measures and incentives appropriate for responsibilities at all levels of the organization.
3. Perform evaluations timely and align incentives with the fulfillment of internal control responsibilities.

In addition, SANDAG's Board adopted Policy No. 041 - Internal Control Standards Policy. The primary purpose of this policy is to establish internal control standards for management and staff that are governed by the Board of Directors. The policy reflects and conforms to the Internal Control – Integrated Framework (2013) issued by the COSO.

**Board Policy 041 in Public Accountability States:**

- 1.1 The Board of Directors is accountable to their constituents, state officials, and the public at large in conducting the affairs of SANDAG. SANDAG executive management including appointed positions also are accountable to the public.
- 1.2 These levels of accountability contain four basic elements, which form the essence of public accountability:
  - 1.2.1 Effectiveness: achieving SANDAG goals.
  - 1.2.2 Efficiency: making optimal use of scarce resources.
  - 1.2.3 Compliance: observing restrictions on the use of resources and complying with mandates and other legal requirements.
  - 1.2.4 Reporting: periodically demonstrating accountability for the stewardship of resources placed in their care.

In emergency situations, the Board has delegated the authority to the Executive Director. Board Policy No. 017 states that in the event of emergency or an urgent need, the Executive Director is authorized to take all necessary actions to prevent significant unnecessary loss to SANDAG, a shut-down of public services, or to address a situation threatening the health or safety of persons or property, including, but not limited to, authorization to contract with a contractor or consultant on a sole source basis, consistent with applicable state or federal law without prior approval from the Board. In the event such an emergency or urgent need occurs, the Executive Director will consult with the Chair of the Board, promptly communicate all actions taken to the Board members, and submit a report to the Board at its next regular meeting in order to obtain ratification for those actions.

## Defining and Understanding Occupational Fraud, Internal Controls and Fiduciary Duties

Fraud can include an array of irregularities and illegal acts characterized by intentional deception and misrepresentations of material facts. While the Board and all employees have some responsibility for internal control, the Board, Executive Director, and other key management personnel have a higher ethical standard, fiduciary duty, and responsibility to safeguard the assets of the organization.

### Occupational Fraud

Occupational fraud occurs when an organization's Board, executives, managers, or employees use their position within the organization to deliberately misuse or misapply the employer's resources or assets for personal benefit. Occupational fraud is more likely to occur when employees are in positions of trust and have access to assets. Types of occupational fraud include:

Asset misappropriation: Theft or misuse of assets such as stealing cash, inventory, or other assets. Asset misappropriation is the most common type of fraud committed.

Corruption schemes: Use of employee's or board member's influence in business transactions in order to obtain a personal benefit that violates that employee's duty to the employer or the organization. Conflicts of interest are a corruption scheme.

Financial statement fraud: Deliberate misrepresentation of the financial condition of an organization and includes the intentional misstatement or omission of material information in financial reports.

Embezzlement: A person lawfully entrusted with property takes it for their personal use.

Common elements in all fraud include:

- Intent, or knowingly committing a wrongful act.
- Misrepresentation or intentional false and willful representation(s) of a material fact.
- Reliance on weaknesses in the internal control structure, including when an individual relies on the fraudulent information.
- Concealment to hide the act or facts.
- Damages, loss, or injury by the deceived party.

## Internal Control

The accounting industry defines the term “internal control” as it applies to organizations. Internal control is “a process, effected by an entity’s board of directors, management, and other personnel, designed to provide reasonable assurance regarding the achievement of objectives relating to operations, reporting and compliance.” [COSO – May 2013]. The reference to achievement of objectives fundamentally refers to an organization’s work of planning, organizing, directing, and performing routine tasks relative to operations, and monitoring performance.

An organization establishes control over its operations by setting goals, objectives, budgets, and performance expectations. Several factors influence the effectiveness of internal control, including the social environment and how it affects employees’ behavior, the availability and quality of information used to monitor the organization’s operations, and the policies and procedures that guide the organization. Internal control helps an organization obtain timely feedback on its progress in meeting operational goals and guiding principles, producing reliable financial reports, and ensuring compliance with applicable laws and regulations.

Internal control is the principal mechanism for preventing and/or deterring fraud or illegal acts. Illegal acts, misappropriation of assets or other fraudulent activities can include an assortment of irregularities characterized by intentional deception and misrepresentation of material facts. Effective internal control provides reasonable assurance that operations are effective and efficient, that the financial information produced is reliable, and that the organization complies with all applicable laws and regulations.

Internal control provides the framework for an effective fraud prevention program. An effective internal control structure includes the board policy and administrative regulations established by the board and operational procedures used by staff, adequate accounting and information systems, the work environment, and the professionalism of employees.

The internal control environment establishes the moral tone of the organization. Though intangible, it begins with the leadership and consists of employees’ perception of the ethical conduct displayed by the governing board and executive management.

Figure 2 shows the five integrated components of internal control and their summarized characteristics.

**Figure 2 – Internal Control Components and Characteristics**

<b>Control Environment</b>	The set of standards, processes and structures used to ensure internal controls are carried out across an organization. Comprises the integrity and ethical values of the organization, code of conduct; ethics policies, hiring and promotion guidelines; assignment of authority and responsibility; oversight by management, Board or audit committee; investigation of reported concerns; and effective disciplinary action for violations.
<b>Risk Assessment</b>	Identification and assessment of potential events that adversely affect the achievement of the organization's objectives and the development of strategies to react in a timely manner.
<b>Control Activities</b>	Actions established by policies and procedures to enforce the governing board's directives. These include actions by management to prevent and identify misuse of the district's assets, including preventing employees from overriding controls in the system.
<b>Information and Communication</b>	Ensures that employees receive information regarding policies and procedures and understand their responsibility for internal control. Provides opportunity to discuss ethical dilemmas. Establishes clear means of communication within an organization to report suspected violations.
<b>Monitoring Activities</b>	Ongoing monitoring to ascertain that all components of internal control are present and functioning; ensures deficiencies are evaluated and corrective actions are implemented.

The control environment is a prerequisite that enables other components of internal control to be effective in achieving the goals and objectives to prevent and/or deter fraud or illegal acts. It sets the tone for the organization, provides discipline and control, and includes factors such as integrity, ethical values, and competence of employees.

The control environment can be weakened significantly by a lack of experience in financial management and internal control.

## Control Activities

Control activities are a fundamental component of internal control and are a direct result of policies and procedures designed to prevent and detect misuse of an organizational assets, including preventing any employee from overriding system controls. Examples of control and transaction activities include the following:

- Performance reviews, which compare actual data with expectations. In accounting and business offices, this most often occurs when budgeted amounts are compared with actual expenditures to identify variances and followed up with budget transfers to prevent overspending.

- Information processing, which includes the approvals, authorizations, verifications, and reconciliations necessary to ensure that transactions are valid, complete, and accurate.
- Physical controls, which are the processes and procedures designed to safeguard and secure assets and records.
- Supervisory controls, which assess whether the transaction control activities performed are accurate and in accordance with established policies and procedures.
- Segregation of duties, the process of ensuring no employee(s) performs more than one control function for a key duty and is not in a position to commit or conceal errors/fraud in the normal course of duties.

Employees should be regularly trained in what constitutes fraud and how it damages the organization. Employees should have several avenues for reporting improprieties and should be encouraged not to ignore warning signs. Risk awareness training about suspicious situations that merit reporting will help create an organization wide culture that supports appropriate reporting.

## **Fiduciary Responsibilities**

A fiduciary duty<sup>1</sup> is the highest standard of care. The person who has a fiduciary duty is called the fiduciary, and the person to whom he or she owes the duty is typically referred to as the principal or the beneficiary.

A fiduciary also may be a person who holds a legal or ethical relationship of trust with one or more other parties (person or group of persons). In other words, a fiduciary takes care of money or other assets for another. Board members, administrators and management are examples of those who have fiduciary responsibilities or a fiduciary duty. According to Cornell law several components of fiduciary duties are as follows:

Duty of Care: Before making a decision, collect all evidence and information available. Do your due diligence and review all the information and evidence available – do not just accept the information as it is presented. Assess information with a critical eye and ask the questions: who? what? when? and where? A fiduciary's responsibility is to protect the assets of the organization.

Duty of Loyalty: Do not use your position in the organization to further your private interests. Avoid anything that might injure the organization.

Duty of Good Faith: Advance the interests of the district. Do not violate the law. Fulfill your duties and responsibilities.

Duty of Confidentiality: Keep confidential matters confidential and never disclose confidential information for your own benefit or to avoid personal liability.

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<sup>1</sup> Source: [https://www.law.cornell.edu/wex/fiduciary\\_duty](https://www.law.cornell.edu/wex/fiduciary_duty)



**Duty of Prudence:** Be trustworthy, with the degree of care and skill that a prudent board member, member of management, or fiduciary would exercise. Prudent means acting with wisdom and care, including exercising good judgment.

**Duty of Disclosure:** Act with complete candor. Be open, sincere, honest, and transparent. Disclose all financial interests on Form 700, Statement of Economic Interests.

A system of strong internal controls is among the most important aspects of any fraud prevention program. Executive Directors, chief financial officers/chief business officials and other managers are in a position of authority and therefore have a higher standard of care to establish the ethical tone and serve as examples to other employees. Employees with administrative responsibility have a fiduciary duty to the organization to ensure that their activities are conducted in compliance with all applicable board policies, laws, and regulations.

Management personnel are entrusted to safeguard the organization's assets and ensure that internal controls function as intended. The internal control environment includes ethical values and integrity displayed by the governing board and management, as well as the underlying tone established by the organization's site administrators. While the Board and all employees have some responsibility for internal controls, the Executive Director, Chief Financial Officer, and other financial management have a fiduciary duty and responsibility to manage and oversee the finances of the SANDAG and to ensure that the Board's fiscal policies and procedures are applied and conducted responsibly and ethically and that all laws and regulations are adhered to.

## **AUDIT OBJECTIVES, SCOPE, AND METHODOLOGY**

### **Audit Objectives**

The objective of the engagement is to review past, current, and planned staff pay scales for competitive talent and risk associated with external versus instructional knowledge building and continuity. To ensure that good system controls are in place, including written policies and procedures, to determine if applicable laws, regulations, policies and procedures are followed. Additionally, auditors will review other compensation such as bonuses, severance packages, and other benefits provided to SANDAG employees for FY 2015-16 to June 30, 2020 and through FY 2021 for all planned and projected costs or actions.

The auditors will not perform an audit of relative financial statements or other financial data, or the objective to provide an expression of an opinion regarding the financial statements in part or taken as a whole, and, accordingly, the OIPA will not express such an opinion on them.

The review consists primarily of gaining an understanding of the relevant laws, rules, regulations; inquiries and observations from management and staff; employee questionnaires and interviews; review of data and other evidence that would support audit objectives; testing for accuracy, adherence to policies, law, rules, regs, etc.; testing of controls; data analytics, and other audit procedures. A review does not provide complete assurance that auditors identified and reported on all significant matters that occurred within the scope of the audit.

### **Audit Scope & Limitations**

The scope of this review is from July 1, 2014 to June 30, 2020; and through FY 2021 on projected cost or actions.

Our audit scope was severely impacted by the lack of data integrity found in key human resource and payroll systems. The OIPA noted the errors in reports pulled from the Ceridian system, SANDAG's human resources and payroll system, and the data from Ceridian did not reconcile to SANDAG's Integrated Master Budget Model (IMBM) system, which is used for budgeting, or its salary schedules.

The data provided from Ceridian was incomplete. Specifically, employees were missing from the report, employees' hire and resignation dates were not always accurate, and promotion and positional change dates were not available on the reports. Further, employees' job titles shown in Ceridian did not trace to SANDAG's salary tables. The OIPA also found salaries shown in Ceridian did not reconcile to the salaries in the budget system, which is used to generate the salaries budget presented to the Board for approval on an annual basis. As a result, our ability to perform detail testing was significantly impacted, as was our ability to reconcile accounting reports to human resources documentation.

At the time of this audit, COVID-19 also impacted the project. SANDAG offices are closed to the public, and the majority of employees, including those from the OIPA, worked remotely. However, COVID-19 did impact our ability to conduct onsite fieldwork, which would be a normal part of any audit project.

As the purpose and scope of the audit are broad and complex, the OIPA identified business practices and processes that should merit further in-depth review, but for the reasons identified above, as well as the audit team's firm deadline of July 2020, the areas were not included in this review. Areas identified for further review includes; processes for ensuring data integrity in key budget, human resource, and payroll systems, data penetration testing, SANDAG's use of retired annuitants, processes and outcomes for reporting of earnable compensation to CalPERS, and time reporting and coding staff time to projects.

The OIPA adhered to one or more professional standards as well as other applicable government codes, laws, and regulations to perform this audit. More specifically, auditors followed the Yellow Book Field Work Standards. Specifically, Chapter 6 section 6.16, which states: "Auditors should obtain an understanding of internal controls that is significant within the context of the audit objectives." Furthermore, Yellow Book Chapter 6 under Field Work Standards for Performance Audits 6.18 states: "Auditors may obtain an understanding of internal control through inquiries, observations, inspections of documents and records, review of other auditors' reports, or direct tests. The nature extent of procedures auditors performs to obtain an understanding of internal control may vary among audits based on audit objectives, audit risk, known or potential internal control deficiencies, and the auditor's knowledge about internal control gained in prior audits."

## Methodology

Testing and analytical procedures were developed to provide an analysis and understanding of the risks identified and potential outcomes. OIPA reviewed, analyzed, and tested business records including payroll disbursement transaction entries, budget and financial reports, board policy and administrative rules and regulations, board meeting minutes, and other relevant documents secured from various departments and from independent sources.

During the review, the OIPA asked questions pertaining to policies and procedures; job responsibilities; budget and financial accounting activities and the internal control structure, including control activities, lines of authority and oversight of financial activities. Open-ended questions were designed to elicit information about other possible irregularities related to the scope of work.

Audits consist of gathering adequate information about specific allegations, establishing an audit plan, and performing audit test procedures, often based on sampling of transactions, using the team's judgment and experience to determine whether fraud, misappropriation of funds, or other illegal fiscal practices may have occurred; evaluating the loss associated with the inappropriate activity; and determining who was involved and how it may have occurred. An audit is conducted based on the study team's experience and judgment.

Audits have many components including: obtaining and examining available original source documents; corroborating documents and information through third-party sources when possible; interviewing potential witnesses; gaining an understanding of internal controls applicable to the scope of the work; and assessing factors such as intent, capability, opportunity, and possible pressures or motives.

The audit scope, objectives, and substantive transaction testing were based on the team's experience and professional judgment and did not include the testing of all

available transactions and records. Sample testing and examination results are intended to provide reasonable but not absolute assurance of the accuracy of the transactions and financial activity and/or to identify if fraud, misappropriation of funds or other illegal fiscal practices may have taken place during the period under review. Though OIPA did not perform a fraud audit, however auditors included the performance of audit steps in consideration of fraud.

This report presents the team's findings regarding the presence of factors including opportunity, rationalization/attitude, and capability to manipulate SANDAG's budget and falsely represent its financial position for personal or organizational benefit.

## AUDIT RESULTS

### Section 1 – Management Override and Misuse of Power

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In Section 1, the OIPA will discuss a number of errors, abuse, and waste attributable to management assuming ownership of the Board's Administrative Rules and Regulations, a key document responsible for limiting SANDAG Executive Director's authority to administer business and appoint, promote, transfer, discipline, and terminate employees of SANDAG. Consequently, SANDAG's management has been responsible for setting the policy, for which, it is supposed to be adhering to.

In addition, to management improperly assuming control of the Board's Administrative Rules and Regulations, the OIPA found:

- Management improperly paid former employees high dollar payments totaling approximately **\$337,598** and authorized approximately **\$60,000**, during this audit, after the employees *voluntarily resigned* from SANDAG. General Counsel stated that Counsel was of the opinion that factors existed upon which the Chief Operations Officer could have based a claim for constructive discharge or workplace injury, however the OIPA verified that none of the employees who received severance compensation had filed a claim against SANDAG. Further, the full Board was not aware of nor approved the payments by a majority vote.
- Management abused their authority to pay a former Chief Deputy Executive Director **\$112,222.80** in bonuses and salary merit increases from January to December 2018, in addition to the employee's salary.
  - Management failed to make the Board aware of their responsibilities to define special compensation and approve compensation tables as required by law and failed to inform the Board of the amounts of compensation amounts paid to management and employees.
  - Management mismanaged the employee's performance incentive program which resulted in significant disparity in merit increases, bonuses, and equity payments to employees. Also, management lacked justification and approvals for performance incentives recommended and paid to employees.
  - Management used insufficient procedures and methodology for setting salary ranges for employees and lacks adequate job duty statements for employees.
  - Significant weakness in SANDAG's financial controls, including paying more in bonuses than was reported as approved by human resources, improperly billing projects for fringe benefits and overhead for bonuses to Executive Management, incorrectly reporting special compensation to CalPERS, approval of large dollar payments without adequate support, and lack of clear and consistent accounting controls and procedures.

## **I. Governance of SANDAG is the Board of Directors' Responsibility**

The OIPA found significant issues surrounding the governance of SANDAG during the review. Specifically, the OIPA found that management had assumed control of the Board's Administrative Rules and Regulations, a key document responsible for limiting SANDAG Executive Director's authority to appoint, promote, transfer, discipline, and terminate employees of SANDAG. As a result, SANDAG's management has been responsible for setting the policy, for which, it is supposed to be adhering.

Further, during the preliminary phase of this review, management stated SANDAG lacked several policies and controls over key human resource functions related to salaries, benefits, and payroll. Yet, a review showed that management revised sections of the Administrative Rules and Regulations at their discretion, and without the oversight and approval of the Board, and that the changes made by management significantly altered the established controls.

Consequently, the OIPA found that management should not have assumed ownership of the Administrative Rules and Regulations because only SANDAG's Board of Directors has the authority to govern the agency, and the Board cannot delegate its responsibility to govern to the SANDAG's management.

If the Board does not reassume its responsibilities for governing the agency in accordance with applicable laws, regulations, and best practices, there is increased risk that the public will lose faith in the Board's oversight of SANDAG.

### **History of SANDAG's Administrative Rules and Regulations**

A review of SANDAG's Bylaws and Board Policies shows that the Administrative Rules and Regulations were created to implement controls and limitations with regards to the Executive Director's authority to appoint, promote, transfer, discipline, and terminate employees of SANDAG.

The earliest iteration<sup>2</sup> of the Administrative Rules and Regulations was undated; therefore, the OIPA could not determine when the Board adopted the document. Section 1.1 of the Administrative Rules and Regulations states that the document was "adopted" to provide fair and systematic procedures for administering all matters affecting the status and activities of employees. During the review, the OIPA did not find, nor did management provide, evidence that the Board voted to repeal or amend the document.

The Administrative Rules and Regulations also states:

Section 2.1 - Responsibility of the Board of Directors states any decision of the Executive Director regarding the personnel system may be duly appealed to the Board of Directors which will take what action it thinks is reasonable. The Board of Directors may create new classes, and revise or abolish existing classes.

Section 2.2 – Authority of Executive Director states the Executive Director shall be responsible for administration of the personnel system and is hereby deemed to be the appointing authority with the power to appoint, promote, transfer, discipline, and terminate all employees of SANDAG subject to the provisions of this manual.

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<sup>2</sup> See Appendix A for the Administrative Rules and Regulations approved by the Board.

Section 1.3 - Variances states the Executive Director is vested with the power to vary or modify the strict application of the provisions of these rules to avoid injustice.

The only other iteration of the Administrative Rules and Regulations the OIPA found during fieldwork, was dated November 2005. In this version of the document, the previous Executive Director took ownership of the document, and made changes which resulted in management assuming greater power over hiring and disciplinary practices at SANDAG.

According to General Counsel, Counsel was unaware of the existence of the Administrative Rules and Regulation and had no knowledge of when the document was approved by the Board or whether the Board had voted to dissolve or amend the document. Consequently, it appears the original version of the document is still in effect.

Though the OIPA made numerous requests to different staff within SANDAG to obtain the Administrative Rules and Regulations, staff was unable to locate the documents during the fieldwork phase of the audit. It was not until a week after the OIPA received management's response and made two additional requests for the Administrative Rules and Regulations that the Office of General Counsel (OGC) provided the documents. The OGC stated that the documents resided on the human resources drive, which indicates that the OGC did not maintain appropriate control over the documents.

A review showed that the documents provided by OGC was not consistent with the version of the Administrative Rules and Regulation found on SANDAG's website, which was available to SANDAG's employees. Because of the inconsistency of the documents provided, the numerous requests made to obtain to the documents, and the significant delays in providing the documents to the OIPA, the OIPA could not verify the integrity of the documents provided.

### **The Executive Director's Authority to Administrate SANDAG's Personnel System Is Subject to Provisions of the Board's Administrative Rules and Regulations**

The responsibility to govern SANDAG is placed with the Board of Directors. The Board's Bylaws, Board Policies, and Administrative Rules and Regulations worked in tandem to keep a system of controls in place over the Executive Director's authority to appoint, promote, transfer, discipline, and terminate all employees of SANDAG. Consequently, any authority of the Executive Director is derived from the direction and policies that are approved by the Board.

PUC Section 132351.1. (a) states that a board of directors consisting of 20 members shall govern the consolidated agency. (b) All powers, privileges, and duties vested in or imposed upon the consolidated agency shall be exercised and performed by and through a board of directors provided, however, that the exercise of all executive, administrative, and ministerial power may be delegated and redelegated by the board, to any of the offices, officers, or committees created pursuant to this chapter or created by the board acting pursuant to this chapter.

PUC Section 132352 states the consolidated agency may adopt bylaws and other rules necessary to carry out its responsibilities.

PUC Section 132355 states that administrative authority for the consolidated agency shall be vested in the office of the executive director, subject to the direction and policies of the consolidated agency as approved by the board.

Based on their statutory authority, SANDAG's Board of Directors, then created a framework to govern the agency that included Bylaws, Policies, and the Administrative Rules and Regulations.

SANDAG Board Bylaws Section V (4)(a) which was amended 2004, states that the Executive Director will be responsible to the SANDAG Board of Directors as set out in the Administrative Rules and Regulations for the administration of SANDAG's business, including: (1) development of program objectives, definition, directions and priorities; (2) management of SANDAG programs and coordination of staff and support services; (3) the development of financial support programs for SANDAG activities; (4) the recommendation and submission of an annual SANDAG program budget to the Board of Directors; and (5) execution of the adopted personnel, purchasing, and budgetary systems. The Executive Director shall perform such other and additional duties as is necessary to carry out the objectives and function of SANDAG and as directed by the Board of Directors.

According to Board Policy 017 – Delegation of Authority Section 5, the Executive Director shall act as the appointing authority for SANDAG with the authority to appoint, promote, transfer, discipline, and terminate all employees of SANDAG subject to the provisions of SANDAG's Administrative Rules and Regulations.

Board Policy 041 in Public Accountability Section 1.1 states the Board of Directors is accountable to their constituents, state officials, and the public at large in conducting the affairs of SANDAG. SANDAG executive management including appointed positions also are accountable to the public.

The framework of Bylaws, Policies and Administrative Rules and Regulations created by SANDAG's Board of Directors was consistent with applicable laws, regulations, SCO's 2015 Internal Control Guidelines which aligned with COSO's Internal Control – Integrated Framework (2013).

SCO's 2015 Internal Control Guidelines states local governments may use policies and procedures to promote and maintain a proper control environment.

According to the SCO's 2015 Internal Control Guidelines<sup>3</sup>, as part of a governing board's oversight responsibilities, a governing board should identify and accept its oversight responsibilities as well as apply skepticism and objectivity in evaluating management and when making decisions. Further, as part of its assignment of authority and responsibility, a governing board should use appropriate processes and technology to assign responsibility and segregate duties as necessary at all levels of the organization. Specifically, the governing board should retain authority over significant decisions and review management assignments and any limitations of management's authority and responsibilities.

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<sup>3</sup> Sections of the SCO's Internal Control Guidelines cited here are also included, with section numbers, within the Background of the Report - Responsibilities to Govern SANDAG.



**Management's Recommended Changes to Board Bylaws and Policies Created Confusion and Obscured the Board's Authority to Govern SANDAG**

The OIPA found that after management assumed control of the Board's Administrative Rules and Regulations, management suggested changes to the Board Bylaws, policies, and manuals which resulted in the framework of documents becoming increasingly inconsistent and unclear over time. So much so, that the OIPA was informed by General Counsel and the Director of Organizational Effectiveness that the Executive Director has the authority to create and implement administrative policy for the organization.

A review found that the most current version of Board Policy 017 – Delegation of Authority Section 5 states the Executive Director's authority as being limited by the Administrative Rules and Regulations. Yet, the current Board Bylaws do not refer to the Administrative Rules and Regulations because in 2008, SANDAG's General Counsel proposed the Board change "Administrative Rules and Regulations" to "Administrative policies and manuals" because staff no longer used the aforementioned title.

According to the OGC, the Administrative Rules and Regulations is now known as the Employee Handbook. Further, General Counsel stated that Counsel was unaware of any formal decision during Counsel's tenure to rename documents as it pertains to the Administrative Rules and Regulations as SANDAG's Employee Handbook.

The OIPA reviewed Board documents available through SANDAG's intranet and internet sites, as well as, relied on staff to provide supporting documentation relevant to the history of the Administrative Rules and Regulations. The OIPA could not identify any Board documents showing that the Board approved the change from administrative policies and procedures to Employee Handbook.

The OIPA also found Board approved changes to Board policy were not made by staff. Specifically, in December 2006 the Board approved changes to Board Policy No. 017 recommended by General Counsel to replace the term Administrative Rules and Regulations to administrative manuals, policies, and procedures. However, the current version of Board Policy No. 017 was not properly updated.

Agenda Item No. 6-12-15 Proposed Amendments to Board Policies dated December 15, 2006, states in part, "This change is an update requested by the Human Resources Manager who is in the process of reorganizing and renaming SANDAG administrative manuals and policies. Instead of referring to "SANDAG's Administrative Rules and Regulations," the provision would instead reference "SANDAG administrative manuals, policies, and procedures."

A review of the job description dated August 2005 of the Deputy General Counsel showed that the Administrative Rules and Regulations is one of the responsibilities of Counsel, therefore the OIPA questions how and why Human Resources would be enabled to rename the document.

While an Employee Handbook is considered an industry best practice, the OIPA determined that the creation and amendments to the Administrative Rules and Regulations approved by the Board was created in order to properly govern the organization. Whereas, an Employee Handbook should remain under the control of

management to further elaborate on Board policy and ensure management has designed sufficient controls to enact Board's policy.

Because General Counsel failed to make the Board aware of the existence of the Administrative Rules and Regulations, there is increased risk that the Board has passed resolutions to fill the gaps in policies and controls left by the absent Administrative Rules and Regulations.

### **Significant Weakness in Record Keeping and Document Control of the Administrative Rules and Regulations**

In order to determine the history of creation, changes, and possible abolishment of the Administrative Rules and Regulations, the OIPA requested the Administrative Rules and Regulations from staff within the OGC. However, when the documents were not provided the OIPA conducted inquiries and searches of the SANDAG's intranet and internet sites. The OIPA also requested General Counsel review the history and documents related to the Administrative Rules and Regulations in order to provide the OIPA with historical knowledge of events that occurred.

According to management, General Counsel's lack of historical knowledge is understandable since current General Counsel was not hired until June 2006, after the Administrative Rules and Regulations had been superseded, and did not become General Counsel until January 2012.

Further, according to General Counsel, Counsel joined SANDAG as Deputy General Counsel in June 2006, which is approximately six months before the Board voted to change the term of Administrative Rules and Regulations to administrative manuals, policies, and procedures in December 2006.

However, a job description for Deputy General Counsel from August 2005 showed that one of the Deputy General Counsel's job duties is to conduct legal research and prepare ordinances, resolutions, memoranda, administrative rules and regulations, and other legal documents, and advising the Board of Directors, the Executive Committee and SANDAG departments.

Further, an undated job description for SANDAG's General Counsel shows the responsibility of the General Counsel is defined as:

"Under policy direction of the Board of Directors and general administrative direction of the Executive Director, to provide legal advice to the SANDAG Board of Directors, Executive Committee, other SANDAG committees, Executive Director, and staff; and to provide highly responsible and complex legal assistance to the Executive Director and Board of Directors"

The General Counsel's job description also states that the General Counsel exercises direct supervision over professional and administrative support staff, which includes but is not limited to, providing legal advice to the Board of Directors, Executive Committee, SANDAG committees, and staff on a wide variety of legal matters; advise staff and officials on the legal requirements and consequences of proposed actions; conduct ongoing legal research in connection with legal issues pertaining to SANDAG.

It is a widely accepted practice that when an employee is hired to perform a job, the employee is responsible for knowing or learning all aspects, including historical and technical knowledge, which will ensure the employee can perform the duties of their position. Consequently, as a steward of the Board, General Counsel should have knowledge of the history and relevance of the Administrative Rules and Regulations.

Management also stated that the employee currently serving as the agency's Director and Legal Counsel, Contracts and Grants was hired in part due to the employee's experience in public employment law, and served as Deputy General Counsel (2000-2005), General Counsel (2005-2012) and Special Counsel (2012-2019) for the agency. Management states that it is this employee's job description that shows responsibility for employment law and administrative policies, not the current General Counsel.

According to the job description of the Director of Contracts and Grants, under general administrative direction, the Director of Contracts and Grants will plan, direct, manage, oversee, and provide legal advice on the activities and operations of the Contracts and Grants Department, including procurement, award of contracts, and grant administration; coordinate assigned activities with other SANDAG departments, the Board of Directors, Policy Advisory Committees, member agencies, and outside organizations; and provide highly responsible and complex management support to the Executive Director and Senior Leadership Team.

Based on a review, the OIPA found that it is the General Counsel, not the Director of Contracts and Grants who is responsible for maintaining documentation and records related to the history of the Administrative Rules and Regulations. Consequently, the Board and management should have the expectation that General Counsel has the historical and institutional knowledge to provide sound legal advice aligned with General Counsel's job description, responsibilities, and requirements, not the incumbent who holds the position of Director of Contracts and Grants.

Given the OGC's role within SANDAG, the OIPA found that the OGC was responsible for ensuring documents related to the Administrative Rules and Regulations were properly retained. Further, OGC staff should have appropriate knowledge and training on the historical knowledge of Board documents, and the changes to those documents, with respect to the Board's oversight of SANDAG and delegated authority to the Executive Director.

Moreover, the OIPA found that aligned with its responsibility for advising both Board and management, the OGC had a professional responsibility and obligation to advise the Board that management's control over the Administrative Rules and Regulations was improper and inconsistent with the Board's responsibility to govern the agency.

### **Management Asserts that the Board Wanted the Executive Director to Have Governance Responsibilities**

Management stated records from the Executive Committee and Board of Directors meetings establish that the Board members had full knowledge of the name change for the Administrative Rules and Regulations and that they wanted the Executive Director to have authority over the administrative policies of the agency. Management also stated that SANDAG's Executive Committee recommended and the Board approved the former Administrative Rule and Regulations being placed under the authority of the Executive Director.

The OIPA reviewed the documentation and found that documents did not show that the Board approved the Administrative Rules and Regulations being placed under the authority of the Executive Director. However, the documents show General Counsel did suggest changes to the Board's Bylaws and Policies, to replace Administrative Rules and Regulations with more generalized terms.

The OIPA found that the General Counsel did not provide an Impact Statement or other information that clearly informed the Board that the act of removing the wording "Administration Rules and Regulations" from the Bylaws and other polices would result in management assuming control of the Administrative Rules and Regulations, or that subsequent changes to the rules would not be brought to the Board for approval to ensure that Board performed its responsibility to govern the agency.

Management also stated that PUC Section 132335 was evidence of intent of the Board, as well as, the California Legislature for the Executive Director to have authority over the agency's employees. As stated above, the Board cannot delegate its responsibility to govern the agency to management.

The OIPA also notes that the Board was not responsible for creating legislation to create the consolidated agency, as law is created through the Legislative Process<sup>4</sup>. Further, the section of the law cited by management states that the authority granted to the Executive Director is subject to the direction and policies of the consolidated agency as approved by the Board.

According to management, the Executive Director's purview over the Employee Handbook and the administrative policies attached to it as appendices, does not results in lack of controls. The Executive Director position is a contract position and was never subject to the provision in what was once the Administrative Rules and Regulations or what is now in the document that took its place, the Employee Handbook. In the Employee Handbook, Section 1.7 of those documents state: "These Rules do not apply to the Executive Director, who serves under contract at the will of the SANDAG's Board of Directors." Thus , the Executive Director has no conflict in setting or imposing the policies in the Employee Handbook and the position serves as a gatekeeper on behalf of the Board.

However, a review of the January 2020 Employee Handbook showed that the Executive Director had delegated authority to the Senior Leadership to set and approve policies within the Employee Handbook. According to the January 2020 Employee Handbook, Section 1.3 Revisions - SANDAG reserves the right to revise, modify, delete, or add to any and all policies, procedures, work rules, or benefits referred to in this Handbook or in any other document without notice. Any such changes must be in writing and must be signed or otherwise approved by the SANDAG Executive Director or a member of the Senior Leadership Team.

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<sup>4</sup> The Legislative Process is the process of government by which bills are considered and laws. The California State Legislature is made up of two houses: the Senate and the Assembly. There are 40 Senators and 80 Assembly Members representing the people of the State of California.  
<http://www.leginfo.ca.gov/bil2lawx.html#:~:text=The%20process%20of%20government%20by,of%20the%20State%20of%20California.>

As a result, the OIPA found a significant conflict of interest does exist, as there is increased risk that management could make changes to Board policy and override established controls to:

- Improperly pay high dollar amounts to employees who resigned.
- Improperly pay bonuses to senior management.
- Inequitably distribute performance incentive payments to staff.
- Inequitably pay management benefits.
- Create/change senior management positions titles to boost pay.
- Reclassify regular employees to at-will employees.
- Remove employees' rights to file a grievance against management.
- Promote executive, director, and managers level employees without an open, competitive hiring process.
- Improperly set promoted employees' salaries above the minimum.

Management also stated that there has been multiple occasions when the Board has had the opportunity to revisit its delegation of authority, and cited two examples; 1) the Board approved job announcement for the Executive Director dated January 2018, and 2) Board approved changes to Section 4.1 of Board Policy No. 017 made after the current Executive Director was hired. According to management, these examples serve as evidence of the Board's intent and understanding of the extent of the Executive Director's authority.

In the first example, management cited language from the January 2018 job announcement which states that the Executive Director will plan, direct, manage, administer, and review the activities and operations under policy direction of Board of Directors. Based on review, the OIPA found that the inclusion of this statement within the job announcement confirms that the Executive Director's authority is subject to Board approval.

In the second example, management cited changes to the Board Policy 017, Delegation of Authority. The amended Board Policy No. 017 January 2019 states,

Section 4, the Executive Director is hereby authorized to carry out the actions set forth below. In the event any of the authorities in this paragraph are exercised, the Executive Director will report actions taken to the Board in summary written form at the next regular meeting of the Board.

Section 4.1 Enter into agreements not currently incorporated in the budget and make other modifications to the budget in an amount up to \$300,000 per transaction so long as the overall budget remains in balance. This provision may not, however, be used multiple times on the same budget line item or contract in order to circumvent the \$300,000 limit.

A review of the Board agenda and meeting minutes in January 2018, shows that management did not provide the Board with an Impact Statement that disclosed the effects of increasing the dollar value of the Executive Director's authority within Section 4.1 of Policy No 017, nor did management disclose that the changes would affect the Executive Director's authority to appoint, promote, transfer, discipline, and terminate all employees of SANDAG. As provisions for the Executive Director's authority over the personnel system clearly defined within Section 5 of the Board Policy 017, it is doubtful that the Board members would have concluded that those changes would apply to hiring, salaries, and compensation unless directly informed by the Board.

Board Policy 017 – Delegation of Authority Section 5, the Executive Director shall act as the appointing authority for SANDAG with the authority to appoint, promote, transfer, discipline, and terminate all employees of SANDAG subject to the provisions of SANDAG's Administrative Rules and Regulations.

**Finding I – Recommendations:**

To ensure that SANDAG's Board properly governs and develops a system of internal controls over salaries, compensation, and benefits, the Board should:

1. Assume ownership of and update the Board's Administrative Rules and Regulations, including but not limited to,
  - Citations of the applicable laws and regulations for which SANDAG will follow with regard to salaries, compensation, and benefits.
  - Define the responsibility for SANDAG management to create and update an Employee Handbook that is aligned with Board Bylaws, Policies, Administrative Rules and Regulations, and Manuals.
2. Strengthen and amend the Board's Bylaws, and other Board Policies as necessary, to ensure consistency and clarity of Board documents, including but not limited to,
  - Document that the Executive Director's authority is limited subject to the Administrative Rules and Regulations, rather than Administrative policies and manuals, for administration of SANDAG business.
  - Document the hierarchy of Board Bylaws, Policies, Administrative Rules and Regulations, and management procedures and the Employee Handbook to ensure that management is aware of and adhering to the highest authority.
  - Clarify Board policy to ensure that sections pertaining to the Executive Director's authority to administer SANDAG's personnel system are clearly indicated.
3. Evaluate retaining General Counsel for the Board to conduct legal research, prepare ordinances, resolutions, memoranda, administrative rules and regulations, and other legal documents, and advise the Board of Directors, and keep the Board apprised of its obligations for following applicable laws and regulations, and to ensure that Board documents are properly retained and

changes approved by the Board to Board Bylaws, policies, and other documents are completed and tracked.

4. Require SANDAG management to acknowledge that they are aware of and complying with the Board Bylaws, Policies, Administrative Rules and Regulations, and Manuals upon being hired and on an annual basis thereafter.

Management's Response begins on page 91, Finding I begins on page 99.

The OIPA's comments on the response from SANDAG's Management begins on page 130, comments to findings begin on page 135.

## II. Improper High Dollar Payments to Employees Upon Their Resignation

SANDAG, without the Board's knowledge or approval, improperly paid three employees **\$337,598.34** upon their resignation from SANDAG in August 2019, as shown in Table 1.

**Table 1 - Payments to Resigned Employees**

Employee Position	Purpose of Payment	Amount Paid
Chief Deputy Executive (Director)	Severance Payment	\$115,991.20
	Unused Sick Leave Paid in Excess of 25% of Balance	\$110,519.54
Director	Severance Payment	\$48,781.20
Director	Severance Payment	\$62,306.40
<b>TOTAL PAYMENT</b>		<b>\$337,598.34</b>

A review showed that SANDAG's Executive Director, under the guidance of General Counsel and without the Board's knowledge or approval, authorized severance payments totaling **\$227,078.80** [\$115,991.20 + \$48,781.20 + \$62,306.40] to three Directors though they were not entitled to those amounts because they voluntarily resigned from SANDAG. Severance payments should be granted to employees only when the employer discharges or removes the employee without cause.

In addition, for one of the employees, the Executive Director, under the guidance of General Counsel and without the Board's knowledge or approval, also made an exception to the Administrative Rules and Regulations of paying one-quarter of an employee's unused sick leave upon resignation. The OIPA found that the Executive Director, under the guidance of General Counsel, agreed to pay the employee an additional **990.94** hours (**62.6%**) of the employee's **1,581.88** hours of unused sick leave. As a result, the employee was paid an additional payment of **\$110,519.54** to which the employee was not entitled. A review of the agreement titled Separation Agreement and General Release of All Claims, which granted the employee both a severance payment and sick leave in excess of the allowed amounts, stated,

"Pay out of Accrued Sick Leave – As of July 21, 2019, Director has 1,581.88 hours of accrued sick leave. **SANDAG** has agreed to make an exception to its policy of paying out 25% of Director's sick leave balance that will be included as part of her final paycheck, SANDAG will pay out an additional 990.94 hours of sick leave to Director, less any applicable tax withholdings, on the first

regular SANAG payday following the Effective Date of this Agreement.”

Based on a review of the agreements, the OIPA found that the employees voluntarily resigned and generally released all claims against the organization, and that the contracts were signed by the employees and Executive Director, but not by SANDAG’s General Counsel or the Board of Directors. The OIPA determined that had employees filed a claim with SANDAG, the OGC should have been the authority within the agency that would negotiate and settle the claims.

SANDAG management did not provide justification for why employees, who voluntarily resigned from the agency, would receive severance payments or receive payments for sick leave in excess of what should be paid to employees. Further, SANDAG management did not provide a basis for how SANDAG determined the amounts to pay these employees.

According to the Director of Organizational Effectiveness payments were paid under threat of litigation. Yet, management and General Counsel did not provide the OIPA with evidence that any of the employees had filed a claim against SANDAG. The OIPA made numerous attempts to obtain documentation related to any claims filed or the basis for the payments, however, neither the Department of Organizational Effectiveness nor the OGC provided any supporting documentation to the OIPA.

According to management, the Legislature empowered SANDAG to set compensation and to resolve employee claims through its delegation of authority in the Public Utilities Code. Therefore, through this delegation, the funds spent were within SANDAG’s discretion and not improper.

However, the OIPA found that the Board is empowered by the Legislature to set compensation, not management. Also, management did not provide evidence that employees had filed claims against SANDAG, therefore there is no basis for the amounts paid to employees. The threat of claim is not a claim, and therefore the OIPA could not substantiate management’s statements that payments were made under threats of litigation. Finally, it is not a best practice for management to make lump sum payouts to employees without a claim, as this could result in taxpayers perceiving payouts to employees who resign as wasteful and abusive.

Based on inquiry, the OIPA found that the severance pays were coded as regular salary, and that Finance Services changed the coding after the payments were paid to not include the payments in the employee’s final compensation, which would greatly increase their CalPERS retirement benefits. However, auditors did not confirm whether amounts were correctly reported or not reported as earnable compensation to CalPERS.

According to the Director of Organizational Effectiveness, salary savings from vacant positions in FY 2019-20 was used to pay for the severance payments, however this was not SANDAG practices, but rather an exception. As a result, there is increased risk that SANDAG was unable to hire employees to perform work SANDAG has an obligatory responsibility to perform on behalf of the taxpayers and the general public within the region.



According to the Director of Organizational Effectiveness, there is no policy or procedures for severance payments, and the Executive Director has been delegated authority for overseeing personnel actions, including the determination of severance payments. However, upon review, the OIPA found that Board Bylaws, policies, and Administrative Rules and Regulations did, in fact, address termination pay for employees<sup>5</sup>. And, that the Executive Director did not have the authority to grant severance payments to employees.

The OIPA also notes that management cited its delegated authority as evidence that the Executive Director had authority to enter into agreements with former employees

According to Board Policy No. 017 amended January 2019,

Section 4, the Executive Director is hereby authorized to carry out the actions set forth below. In the event any of the authorities in this paragraph are exercised, the Executive Director will report actions taken to the Board in summary written form at the next regular meeting of the Board.

Section 4.1 Enter into agreements not currently incorporated in the budget and make other modifications to the budget in an amount up to \$300,000 per transaction so long as the overall budget remains in balance. This provision may not, however, be used multiple times on the same budget line item or contract in order to circumvent the \$300,000 limit.

The Director of Organizational Effectiveness also stated that the Board was not made aware of the severance payments. As a result, management was able to award these severance payments and payments for sick leave without specific disclosure to the Board. Yet, even under Board Policy, the Executive Director had the responsibility to make the Board aware that these payments occurred, if only after the fact.

**During the Audit, SANDAG Makes High-Dollar Payments to Director Who Resigns** – During the audit, the Chief Operations Officer resigned. SANDAG had a remote party, via Zoom, for which employees were encouraged to wish the employee good luck. Yet, the auditors found that the Executive Director entered into an agreement to pay the Chief Operations Officer 3-months' salary upon her resignation. However, the OIPA found that under the terms of the employee's employment agreement, the employee was only due a severance payment in the event that SANDAG terminated the employee from service with SANDAG *without cause*. As a result, SANDAG improperly authorized a severance payment of **\$60,002.80** to the former Chief Operations Officer.

According to General Counsel,

"When an employee resigns, a separation agreement (also referred to as a severance agreement) can help to protect the agency against claims of a "constructive discharge" or "constructive termination". A cause of action for constructive discharge exists notwithstanding the fact that an employee resigned

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<sup>5</sup> Finding 1 explains that the Board has responsibility for governance of SANDAG and the authority to govern cannot be delegated to the Executive Director. Further, changes to the Administrative Rules and Regulations made by management were not Board approved.

when the “employer either intentionally created or knowingly permitted working conditions that were so intolerable or aggravated at the time of the employee's resignation that a reasonable employer would realize that a reasonable person in the employee's position would be compelled to resign.” *Addy v. Bliss & Glennon*, 44 Cal. App. 4th 205, 218 (1996).

Factors that may also be considered in the business case for a separation agreement in the case of a resignation (because they raise the litigation risk to the agency) include the employee’s inclusion in protected classifications, including age (over 40), sex, and medical condition, as well as whether working conditions created or exacerbated a pre-existing medical condition. When the potential for a claim against the agency for constructive discharge exists, a waiver of that and any other potential claims against the agency in exchange for severance compensation may be in the agency’s best interests.

The factors present in the case of each of the employees who received severance compensation are unique, but [General Counsel’s] legal opinion is that each of the payments was well warranted and was in SANDAG’s best interests. None of the employees who received severance compensation had yet filed a claim when the separation agreements were negotiated.”

A review showed that the settlement contract between the employee and SANDAG was signed by the Executive Director but not General Counsel. General Counsel did not allege that a hostile work environment occurred but stated that Counsel was of the opinion that factors existed upon which the Chief Operations Officer could have based a claim for constructive discharge or workplace injury. Further, providing severance compensation in exchange for the employee’s waiver of all such claims was a proper exercise of the Executive Director’s Authority.

Management provided an email from the Executive Director to the Board Chair and Vice Chair that stated that the Chief Operations Officer had resigned and the Executive Director would authorize a 3 month severance compensation payment to her in exchange for her signing a release of all claims against the agency. However, a review of the email showed that the Executive Director did not ask for approval or explain that the employee was not entitled to a severance payment since the employee had voluntarily resigned. Additionally, the OIPA was not provided with the Board Chair and/or Board Vice response or acknowledgement to the Executive Director’s email.

It should also be noted, that according to the employees’ employment agreement with SANDAG, in the event that the employee was terminated without cause, SANDAG agreed to pay the employee six-month salary. The employee was not entitled to severance payments in the event the employee was fired with cause or resigned from service. The amount paid to the employee was not consistent with the employment agreement. Consequently, the OIPA question’s managements use of employment agreements, if management is not bound to follow the terms of the agreements.

Based on review and explanations provided by General Counsel, it appears that SANDAG’s management may have entered into settlement agreements, and made payments, to former employees to avoid disclosing potential claims against the agency, and without investigating the claims and/or taking action against those

found responsible. Further, the OIPA found that this scenario has occurred with four employees, for which SANDAG has paid nearly \$400,000 of taxpayer dollars, in the past two years.

The OIPA found that if former employees had a legitimate claim against the organization then a number of things should have occurred to validate the claims, and before a settlement payment could occur. Generally,

1. Employees should submit claims of workplace violence, hostility and/or discrimination through the proper channels within the agency.
2. SANDAG should formally investigate employee claims and document results of their investigations.
3. If necessary, General Counsel should conduct negotiations on SANDAG's behalf with these employees or their representatives. Settlements should be authorized and signed by General Counsel if the amounts are within General Counsel's delegated authority, or if negotiated amounts exceed General Counsel's delegated authority, the claims should be presented to the to the full Board for approval by majority vote.
4. If during the investigation, SANDAG finds that one or more employee has caused a hostile work environment and/or responsible for egregious, discriminatory, or unlawful behavior, then management should take action to discipline or terminate the employee(s) found responsible.
5. Management should report settlement amounts paid and personal actions taken to the Board so that the Board can ensure proper policies are in place and continually monitor the agency's adherence to codes and standards of conduct and the cost of not doing so.

During the audit, neither General Counsel nor the Department of Organizational Effectiveness (human resources) provided sufficient documentation for any of the cases involved to show that a claim occurred. The OIPA did not find support that:

- Legitimate claims were made against SANDAG from the employees who resigned,
- Management had a basis or justification for the severance or other payments made to employees upon their resignation,
- SANDAG took the steps necessary to validate potential claims,
- Severance or other payments were authorized by the Board Chair or Vice Chair,
- The matter of the approving settlement payments and personnel actions was brought forward to the full Board and passed by a majority Board vote.

SANDAG Bylaws Article V – Officers and Their Duties, Section 4(b) states that Executive Director will be responsible to the Board as set in the Board Policies and administrative policies and manuals for the administration of SANDAG business.

SANDAG Board Policy 017 – Delegation of Authority, Procedure 5 states the Executive Director shall act as the appointing authority for SANDAG with the authority to appoint, promote, transfer, discipline, and terminate all employees of SANDAG subject to the provisions of SANDAG’s Administrative Rules and Regulations.”

The Board’s Administrative Rules and Regulations Section 5.4 – Termination Pay, states that a cash payment of a sum equal to all accrued, unused compensatory time and vacation leave and wages shall be made to each employee upon termination at the salary rate current at the date of said termination. Unused sick leave credit shall not be compensated on separation of an employee unless the employee has been employed continuously for at least five years with SANDAG, after which time and upon termination, said employee shall receive cash payment of a sum equal to one-quarter of all unused sick leave at the salary rate current at the date of termination.”

The Administrative Rules and Regulations Section 1.3 – Variances, states that the Executive Director is vested with the power to vary or modify the strict application of the provisions of these rules to avoid injustice.

As stated in Finding 1, changes that SANDAG’s management made to the Administrative Rules and Regulations (and later the Employee Handbook), were not Board approved. The Board has responsibility for governance and creation of policy for the agency, and that responsibility cannot be delegated to management.

The Executive Director’s decision to pay employees who had voluntarily resigned from the agencies does not appear to avoid an injustice, and in fact creates injustice because regular non-management employees who resign are not receiving large dollar severance or sick leave payouts. This practice is not equally applied to all employees.

There is increased risk that severance and other payments to former employees who resigned and had no claim against SANDAG, as a public agency that is funded by taxpayer funding, will be perceived as waste and abuse by the taxpayers of San Diego County, especially since the employees already receive many benefits of public service including a pension and health benefits.

### **Finding II - Recommendations:**

To ensure that management cannot approve termination payments that exceed the amounts set forth in Board policies and rules and regulations, the Board should:

1. Formally investigate the legality of management’s actions of granting severance pay to employees who resigned without pending litigation, and the granting of the exception for paying more than 25 percent of sick leave to employees who voluntarily resign from SANDAG, and failure to report payouts to the Board in order to determine whether any personnel action should be taken against individuals for breach of fiduciary duty.
2. Require management to develop and formalize procedures, including but not limited to,
  - Ensuring termination pay is paid consistent with the Administrative Rules and Regulations set forth in Board policy.

- Process for requesting approval from the Board for making termination payments not expressly written stated in the Board Policies and Administrative Rules and Regulations.
3. Require staff responsible for implementing procedures related to termination pay to attend training on updated procedures.

Management's Response begins on page 91, Finding II begins on page 104.

OIPA's comments on the response from SANDAG's Management begins on page 130, comments to findings begin on page 135.

### III. SANDAG Paid High Dollar Bonuses and Salary Increases to Former Chief Deputy Executive Director

The OIPA found that SANDAG executive management abused their authority to pay a former Chief Deputy Executive Director **\$112,222.80** in bonuses and salary merit increases from January to December 2018. As shown in Table 2 the employee received three separate bonuses and two merit salary increases in the span of 12 months.

Further, the OIPA found:

- SANDAG management lacked a sufficient basis for the payments to the Chief Deputy Executive Director.
- SANDAG management sought the approval of the previous Board Chair and on a separate transaction the Board Vice Chair for the payments, in order to make the payments appear lawful and reasonable, although the ultimate responsibility for the payments had been delegated to the Director of Administration by the Board.
- SANDAG management failed to make the full Board aware of the payouts and intended to conceal the payouts by breaking them into a series of payments.

**Table 2 – Bonuses Paid to Former SANDAG Chief Deputy Executive Director from January to December 2018**

Date	Purpose of Payment	Amount Paid
January 23, 2018	Performance Bonus	\$4,250.00
	Salary Merit Increase	\$8,507.20
June 6, 2018	Performance Bonus	\$44,200.00
November 27, 2018	Performance Bonus	\$44,200.00
December 19, 2018	Salary Merit Increase	\$11,065.60
<b>TOTAL BONUSES AND SALARY INCREASE PAID</b>		<b>\$112,222.80</b>

According to SANDAG management, after the Executive Director resigned from SANDAG In December 2018, the Board did not place the Chief Deputy Executive Director into an "Acting" role at the time.

**Lack of Basis for High-Dollar Payments to Director** – The OIPA found that the merit-pay increases and bonuses awarded to the Chief Deputy Executive Director were based on performance evaluations that were not performed or were incomplete. Further, the OIPA found that the employee was granted five performance incentives (two merit increases and three bonuses) within a 12-month period as a result of performance evaluations for 2017, 2018, and 2019 though each

evaluations should have occurred on an annual basis and performance incentives should have been paid after and within the respective year.

Upon inquiry of how management determined the amounts to award to the Chief Deputy Executive Director, the Director of Organizational Effectiveness stated that the previous Board Chair *verbally* instructed management to pay a 20-percent bonus. Documents show that the award letters were signed by the previous Board Chair for the first four performance incentives, and the previous Board Vice Chair for the fifth performance incentive. Based on review of documents, the OIPA found the following:

- In January 2018, the previous Board Chair authorized an **annual salary merit** increase totaling approximately **\$8,507** (difference between \$212,409.60 to \$220,916.80) and **bonus of \$4,250**, based on the Chief Deputy Executive Director's 2017 performance evaluation. However, the employee rated her own performance, the evaluation was incomplete, and the employee's signature was missing. The previous Board Chair signed in lieu of the Executive Director.
- In June 2018, the previous Board Chair authorized a **bonus for \$44,200** based on the employee's 2018 performance evaluation. The employee rated her own performance evaluation, the evaluation was incomplete, and the employee's signature was missing. The previous Board Chair signed in lieu of the Executive Director.
- In November 2018, the previous Board Chair authorized a **bonus for \$44,200** based on the employee's 2019 performance evaluation. The OIPA found that no performance evaluation was ever completed for the Chief Deputy Executive Director in 2019.
- In December 2018, the previous Board Vice Chair authorized an **annual salary merit** increase totaling approximately **\$11,065** (from \$220,916.80 to \$231,982.40) based on the Chief Deputy Executive Director's 2018 performance evaluation. The employee had received the June 2018 bonus based on this evaluation. The OIPA was unable to verify if management had made the previous Board's Vice Chair aware of the previous salary increases and bonuses granted to the employee before the Board's Vice Chair approved this salary increase.

According to the Administrative Rules and Regulations Section 10.2 – Productivity Incentive Program, if appropriated by the SANDAG Board of Directors on an annual basis, regular employees are eligible for a special Productivity Incentive Program administered by the Executive Director.

The 2017 Employee Handbook, Section 7.2 Regular and Limited-Term employees are eligible for bonus awards based upon exceeding performance goals and objectives in their performance evaluations. Bonus awards must be authorized by the Executive Director and provided for in the annual budget.

There was no change to who had authority to authorize bonuses, as the 2019 Employee Handbook Section 7.9 states that regular and limited term employees are eligible for bonus awards for superior performance as demonstrated by exceeding performance goals and objects in their annual performance evaluation. Bonus

awards must be authorized by the Executive Director and provided for in the annual budget.

According to the Administrative Rules and Regulations Section 5.7 – Performance Evaluations, performance evaluations are completed prior to the end of probation, one-year anniversary and annually thereafter. The completed performance evaluation may be accompanied by a recommendation to the Executive Director for merit salary increase or incentive award if recommended by the employee’s supervisor.

**Lack of Accountability for Awarding Salary Merit Increases and Bonuses to Chief Deputy Executive Director** – The OIPA found that management incorrectly sought the approvals of the previous Board Chair and Board Vice Chair, rather than the entire Board of Directors, to grant performance incentives to the Chief Deputy Director. The OIPA also found that General Counsel misinterpreted who, within SANDAG, had the authority to grant salary increases and bonuses.

The OIPA confirmed with General Counsel that management and General Counsel did not make the Board aware of the payments either before or after they occurred. Further, SANDAG management elected to make a series of salary increases and bonuses rather than a lump sum payment to the Director, which would increase the likelihood of the payments being overlooked.

Through inquiry with the General Counsel and the Director of Organizational Effectiveness, at the time the Chief Deputy Executive Director was performing the duties of the Executive Director, without being made the Acting Executive Director or receiving additional compensation for the work performed.

According to the General Counsel, in light of the unusual circumstances during FY 2019, involving the absence of an Executive Director, the previous Board Chair’s involvement in overseeing the compensation adjustment for the Chief Deputy Executive Director while she served in the absence of an Executive Director provided an added level of transparency in carrying out previously-delegated authority for compensation adjustment. This prevented the Director of Administration, who reported directly to the Chief Deputy Executive Director, and the Chief Deputy Executive Director herself from acting in a manner that could be perceived as self-serving in authorizing her own compensation adjustment.

Through inquiry, the OIPA was informed that a number of employees and Board members had the authority to award salary increases and bonuses. Specifically, General Counsel provided an argument that the Executive Director, Chief Deputy Director, Director of Administration, Board Chair, and Board Vice Chair all had the authority to grant salary increases and bonuses to the former Chief Deputy Executive Director. According to the General Counsel, Counsel determined the laws and policies granting each position authority are as follows:

- According to General Counsel, oversight of the compensation adjustment process is also vested in the Executive Director per PUC Section 132355 states that administrative authority for the consolidated agency shall be vested in the office of the Executive Director, subject to the direction and policies of the consolidated

agency as approved by the Board. As a result, General Counsel concluded that the Executive Director had authority to grant salary increases and bonuses<sup>6</sup>.

- General Counsel also cited SANDAG Board Policy 017 – Delegation of Authority Section 2, which states that any authority delegated to the Executive Director shall automatically vest with a Chief Deputy Executive Director when business must be conducted in the absence of the Executive Director. As a result, General Counsel concluded that the Chief Deputy Executive Director had authority to grant salary increases and bonuses, as the Executive Director was not present.
- General Counsel also cited SANDAG Board Resolution No. RTC-2018-04 passed in May 2018, which authorized the SANDAG Director of Administration to make, if applicable, such personnel changes, position and classification and salary range table adjustment, and other employee compensation package adjustments for which funding is provided in the adopted FY 2018-19 program budget. General Counsel stated this process was followed in previous budget cycles.

As a result, General Counsel concluded that the Director of Administration had authority to grant salary increases and bonuses but would be impeded from awarding such compensation by a conflict of interest since the Director of Administration reported to the Chief Deputy Executive Director. The OIPA agreed with General Counsel's assertion that the Board had granted the Director of Administration with authority.

- PUC Section 132354(j), states that SANDAG has authority to adopt an annual budget and to fix the compensation of its officers, board members, and employees. Further, PUC Section 132351.1, states that the Board may delegate its authority to other officers. SANDAG Bylaws, Article V, Section 1.a. states the SANDAG Board of Directors Chair is vested with general supervision over the Board's affairs. As a result, General Counsel also concluded that the Board Chair had authority to award salary increases and bonuses on behalf of the Board.

The OIPA disagrees that the Board Chair and/or Board Vice Chair had authority to award salary merit increases and bonuses to the Chief Deputy Executive Director, and instead that power was granted to the Director of Administration via the Board Resolution No. RTC-2018-04.

Given that the Chief Deputy Executive Director was vested with the same power at the time the bonuses were paid, management's decision to seek the approval from a single Board member increases the likelihood that the payouts could appear as a quid pro quo between key officials within SANDAG and member cities of SANDAG.

### **Finding III - Recommendations:**

To ensure that management and Board members cannot approve salary increases and large dollar payouts without justification, the Board should:

1. Formally investigate the legality of management's actions of granting large dollar salary increases and bonuses to the former Chief Deputy Executive Director, and

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<sup>6</sup> In Finding I, OIPA reported management incorrectly assumed control of the Board's Administrative Rules and Regulations in 2005.



- failure to report the payouts to the full Board in order to determine whether any personnel action should be taken against individuals for breach of fiduciary duty.
2. Rescind all delegated authority to award salary increases and bonuses until such time as the investigation has taken place and appropriate controls have been implemented to ensure that abuse of the performance incentive program does not occur.
  3. Clarify the responsibility of the Board Members acting in the capacity of the Chair and Vice Chair, to report actions taken on behalf of the full Board to ensure the Board is aware concerning awarding salaries increase and performance incentive pay.

Management's Response begins on page 91, Finding III begins on page 108.

OIPA's comments on the response from SANDAG's Management begins on page 130, comments to findings begin on page 135.

#### **IV. Breach of Fiduciary Duty by SANDAG Management**

The OIPA found that SANDAG management failed to inform the Board of its responsibilities to define special compensation and did not disclose benefits paid to management. Also, management failed to inform the Board of its responsibility to separately agendaize, fully discuss, and approve salary and special compensation tables. The OIPA found serious issues regarding how information related to the Performance Incentive Program was presented to the Board. The OIPA found the following:

##### **Special Compensation is Not Defined and Management Benefits Were Not Disclosed to the Board**

A significant weakness found during the review pertains to how management presents budget information related to employee compensation to its Board and the public. SANDAG was able to hide significant salary compensation adjustments, such as merit increases, bonuses, equity salary adjustments, management benefits, and severance payouts for staff in its annual budget that were unknowingly approved by the Board. Specifically, the OIPA found that these types of payments or the anticipated increases were not shown in the budget detail.

SANDAG's management entered into employment agreements that awarded severance payments to management level employees upon termination without cause and **\$5,000** towards the employee's 457 retirement accounts during employment, but the Board was not made aware of these benefits. It is unlikely that Board members would be able to identify which employees are receiving management benefits by reviewing the materials that management provided to the Board.

The OIPA also found that these management benefits were not equally available to all employees of the same management level within SANDAG. Unequitable distribution of management benefits can result in unfair treatment of employees and decrease employee morale.

Based on inquiry and review of records, the OIPA found SANDAG did not define what constitutes special compensation as required by laws and regulations because the

management did not inform the Board of the requirement. The Director of Organizational Effectiveness stated that special compensation is approved by the Board as part of the annual compensation package.

Gov Code 20636 Section(c)(2) states that special compensation shall be limited to that which is received by a member pursuant to a labor policy or agreement or as otherwise required by state or federal law to similar situated members of a group or class of employment that is in addition to payrate. If an individual is not part of a group.

Gov Code 20636 Section(c)(6) states that the board shall promulgate regulations that delineate more specifically and exclusively what constitutes "special compensation."

Failure to define special compensation, increases the risk that management is able to use its discretion to award undefined earnable compensation and/or award compensation unequally between classifications of employees. There is also increased risk that special compensation paid to employees is not reportable to CalPERS.

### **SANDAG Management Failed to Notify SANDAG's Board of Its Responsibility to Approve Compensation**

A review showed that from FY 2016-17 to present, SANDAG's Board approved employee salary range tables as part of the annual program budget rather than separate agenda resolution as required by laws and regulations. The purpose of Board approving salary and special compensation tables as a separate resolution is to ensure that the Board is aware and accountable for the compensation paid to employees of the organization.

In most cases, the annual program budget package presented to the Board averages 500 pages. The importance of the review and approval of the salary tables is minimized since the documents are buried within the package. A review showed that after the salary tables are approved, the tables are not posted to SANDAG's website so they can be easily located by the public and employees or properly dated as required by law.

Further, SANDAG's administrative procedures are not designed to ensure salary and special compensation tables were approved in accordance with applicable laws and regulations. Specifically, the OIPA found that the Employee Handbook Chapter 10: Classification and Compensation, Section 2 states that the Classification Salary Range Table is approved annually by the Board of the Directors as part of the Program Budget.

SANDAG's General Counsel acknowledged that they are not aware of the Government Code requiring that the Board approve SANDAG's compensation. General Counsel and management cited Public Utilities Code, SANDAG Bylaws, SANDAG Board Policy No- 017 - Delegation of Authority, and certain resolutions passed by the Board as giving the Executive Director and other SANDAG management the right to set and approve compensation.

California Code of Regulations (CCR) Section 570.5 Requirement for a Publicly Available Pay Schedule (a)(1) states that for purposes of determining the amount of compensation earnable, the payrate shall be limited to the amount listed on a pay

schedule that has been duly approved and adopted by the employer's governing body.

CCR Section 570.5 (a)(5) states that the pay schedule must be immediately accessible and available for public review. CCR Section 570.5 (a)(8) states that the pay schedule cannot reference another document in lieu of being disclosed.

Failure to separately agendize salary and special compensation tables increases risk that the Board will not critically review changes in the salary and special compensation tables on a year to year basis.

Without strong governance at the Board level, there is an increased risk of fraud, waste, and abuse of salaries and compensation, especially at the management level of an organization.

Lack of properly approved salary and special compensation tables increases the risk that employees' compensations are not properly reported to CalPERS.

### **SANDAG Management Failed to be Transparent in Presenting Budget and Financial Information to the Board**

SANDAG uses a pay-for-performance based system to reward employees on an annual basis. Each year, SANDAG's management calculates an amount to award employees under the program, and requests that the Board approve the amount. The amount proposed is called the Annual Compensation Pool.

To determine the Annual Compensation Pool, the Department of Organizational Effectiveness applies a percentage increase to the salaries of all filled and vacant positions to determine the amount to recommend to the Board. However, the OIPA found that management does not intend to nor does it award the percentage used to calculate the Annual Compensation Pool to all employees. After granting performance increases, management does not inform the Board on how the funds are spent or who received them. Table 3 shows the total percentage increase applied to the prior year's total salaries to determine the Annual Compensation Pool by fiscal year.

**Table 3 – Percentage Increase Applied to Salaries to Determine the Amount of the Annual Compensation Pool FY 2014-15 to FY 2019-20**

<b>Fiscal Year</b>	<b>Beginning Total of Salaries</b>	<b>Increased Total of Salaries</b>	<b>Percent Increase</b>	<b>Difference in Salaries</b>
2014-15	\$ 24,625,620	\$ 25,556,363	3.8%	\$930,743
2015-16	\$ 27,258,501	\$ 28,345,506	4.0%	\$1,087,005
2016-17	\$ 28,184,460	\$ 29,296,418	3.9%	\$1,111,958
2017-18	\$ 28,667,271	\$ 29,682,663	3.5%	\$1,015,392
2018-19	\$ 31,263,371	\$ 32,217,033	3.1%	\$953,662
2019-20	\$ 34,093,303	\$ 35,460,762	4.0%	\$1,367,459
<b>Total</b>				<b>\$6,466,219</b>

The OIPA found that though management calculated approximately **\$6.5 million** would be used to grant performance incentives from FY 2014-15 to FY 2019-20, they requested the Board approve significantly more in order to cover CalPERS, Medicare, and Workers Compensation costs without disclosing that those costs would only be incurred only if the employee was granted a merit increase and/or equity adjustment,

but not a bonus. As shown in Table 4 management requested that the Board approve nearly **\$7.9 million** for the Performance Incentive program during that time.

**Table 4 – Cost Breakdown of Annual Compensation Pool Recommended to the Board from FY 2014-15 to FY 2019-20**

Fiscal Year	Difference in Salaries	CalPERS	Medicare	Workers Compensation	Total
2014-15	\$930,743	\$ 193,735	\$ 13,496	\$ 14,527	\$1,152,501
2015-16	\$1,087,005	\$ 208,544	\$ 15,762	\$ 17,177	\$1,328,488
2016-17	\$1,111,958	\$ 191,748	\$ 14,760	\$ 13,787	\$1,332,253
2017-18	\$1,015,392	\$ 177,245	\$ 13,646	\$ 11,397	\$1,217,680
2018-19	\$953,662	\$ 179,581	\$ 12,777	\$ 9,671	\$1,155,691
2019-20	\$1,367,459	\$ 272,036	\$ 17,172	\$ 11,576	\$1,668,243
<b>Total</b>	<b>\$6,466,219</b>	<b>\$1,222,889</b>	<b>\$87,613</b>	<b>\$78,135</b>	<b>\$7,854,856</b>

Since management did not award the same percentage increase to staff, as it used to determine Annual Compensation Pool, the actual CalPERS, Medicare, and Workers Compensation costs vary greatly from the amounts approved by the Board.

Also, including amounts such as CalPERS, Medicare, and Workers Compensation to the Annual Compensation Pool without clarifying that those costs will be the result of the performance incentives granted to employees, increases the risk that SANDAG management could award more in salaries costs than was originally intended because bonuses would not result in CalPERS, Medicare, and Worker's Compensation costs.

In further review, the OIPA found that SANDAG management does not reconcile the total amount of performance incentives awarded to employees to the amount authorized by the Board or the amount paid by accounting. By not reviewing and reconciling the performance incentive payments, SANDAG cannot assure that its budget-to-actual comparison is accurate. The OIPA could not perform the reconciliation without considerable effort because the documents used to track approved performance incentives lacked totals by type of payment.

For all years reviewed, the OIPA found that SANDAG's management failed to report the total amount paid to employees, by employee name and title, through the Performance Incentive Program to the Board.

The lack of reconciliations for the program increases the risk that management can pay large, unjustified amount to employees without the Board's knowledge and detection.

Gov Code 20636 Section (c)(3)(C) states that special compensation shall be for services rendered during normal working hours, and when reported to the board, the employers shall report each item separate from payrate.

#### **Finding IV - Recommendations:**

To ensure that SANDAG's Board is properly informed of SANDAG business and information is presented clearly, accurately, and timely, the Board should:

1. Create and promulgate a Board policy defining special compensation for SANDAG employees.

2. Create and promulgate a policy which addresses the nature and timing of information that SANDAG management and staff should present to the Board and the public, including but not limited to,
  - Responsibility of management to present salary and special compensation tables as a separate azenized resolution at least annually, properly date approved schedules, and post the approved schedules on SANDAG's website.
3. Require management to develop and formalize procedures for budgeting and reporting financial information, specifically salaries and benefits information, to the Board in accordance with applicable laws, regulations, Board Bylaws, and Board Policies.
4. Require management to update its methodology and formalize procedures for determining the total Annual Compensation Pool and in alignment with Board defined special compensation and approved special compensation tables.
5. Requirement management to develop and formalize a procedure for reconciling the Annual Compensation Pool to amounts awarded to employees and report performance incentives earned by employee name, title, amount, and period earned in accordance laws and regulations.
6. Require staff to review formalized policies and procedures to ensure staff is aware of their roles and responsibilities for receiving and documenting approvals of salary schedules and special compensation.

Management's Response begins on page 91, Finding IV begins on page 110.

The OIPA's comments on the response from SANDAG's Management begins on page 130, comments to findings begin on page 135.

## V. Significant Weakness in Financial Controls

The OIPA found significant and material weaknesses in the internal controls over Finance Services. The OIPA noted the following issues:

### **SANDAG Overbilled Projects for Bonuses Paid to Former Chief Deputy Executive Director**

The OIPA found SANDAG incorrectly charged projects for fringe and overhead costs for at least one bonus paid to the Chief Deputy Executive Director<sup>7</sup>. The Chief Deputy Executive Director was paid a bonus in the amount of **\$44,200** on November 27, 2018. SANDAG **billed 30 project codes** for a total of **\$101,736.90**, the amount shown at Table 5, on the following page. As a result, SANDAG *overbilled* projects for approximately **\$57,537** [\$33,579 + \$23,958] for fringe and overhead costs.

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<sup>7</sup> For a complete list of the projects and amounts incorrectly charged for the Chief Deputy's November 27, 2018 bonus, see Appendix C of this report.

**Table 5 – Total Amount Allocated to Projects for Chief Deputy Executive Director Bonus**

Description of Salary Charged to Projects	Amount
Bonus to former Chief Deputy Executive Director	\$44,200.00
Fringe Benefits	\$33,578.76
Overhead	\$23,958.14
<b>TOTAL</b>	<b>\$101,736.90</b>

According to the Chief Financial Officer, SANDAG should not bill for fringe and overhead amounts for bonuses. To ensure that the correct amounts are charged to projects, the Chief Financial Officer stated that bonus allocation journal entries are prepared by experienced payroll staff and reviewed by the supervisor to ensure accuracy, and both finance and project managers review the project costs (including labor costs) to ensure the project charges are properly recorded.

In addition, given that the 2019 performance evaluation was not completed, the OIPA questions whether the bonus amount should have been charged to many of the projects. Specifically, the time sheets for the period that the bonus was earned would need to support that the employee worked on those projects. However, the OIPA found the employee had not yet completed the work for the 2019 fiscal year, the year for which the bonus was awarded. As a result, the OIPA questions how Finance Services identified the projects codes for the entire year for which to apply the bonus. SANDAG lacks adequate support for charging the bonus to projects.

A review of the journal entry documents showed that at least two people had reviewed and initialed the document. Yet, SANDAG incorrectly charged the fringe benefits and overhead costs for a bonus paid. It is unclear how the incorrect amounts were not detected by staff. The OIPA did not perform a reconciliation of the employee's timesheet to the project codes charged to determine whether the appropriate projects were charged.

The State Controllers Manual states local governments should perform analyses of financial data, including comparing actual results to budget forecasts and historical data, to ensure variances are in accordance with expectations, considering internal and external factors.

There is increased risk that SANDAG is unfairly using money meant for transportation and criminal justice related projects to recoup costs for large dollar bonuses paid to executive level management. As a result, the cities and the County may not receive funding for their projects and the public could lose trust in SANDAG, its Board, and its employees.

#### **Unapproved Bonuses Reported to CalPERS as Special Compensation**

In an audit completed by CalPERS in June 2020, CalPERS found that SANDAG *incorrectly reported* the Chief Deputy Executive Director's bonus of **\$44,200** paid in June 10, 2018 to CalPERS.

According to the report, SANDAG's Employee Handbook contained a bonus plan. CalPERS found the plan was not approved by SANDAG's Board and did not specify the conditions for payment. As a result, CalPERS found the bonus pay was not reportable as special compensation. The OIPA did not verify that SANDAG properly

reported bonuses it paid employees from FY 2014-15 to December 2019 in the amount of approximately **\$829,370**.

The audit report also states that SANDAG was unaware the Board of Directors could not delegate the approval of administrative policies to the Executive Director and the policies must contain the conditions of payment including the amount of the special compensation. When items of compensation are not accurately reported, the employee's member contributions and retirement benefits may be impacted.

Gov. Code Section 20636 and CCR section 571(a) state that special compensation must be contained in a written labor policy or agreement approved by an employer's governing body in accordance with requirements of applicable public meetings laws and the policy or agreement must indicate the conditions for payment of the item of special compensation, including eligibility and amount of the special compensation. According to SANDAG's audit response, management disagreed with CalPERS that Gov. Code Section 20636 contained a clear requirement that items of special compensation be Board approved.

CalPERS performs audits to ensure member agencies have sufficient controls put in place to ensure the agencies' governing body reviews and approves employee compensation.

#### **Lack of Strong System of Internal Controls Resulted in the Approval of Payments Without Adequate Supporting Documentation**

The OIPA found accounting staff paid high dollar severance payments to employees without sufficient supporting documentation because management directed them to process the payments. The OIPA also found that when one of the checks was voided, SANDAG failed to destroy the check because Finance Services lacks adequate procedures to ensure voided checks are destroyed in a timely manner.

A review showed that payroll did not receive adequate supporting documentation to process the payments for severance payments<sup>8</sup>. Payroll processed the payments using Payroll Action Forms that were processed and emailed to payroll by human resources staff. However, the contracts signed by the employees and Executive Director were missing. The OIPA found that the forms lacked proper approvals by human resources because they are not designed to capture the signatures of the preparer and approver. As a result, payroll staff could not validate that the amount on the Payroll Action Forms was accurate, or who had prepared and approved the forms within payroll.

According to payroll staff, they were aware that insufficient supporting documentation was not provided, but they felt pressured to process the payments because they are low level staff and that they were following the chain of command. It appears that payroll staff does not feel comfortable questioning direction from management even if management's instructions does not seem reasonable. Further, accounting staff stated that the control in place to prevent erroneous payments was the approval of the Chief Financial Officer, who must sign the check, and a secondary signature by the Executive Director if the payment was more than \$5,000.

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<sup>8</sup> See Finding 2 for high dollar severance payments to employees who resigned from SANDAG.

The SCO Guidelines states that local governments should establish policies and procedures to implement control activities that achieve management directives and respond to identified risks in the internal control system. Authorization activities should be in accordance with the local government's policies and procedures.

However, a review found that SANDAG's payroll procedures were not adequately designed, and the document did not comply with SCO Guidelines and SANDAG's Bylaws and policies. The OIPA found that the payroll procedures failed to include the key controls<sup>9</sup>, and were not clearly written and easy to understand. The OIPA also found the procedures:

- Lacked an index to move between sections and the date of when the document was last updated.
- Lacked definitions of what each procedure was designed to accomplish.
- Included instructions based on the names of employees rather than position titles. As a result, if those employees leave SANDAG or transfer to other areas in SANDAG the procedures would need to be updated.
- Included log-in and password information to access payroll laptop and confidential payroll systems.

SANDAG Bylaws Section VI Section 3 states that the Director of Finance shall establish and maintain funds and accounts required by good accounting practice, state and federal law, and the Bylaws. SANDAG Bylaws Section VI Section 4 states that the Director of Finance shall disburse SANDAG's funds pursuant to the accounting procedures developed under Section 3.

Board Policy No. 041 states that SANDAG executive management and staff are responsible for maintaining sufficient internal controls to obtain reasonable assurance that SANDAG goals are achieved efficiently and in compliance with laws. Reasonable assurance of public accountability is achieved by maintaining strong internal controls within the organization, at least equivalent to the Internal Control Standards issued by the Independent Performance Auditor.

Board Policy No. 039, the Independent Performance Auditor, the IPA is the official body of SANDAG to investigate allegations of potential fraud, waste, and abuse identified by staff or other stakeholders. An employee, contracted parties, member of the public, or other stakeholders of SANDAG can file a complaint with OIPA alleging improper activities. Any reprisal action taken against SANDAG employees, applicants or witnesses, because of the filing of a complaint, is strictly prohibited under Government Code Section 53297.

A system of strong internal control is among the most important aspects of any fraud prevention program. Executive Directors, Chief Financial Officers/Chief Business Officials and other managers are in a position of authority and therefore have a higher standard of care to establish the ethical tone and serve as examples to other employees. Employees with administrative responsibility have a fiduciary duty to the organization to ensure that their activities are conducted in compliance with all applicable board policies, laws, and regulations.

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<sup>9</sup> For a description of internal control activities, see the Background section of this report.



A lack of controls over payroll functions increases the risk of material weakness to the organization's financial system. Further, poor controls over payment disbursement can result in staff processing and approving erroneous and fraudulent payments.

Accounting staff are not empowered to ask questions when they have not received sufficient documentation to process payments. As a result, there is increased risk that employees in key positions can collude to compel lower level accounting staff to process payments that are fraudulent.

**Finding V - Recommendations:**

To ensure that SANDAG has adequate procedures in place to ensure the accuracy and reliability of SANDAG's financial information the Board should:

1. Require Financial Services to create and formalize procedures for reallocating special compensations costs to projects, including but not limited to:
  - Verifying that fringe benefits and overhead are not charged when bonuses are charged to projects.
  - Reallocations are supported by employee timesheets to ensure that costs are correctly allocated to projects.
  - The total amount of bonuses charged to projects reconciles to the bonuses approved by the Executive Director.
2. Require Financial Services to develop and formalize procedures for reporting special compensation to CalPERS in accordance with applicable laws and regulations, including documenting that Financial Services has reviewed that amounts were accurately reported for periods earned.
3. Require Financial Services to review the allocations for bonuses paid, identify whether bonus amounts were accurately reallocated to projects based on supporting time sheets and other documentation, and correct any amounts not properly charged to projects.
4. Require Financial Services to update accounting procedures to address the issues identified in this report, including but not limited to, ensuring procedures are clearly and concisely written, control activities are clearly stated, the document is properly indexed and dated, and login information, passwords, and other confidential information is removed.
5. Require staff to review formalized policies and procedures to ensure staff is aware of their roles and responsibilities for ensuring sound financial practices within SANDAG.
6. Require all SANDAG employees to acknowledge that they have read and understand their fiduciary duties as provided in Board Policy 041 and their obligation to report fraud, waste, and abuse, as well as, their protection as a whistleblower as provided in Board Policy 039.

Management's Response begins on page 91, Finding V begins on page 112.

The OIPA's comments on the response from SANDAG's Management begins on page 130, comments to findings begin on page 135.

## **VI. Mismanagement and Lack of Transparency of SANDAG's Annual Productivity Program Resulted in Disparity of Payments to Employees**

The OIPA found significant disparity in the amounts of performance incentives (merit increases, bonuses, and equity payments) paid to staff and management from FY 2015-16 to FY 2019-20. The OIPA also found that SANDAG lacked a system of internal controls to prevent fraud, waste, and abuse of the performance incentive program and to ensure the total amount of performance incentives paid to employees reconciled to the amounts approved by the Board.

A review of SANDAG's compensation program found that the Board had approved approximately **\$7.98 million** in performance incentive payments to staff from FY 2014-15 to FY 2019-20. Table 6 shows the Total Annual Compensation approved by the board. Note, these amounts were in addition to the salary, benefits, and management benefits that staff were paid.

**Table 6 – Annual Compensation Pool Amounts Approved by SANDAG to Determine the Amount of the Annual Compensation Pool FY 2014-15 to FY 2019-20**

<b>Fiscal Year</b>	<b>Total Annual Compensation Pool Approved by the Board</b>
2014-15	\$1,150,000
2015-16	\$1,330,000
2016-17	\$1,350,000
2017-18	\$1,200,000
2018-19	\$1,300,000
2019-20	\$1,650,000
<b>TOTAL</b>	<b>\$7,980,000</b>

### **Merit Increases, Equity Payouts, Bonuses are not Equitably Distributed to Employees**

During our review, the OIPA noted that employees were not paid performance incentives equally because SANDAG lacks a definition of what amounts can be paid and the basis for which to award employees performance incentives.

Specifically, during our review of merit increases and equity payments from FY 2015-16 to FY 2019-20 the OIPA found that the percentage increases awarded to employees varied greatly by employee position and classification. For example, a review of the Associate Regional Planner group showed pay increases ranged from **2.7% to 17.1%**, with the largest increase going to the employee who was already making highest salary within the group in FY 2019-20.

In contrast, according to its website, the Southern California Association of Governments (SCAG) pays between 2% and 10% annual merit increase to employees, and no cost of living increases. Further, SCAG does match 457 contributions for managers, but does not pay employees bonuses. Whereas, the San Bernardino County Transit Authority grants employee up to 5 percent of an employees pay based on an employee's annual performance evaluation.

During our review of bonuses<sup>10</sup>, the OIPA found that **286** bonuses were paid for a total of **\$829,369.84** from FY 2014-15 to December 2019. Documents showed that just **121** employees received bonuses during that time, which is less than a third of SANDAG's regular and part-time employees for that period (estimated between **380** and **415** employees). Bonuses paid to employees ranged from **\$250** to **\$44,200**.

The OIPA also found that **42** employees within seven classifications of employees, a classification may contain only one position or a number of positions, accounted for approximately **\$468,039 (56.43%)** of the total bonuses paid for all years reviewed. A breakdown is shown on Table 7.

**Table 7 – Percentage and Number of Bonuses Paid by Job Title from FY 2014-15 to FY 2019-20**

<b>Job Title</b>	<b>Number of Employees Receiving Bonus within Job Title</b>	<b>Percentage of Total Bonus Paid</b>	<b>Amount Total Bonus by Job Title</b>
Capital Development Project Manager	4	3.18%	\$26,400
Chief Deputy Executive Director	1	11.17%	\$92,650
Executive Director	1	5.57%	\$46,200
Principal Engineer	5	5.73%	\$47,500
Principal Regional Planner	8	10.60%	\$87,950
Senior Engineer	13	12.67%	\$105,100
Senior Regional Planner	10	7.5%	\$62,239
<b>SUBTOTAL</b>	<b>42</b>	<b>56.43%</b>	<b>\$468,039</b>
Other Positions (66 positions) <sup>11</sup>	79	43.57%	\$361,331
<b>TOTAL</b>	<b>121</b>	<b>100%</b>	<b>\$829,370</b>

It is unclear why only seven classifications of employees would be awarded such a large portion of the total bonuses paid during the period reviewed. But this disparity is most likely the result of management's failure to standardize the performance ratings necessary for employees to receive performance incentive pay.

Further, since the rating scales are an even number; 1-4 for goals and objectives and 1-8 for competencies, the OIPA could not identify the rating for the competencies that would be considered "standard performance". The rating for goals is included in the Background section of the report. The OIPA would not expect employees who meet standards or perform below standards to receive a performance incentive.

Management also failed to define and get Board approval for the amounts that can be awarded under the pay for performance program. Without a defined amount of merit increases and bonuses, management can award unlimited amounts to certain employees each year.

Gov Code 20636 Section (c)(2) states that special compensation shall be limited to that which is received by a member pursuant to a labor policy or agreement or as otherwise required by state or federal law to similar situated members of a group or class of employment that is in addition to payrate.

<sup>10</sup> See Appendix C for a complete list of bonuses paid by position by fiscal year.

<sup>11</sup> Some employees held more than one job title, in which, they were awarded a bonus.

Gov Code 20636 Section (c)(6) states that the board shall promulgate regulations that delineate more specifically and exclusively what constitutes “special compensation.”

Failure to define special compensation, increases the risk that management is able to use its discretion to award undefined earnable compensation and/or award compensation unequally between classifications of employees<sup>12</sup>. There is also increased risk that special compensation paid to employees is not reportable to CalPERS.

Further, the use of public funds to pay special compensation such as cash bonuses to government employees who already receive generous pension packages, competitive salaries and other public employee benefits, is not looked upon as a prudent use of public dollars. In fact, it is rare and uncommon that public employees at the federal, state, and other local governments such as counties and cities are paid special compensation that SANDAG has paid over the years to a select number of employees.

#### **Lack of Justification for Awarding Performance Incentive Pays**

The OIPA tested a sample of **26** employees who received bonuses during the audit period and tested two of the sample employee’s performance evaluations to determine whether SANDAG has sufficient support and basis to award bonuses. Based on testing of 52 performance evaluations the OIPA found:

- **12** performance evaluations were missing the signature of the employee’s supervisor. Also, the OIPA found that the employees did not always sign their evaluations. As a result, SANDAG cannot ensure that the supervisor agreed with the ratings in the performance evaluation or that the employees are made aware of whether their performance meets standard expectations.
- **10** of the performance evaluations are missing a rating of performance by supervisor. As a result, the OIPA cannot determine what basis was used to award these employees bonuses. The OIPA found that the former Principal Management Internal Auditor, who reported to the Executive Director, was awarded a \$2,800 bonus although his performance was unrated. This also presented a conflict of interest for the internal auditor.

The OIPA also found that performance ratings did not corollate to the amount of the bonuses awarded to staff. For example, the Chief Financial Officer received payments of **\$6,400** and **\$3,450** in different fiscal years though the employee’s performance rating was nearly the same. In another example, a Principal Regional Planner received payment of **\$6,500** and **\$3,150** within different fiscal years though the employee had nearly identical ratings between years.

SANDAG lacks a basis for the amounts that are paid to employee because SANDAG is missing formalized procedures that state the performance evaluation ratings necessary to award a merit increase, bonus, and equity pay and amounts that should be awarded.

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<sup>12</sup> Refer to Findings III, V, and IX for evidence of large dollar salary increases and bonuses to senior management and unequitable merit increases, bonuses, and equity payments to employees.

Without a consistent process for performing evaluations, SANDAG cannot ensure that employees earned the performance incentives.

According to the Administrative Rules and Regulations Section 10.2 – Productivity Incentive Program, if appropriated by the SANDAG Board of Directors on an annual basis, regular employees are eligible for a special Productivity Incentive Program administered by the Executive Director.

The 2017 Employee Handbook, Section 7.2 Regular and Limited-Term employees are eligible for bonus awards based upon exceeding performance goals and objectives in their performance evaluations. Bonus awards must be authorized by the Executive Director and provided for in the annual budget.

There was no change to who had authority to authorize bonuses, as the 2019 Employee Handbook Section 7.9 states that regular and limited term employees are eligible for bonus awards for superior performance as demonstrated by exceeding performance goals and objects in their annual performance evaluation. Bonus awards must be authorized by the Executive Director and provided for in the annual budget.

According to the Administrative Rules and Regulations Section 5.7 – Performance Evaluations, performance evaluations are completed prior to the end of probation, one-year anniversary and annually thereafter. The completed performance evaluation may be accompanied by a recommendation to the Executive Director for merit salary increase or incentive award if recommended by the employee’s supervisor.

#### **No Evidence of Approvals of Performance Incentive Recommended and Awarded to Employees**

Based on review, the OIPA found that management did not document the approval of merit increases, bonuses, or equity adjustments. Specifically, the Department of Organizational Effectiveness provided us with a series of documents for FY 2014-15 to FY 2019-20, showing the amounts of performance incentives awarded each year. A review of the documents found that management failed to document supervisory recommendations to award performance incentives and management’s approval of performance incentives.

The OIPA also found that the documents did not include totals of the amounts awarded by payment type. Therefore, the amounts awarded could not be traced to accounting records. As a result, the OIPA was unable to determine the total amount of merit increases and equity pays recommended by supervisors, approved by human resources or paid by accounting.

According to the Director of Organizational Effectiveness, the process for recommending and approving is for managers to recommend performance pay for employees by uploading a spreadsheet into a shared file. These documents are unsigned and dated.

SANDAG’s Administrative Rules and Regulations Section 10.2 – Productivity Incentive Program states that if appropriated by the Board on an annual basis employee are eligible for a special productivity incentive program administered by the Executive Director.

The 2017 Employee Handbook, Section 7.2 Regular and Limited-Term employees are eligible for bonus awards based upon exceeding performance goals and objectives in their performance evaluations. Bonus awards must be authorized by the Executive Director and provided for in the annual budget.

There was no change to who had authority to authorize bonuses, as the 2019 Employee Handbook Section 7.9 states that regular and limited term employees are eligible for bonus awards for superior performance as demonstrated by exceeding performance goals and objects in their annual performance evaluation. Bonus awards must be authorized by the Executive Director and provided for in the annual budget.

According to the Administrative Rules and Regulations Section 5.7 – Performance Evaluations, performance evaluations are completed prior to the end of probation, one-year anniversary and annually thereafter. The completed performance evaluation may be accompanied by a recommendation to the Executive Director for merit salary increase or incentive award if recommended by the employee’s supervisor.

#### **Paid Bonuses Does Not Reconcile to Approved Bonuses Amounts**

During FY 2014-15 to FY 2019-20, the OIPA found SANDAG paid **\$14,500** more in bonuses than was approved based on a review of the support for approved performance incentive pay and payroll records. Table 8 shows the difference in the bonuses reported as approved by human resources and paid by accounting.

During the review, the OIPA requested evidence of the bonuses that were authorized by human resources and paid by payroll. Yet, payroll provided several versions of the performance incentive pay documents from human resources that they used to make the payments.

**Table 8 – Difference in Bonuses Reported as Approved and Paid from FY 2014-15 to FY 2019-20**

<b>Fiscal Year</b>	<b>Count of Bonuses Paid to Employees</b>	<b>Amt of Approved Bonuses</b>	<b>Amt of Paid Bonuses</b>	<b>Difference</b>
2014-15	59	\$ 190,267	\$ 187,267	\$ (3,000)
2015-16	64	\$ 148,032	\$ 150,532	\$ 2,500
2016-17	31	\$ 49,060	\$ 57,460	\$ 8,400
2017-18	57	\$ 210,961	\$ 211,811	\$ 850
2018-19	63	\$ 211,150	\$ 216,900	\$ 5,750
2019-20	12	\$ 19,900	\$ 19,900	\$ -
<b>TOTAL</b>	<b>286</b>	<b>\$ 829,370</b>	<b>\$ 843,870</b>	<b>\$ 14,500</b>

As stated in the section above, human resources failed to sign the final version of the approved performance incentive pay. As a result, the OIPA could not determine whether payroll used the correct version of the document provided by human resources to make payments.

**Finding VI - Recommendations:**

Based on the auditor's review, and to ensure adequate controls over approvals over performance incentives and special compensation the Board of Directors should:

1. Require management to develop and seek Board approval a special compensation table, which defines the amounts to be awarded to employees, in accordance with applicable laws and regulations and aligned with the Board's defined special compensation plan on an annual basis.
2. Require management to develop and formalize procedures for a consistent methodology which identifies the performance ratings employees should attain in order to qualify for performance incentives on an annual basis, including but not limited to, documenting approvals, recommendations, and justification of amounts awarded.
3. Require staff to review formalized procedures for completing performance evaluations, recommending performance incentives, and approving performance incentives to staff to ensure they understand their roles and responsibilities.
4. Require Financial Services to develop and formalize a procedure for reconciling the performance incentives paid to employees to the amounts approved by management.

Management's Response begins on page 91, Finding VI begins on page 113.

The OIPA's comments on the response from SANDAG's Management begins on page 130, comments to findings begin on page 135.

**VII. Inadequate Procedures and Methodology for Setting Salary Ranges**

The OIPA found several issues related to SANDAG's methodology and process for setting salary ranges for positions. The OIPA noted the following:

**Insufficient Methodology in Utilizing Comparable Salary Surveys**

The OIPA found that salary comparison surveys used by SANDAG did not rely on comparable governmental agencies of the same size or functions. Rather, they relied in part on private and out-of-state governments. In addition, OIPA found that SANDAG did not include all of its positions in its salary comparison surveys. For example, we found that critical positions, such as the Chief Economist and Clerk of the Board, are missing from the analysis. Also, the analysis did not include consideration of special compensation or benefits paid to retain critical positions.

During the review, the OIPA found that SANDAG lacked formalized procedures for performing salary comparison surveys on a regular basis. The OIPA reviewed prior salary comparisons completed by consultants in January 2016 and January 2019.

Without performing salary comparison surveys, there is increased risk that SANDAG will not be aware when it is significantly underpaying or overpaying salaries for positions. As a result, SANDAG could be at risk of losing employees who hold critical positions and/or may not be able to sustain unjustified salaries and benefits costs. See Appendix D of this report for the approved FY 2021 Salary Table for the agency.

Without performing a salary survey for newly created levels of positions within the supervisory and management classification, there is increased risk that SANDAG is not paying newly created positions a salary that is considered fair market value based on the requirements of the positions.

The OIPA also found that for the most recent salary range adjustment presented to the Board, a review showed that the Department of Organizational Effectiveness aged the median salary ranges from a prior Salary Comparison by **1.25%** from January through June 2019, **2.5%** from July 2019 to June 2020, and **2.5%** from July 2020 to June 2021 to determine the amount of salary adjustments to recommend to the Board for FY 2020-21. The OIPA determined that this methodology was not sound or adequate because SANDAG lacked basis for the percent increase applied to salaries, and it was not indicative of the current market conditions.

The Executive Director asserted that SANDAG increased staff salaries to provide employees with competitive pay. According to Director of Organizational Effectiveness, SANDAG increased its staff salaries because the Executive Director believed that the employees were being paid below market rate. SANDAG does not provide staff with a cost of living increase to ensure salaries are adjusted for inflation.

By failing to perform a proper salary comparison survey, there is increased risk that SANDAG is recommending the Board approve salary schedules that do not reflect the market values for positions.

Administrative Rules and Regulations Section 4.1 – Classification Plan Definition, states that all positions of regular employment shall be classified for inclusion in the classification plan. A class consists of all positions sufficiently similar in duties, authority, responsibility, and working conditions to permit grouping under a common title and the application with equity of common standards of personnel actions. The classification plan shall be comprised of the assembled specification of each class.

Administrative Rules and Regulations Section 4.3 – Classification Plan Purpose, states class specifications are to be used as guidelines in determining applicant qualifications for positions and establishing position comparability for the purpose of comparable salary survey.

### **SANDAG Lacks Complete Job Duty Statements**

The OIPA found that SANDAG does not consistently create and use duty statements for positions within the agency. Further, staff reported being hired without reviewing their job duties, and/or being provided with job descriptions that do not match the duties that they regularly perform.

The OIPA found that the Employee Handbook's description of a class specification is not aligned with laws and best practices. Specifically, the Employee Handbook Section 10.4 states that Class Specification is typically a broad summary of the general duties, responsibilities, and qualifications that apply to all positions within a particular job title. Yet, the Employee Handbook should require that class specifications identify the essential job duties, how often those will be performed, and the minimum qualifications necessary to hold the position.



A review found that the class specification for the Facilities Coordinator position is missing percentages of duties to be performed. Also, when the OIPA requested the job duty for the Executive Strategic Advisor, SANDAG was unable to provide the document. The Executive Strategic Advisor is shown as a salary grade 35, with a salary range of **\$184,910** to **\$286,611** in the FY 2019-20 salary schedule revised September 27, 2019. The OIPA also noted that the employee holding this position has the job title of "Entrepreneur in Residence" rather than the title of Executive Strategic Advisor, and reports to the Chief Planning and Innovation Officer. However, the OIPA was unable to determine what the position is responsible for, and whether that job merits the salary assigned by SANDAG.

The OIPA found that SANDAG utilized Job Duty Statements in the past however it has devolved into using job descriptions and class specifications which does not provide sufficient detail of the essential job duties each position must perform.

Without clear job duties, it is unclear how SANDAG is able to perform job salary comparisons or sets the goals that employees must accomplish in order to evaluate their performance. Further, without knowing the job duties for positions management is unable to set performance goals and standards for which employees should work to achieve.

Government Codes Section 12926 (f)(2)(b) states evidence of whether a particular function is essential includes but is not limited to, written job descriptions prepared before advertising or interview applicants for the job.

#### **FINDING VII - RECOMMENDATIONS:**

To ensure that SANDAG has an adequate process for determining and setting salary ranges, SANDAG's Board should:

1. Establish and formalize policies and procedures to regularly complete salary comparison surveys and analysis, including but not limited to,
  - Explain when and how it will complete a salary survey, including a methodology it will use to determine these entries against which it compare itself, and how it uses the results to determine the increases in salaries and benefits. Further it should provide justification to the Board when deciding to increase salaries above the amounts that the salary survey. E.g. Chief Economist, Clerk of the Board, and other key positions identified by SANDAG.
  - Develop a schedule for ensuring that salary positions are included on the salary comparison surveys.
  - Require that SANDAG create duty statements for each position within the organization.
2. Request management to conduct a job analysis by gathering, documenting, and analyzing information about the job duties to determine the activities and responsibilities.
3. Request management to develop job duty statements in compliance with applicable laws, regulations, and best practices for each position within SANDAG.

The qualifications necessary for performing the job and the conditions under which work is performed.

Management's Response begins on page 91, Finding VII begins on page 116.

The OIPA's comments on the response from SANDAG's Management begins on page 130, comments to findings begin on page 135.

## Section 2 – Reorganization Resulted in Increased Salary and Benefit Costs to SANDAG

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In May of 2020, the Board of Directors asked the OIPA to verify whether an increase to Administrative Salaries and Benefits in the FY 2021 Recommended Annual Program Budget was a result of pay increases to staff. Management's proposed total salaries and benefits costs was approximately **\$51.6 million**. Based on our review, the OIPA was able to confirm that the increase is, in fact, a result of salary increases due the reorganization that occurred in September 2019, which resulted in added positions for each layer of management, significantly increased Executive Leadership team, and unjustified salary increases and promotions to top management.

The OIPA reviewed the results of the reorganization and found a number of significant issues. One major problem identified is that SANDAG routinely used different position and classification titles throughout SANDAG documents and systems. This lack of sufficient documentation made reviewing the impacts of reorganization and tracing the movement of positions within the organization unnecessarily difficult. The OIPA also found that some of the newly created positions did not trace to the Board approved salary table. For example, the Chief Operations Officer is not listed on the approved salary table, and instead is traced to the Chief Administrative Officer.

During the review, the OIPA found:

- SANDAG is top heavy with management for an organization of its size. Also, the agency significantly added to the number of top-level managers within the organization without justification which resulted in salary costs for executive management increasing by **\$897,303** to **\$1,390,825 per year** going forward.
- Several top-level managers received unjustified raises after their positions were retitled, and though their job duties did not change. In total, the additional amount that SANDAG must pay for executive level employees' salaries increased by **\$312,854 per year** going forward
- SANDAG also set newly promoted top-level management salaries far exceeding the minimum salary required for those positions, without justification. In total, the additional amount that SANDAG must pay for executive level employees' salaries increased by **\$193,919**, of which **\$115,609** was unjustified, per year going forward.
- SANDAG filled several top-level management positions without a fairly and competitively hiring candidates because SANDAG lacks sound hiring practices.
- SANDAG management changed regular employees to at-will employees which resulted in employee's losing the right to file a grievance against management.

### VIII. SANDAG Risked Future Deficiencies by Significantly Increasing the Number of Executive Team Managers and Their Salaries Without Justification

The OIPA found that the reorganization resulted in an **annual** increase of salaries costs to SANDAG –ranging from **\$897,303** to **\$1,390,825**. Assuming no growth over a ten-year period, the reorganization will result in that approximately **\$9** million to **\$13.9** million increase for only **25** executive level salaries excluding the Executive Director’s salary of approximately **\$415,000** annually or nearly **\$5** million over a ten-year period. Note, the total salary increase presented above excludes the salaries cost for the Principal/Manager level because the payroll data provided by SANDAG’s management was incomplete.

The reorganization resulted in SANDAG becoming top heavy with management. In FY 2019-20, SANDAG had approximately 390 full-time regular positions and approximately 33 part-time positions.

#### Significantly Increased Executive Team Without Increasing Productivity

The Executive Director expanded the Executive Team from **11** to **26** employees, though this change was not justified by an increase in the SANDAG’s workload, nor does the increased size of the Executive Team appear to increase the productivity of the organization. SANDAG did not change its workload or scope of work as a regional agency during this time. In fact, based on a review of the May 2020 organization chart SANDAG reduced full-time positions by 36 since last year.

*SANDAG is top heavy with management for its size.*

Prior to the reorganization, the Executive Team included the Executive Director, Chief Deputy Executive Director and eight Department Directors. The reorganization expanded the Executive Team to include all positions at salary grade 30 and above, 15 positions in total. Figure 3 shows the positions and number of employees within SANDAG’s Executive Team before and after the reorganization.

**Figure 3 – SANDAG’s Executive Team Prior to Reorganization In September 2019<sup>13</sup>**

Prior to Reorganization	After Reorganization
<ul style="list-style-type: none"> <li>Executive Director – <b>1</b> position</li> <li>Chief Deputy Executive Director – <b>1</b> position</li> <li>Department Director – <b>8</b> positions</li> <li>General Counsel – <b>1</b></li> </ul>	<ul style="list-style-type: none"> <li>Executive Director – <b>1</b> position</li> <li>Chief Executive Directors – <b>5</b> positions</li> <li>Director II – <b>11</b> positions</li> <li>Director I – <b>7</b> positions</li> <li>General Counsel – <b>2</b> positions</li> </ul>
<b>Executive Team - 11 employees</b>	<b>Executive Team - 26 employees</b>

In addition to a greatly expanded Executive Team, SANDAG also has **31** employees at the Principal/Manager level classification, excluding OIPA’s IPA and Principal Management Internal Auditors.

<sup>13</sup> See Appendix B for SANDAG’s organizational charts before and after the reorganization.

For an organization of this size, SANDAG is top heavy. In contrast, a review of the San Bernardino County Transit Authority showed that agency has seven director level employees, in addition to the Executive Director and Deputy Executive Director. The agencies total expenditures in FY 2021 is expected to be approximately \$960 million. While a review of SCAG's organizational charts showed a similar picture. In addition to the Executive Director, Deputy Executive Director, Chief Operating Officer and Deputy, SCAG has four department heads titled Director/Chief – an executive staff of approximately 7 employees excluding their General Counsel. SCAG's FY 2021 proposed budget proposed expenditures totaling \$96 million.

The OIPA found that management lacked adequate explanation surrounding the need for additional positions, promotions in place, and changes to the organizational structure.

The expansion of the executive team resulted in several additional employees becoming eligible and/or receiving management benefits, and increased costs to SANDAG. However, the OIPA was unable to identify the employees receiving management benefits or determine the total amount paid because SANDAG did not provide the auditors with sufficient documentation.

**Difference Between Director I, Principal, and Manager is Salary Not Level Of Responsibility** – A review showed that during the reorganization, management began using Director II rather than Department Director to indicate when a position's area or responsibility included oversight of a department, and Director I rather Director when a position's area of responsibility included oversight of a division. These changes are not aligned with SANDAG's Position Classification Manual.

During the review of the Position Classification Manual, the OIPA found that there is no difference between the Director I (formerly Director) and the Principal/Manager level classification. The Principal/Manager title is used in the job titles of those positions where the focus is on direct supervision of a section or program area within a department. However, the terms "division" and "section or program" are not defined in the Position Classification Manual. A review of the agency's organizational chart confirmed that Director I, Principals, and Managers all lead divisions.

In fact, the OIPA found multiple instances where the reporting lines within the agency are not consistent with a Director I position being at a level higher than that of a Principal or Manager. For example, within the Department of Regional Planning, we found three Principals and two Director I's are leading divisions within that area and reporting directly to the Director II of Regional Planning, who then reports to the Chief Planning and Innovation Officer Executive Director.

It appears the creation of Director I during the reorganization was used to validate paying some employees higher salaries though their job duties and responsibilities are similar in complexity to that of a Principal or Manager. Figure 4, on the following page, shows the reporting structure for the Department of Regional Planning with the number of employees reporting to directors and principals within each area.

**Figure 4 - Reporting Structure of the Department of Regional Planning After Reorganization**



The OIPA questions the need for maintaining the number of executive and manager level staff within the organization.

**Changes to the Data and Modeling Services Are Not Aligned to SANDAG's Mission** – A review showed the Chief Economist, which was formerly at Department Director, who oversaw **77.5** positions prior to the reorganization, was left with just five positions under the reorganization. The staff were moved under the oversight of the former Department Director of Operations, who does not appear to have the skills and knowledge to oversee the staff previously under the Chief Economist. However, the OIPA noted that the Chief Economist salary and position on the salary schedule was elevated without documentation that justified the changes. Note, the OIPA found that this position is crucial within SANDAG, and therefore the increase is most likely justified.

#### **Management Lacked Support for Increases to Executive Management's Salaries Ranges**

The OIPA performed testing to identify the total number of new management positions added to the organization, total number of existing management positions that were changed upward or downward, and the total salary and benefit increases as a result of these changes.

Based on a review, the OIPA found that the reorganization resulted in an **annual** increase of salaries costs to SANDAG ranging from **\$897,303** to **\$1,390,825**:

- The total number of Chief Deputy Executive Director level positions was increased from **one (1)** to **five (5)**, by the addition of four positions formerly at the Department Director level. However, three of those positions were given the authority as the Chief Deputy Executive Director. The total increase to the salary ranges for these positions increased by a minimum of **\$138,080** and a maximum of **\$214,025**.
- The total number of Director II level positions was increased from **8** to **11**, including the Executive Strategic Advisor. The OIPA found that three of the positions were formerly Department Director level. SANDAG added four positions formerly at the Director level and 1 position formerly at the Manager. Also, two

new positions were added to this level; Executive Strategic Advisor and Director II, Data and Modeling. The salary range for the position Director II position is **\$152,818** and maximum is **\$236,868**, while the salary range for the Executive Strategic Advisor was **\$184,910** to **\$286,611**. Documents reviewed lacked justification for the creation of these positions. The positions of the Director II, Data and Modeling was formerly held by the Chief Economist who was promoted in place to a Chief Deputy Executive Director level position. Management failed to provide justification for splitting the Chief Economist and Department Director position into two separate positions. The Director II, Data and Modeling is currently vacant. The total increase to the salary ranges for these positions increased by a minimum of **\$516,262** and a maximum of **\$800,208**.

- The total number of Director I level employees was increased from **six (6)** to seven **(7)** positions. Within this group, three (3) of the positions were already the Director level before the reorganization. SANDAG added five (5) positions; two (2) Manager level positions, one (1) Senior level position, and one (1) newly created position. The newly created Director I Mid-Coast Corridor Project Transit Project is a limited term position. The minimum salary range for the position is \$126,296 and maximum is \$195,759. Although the position is limited term, a review showed that management did not provide a thorough and adequate justification for adding the position. Documents show that the position was openly advertised, and the incumbent was competitively hired. The total increase to the salary ranges for these positions increased by a minimum of **\$242,961** and a maximum of **\$376,592**.

The OIPA found that that SANDAG did not perform a salary comparison survey for newly created positions before setting the salary ranges. Therefore, the OIPA could not identify how SANDAG determined the amounts to pay Senior Leadership, Director I, and Director II positions. Instead, it SANDAG used the salary of the Chief Deputy Executive Director to determine the salaries for the Senior Leadership Positions. However, this methodology appears flawed, because those positions do not manage the same areas nor carry the same authority or responsibility of the former Chief Deputy Executive Director position or require the same amount of skills and knowledge.

Administrative Rules and Regulations Section 2.1 – Responsibility of the Board of Directors, states in part that the Board of Directors may create new classes, and revise or abolish existing classes.

Administrative Rules and Regulations Section 4.1 – Classification Plan Definition, states that all positions of regular employment shall be classified for inclusion in the classification plan. A class consists of all positions sufficiently similar in duties, authority, responsibility, and working conditions to permit grouping under a common title and the application with equity of common standards of personnel actions. The classification plan shall be comprised of the assembled specification of each class.

The OIPA questions whether increasing salary ranges was an appropriate decision given SANDAG's past errors and revenue short falls. Further, given that COVID-19 will significantly impact the region's revenue, we also question whether this a sustainable in the future.

### Top Level Managers Received Large Salary Increases Though Job Duties Were Unchanged

The OIPA found a number of executive level employees received large salary increases though their job duties for these positions did not change and the increases were not based on their job performance. In total, salaries for these employees increased by **\$312,854 annually** or **\$3.1 million** over a **10-year** period for 11 employees.

According to documents reviewed, some of these positions were “reclassified” however, the OIPA found no evidence showing that the job duties for these positions significantly changed. The total salary increases granted to each executive level employee ranged from approximately **\$8,570** to **\$60,299** per year or **4.9%** to **33.6%** as shown on Table 9.

**Table 9 – Unjustified Salary Increases to Top Level Management**

Former Position Title	Retitled Position	Employee's Former Salary	Employee's New Salary	Actual Salary Percentage Increase	Change in Salary
Department Director of Operations	Chief Planning and Innovation Officer	\$179,712	\$240,011	33.6%	\$60,299
Department Director of Mobility Mgt & Project Implementation	Chief Capital Programs and Regional Services Officer	205,524	240,011	16.8%	34,487
Director of Rail	Director II, Engineering and Construction	177,091	195,000	10.1%	17,909
Contracts and Procurement Manager	Director II, Contracts and Grants	186,409	200,012	7.3%	13,603
Division Director of Info. & Tolling Systems	Director II, Business Information and Technology Services	160,014	195,000	21.9%	34,986
Division Director of Applied Research	Director II, Research and Program Management	177,112	195,000	10.1%	17,888
Principal Regional Planner	Director I, Integrated Transportation	139,172	165,006	18.6%	25,834
Principal Government Relations Analyst	Director I, Government Relations	116,209	155,001	33.4%	38,792
Department Director of Finance	Chief Financial Officer	204,318	225,014	10.1%	20,696
General Counsel	General Counsel	220,210	260,000	18.1%	39,790
Deputy General Counsel	Deputy General Counsel	176,446	185,016	4.9%	8,570
	<b>TOTALS</b>	<b>\$ 1,942,217</b>	<b>\$ 2,255,071</b>		<b>\$ 312,854</b>

According to the Employee Handbook 10.10, a reclassification occurs when the assigned job duties for a position have significantly changed, or the job duties are anticipated to significantly change in response to the business needs of the agency. These positions were not reclassified, and SANDAG cannot promote managers in



place. In effect, the retitling of positions was a way to give top level managers large raises.

Even if changes to a management position's job duties had necessitated a change in the positions' salary range, it still should not have resulted in the manager receiving a salary increase in excess of 10 percent of their new minimum salary range. Typically, within government, a promotion at the management level should result in the employee's salary being adjusted to the minimum of their new range or no more than a 10 percent increase to salary if above the minimum salary range. A reclassification should result in the employee receiving the minimum salary or no change to salary.

The OIPA found that the increased salary range for the Chief Planning and Innovation Officer and Chief Capital Programs and Regional Services, which contributed to the significant salary change for two employees, could only have been a result of a promotion in place for these employees, which is not allowable.

According to the Employee Handbook Section 10.8 - Promotions states that flexibly staffed promotions occurs when an employee is promoted to a higher-level position up to the Associate or III level (journey level) within a current or significantly similar job family based on demonstrated performance of assigned duties.

The OIPA also found that though General Counsel and Deputy General Counsel's titles were unchanged, they received a salary increase of approximately **\$40,000** (18.1%) and \$8,570 (4.9%) respectively, which far exceeded the 4% merit increase that was reported to the Board.

SANDAG's Administrative Rules and Regulation Section 5.8 - Promotions states that when an employee is promoted to a different classification with a salary range that is higher than that for the position previously occupied, the employee will normally be receiving the beginning amount of the new range. If that rate is equivalent to or less than the employee's present salary, the salary rate will normally be set at the discretion of the Executive Director at an amount that is higher than the former salary.

**Reorganization of Department of Finance Did Not Justify Pay Increases** – The OIPA found that the explanation provided for increasing the salary of the Chief Financial Officer was unjustified given the changes to the Department of Finance during the reorganization.

According to documents reviewed the title of Department Director of Finance was changed to the Chief Financial Officer, and the position's salary range and employee's salary was significantly increased, because the two divisions were added to the department. Prior to the reorganization, the Department Director of Finance oversaw two divisions - Accounting and Budget Program and Project Control. The reorganization added two additional divisions – TransNET and Contracts and Procurement. One of those divisions had been a department with its own Department Director before the reorganization.

However, the OIPA found that the responsibility and duty of the Department Director of Finance/Chief Financial Officer were essentially unchanged during reorganization. Specifically, the area of Contracts and Procurement had been moved from the

Department of Administration, which had six divisions as compared to the two divisions managed by the Department Director of Finance. It appears that moving divisions around evened the workload of the department heads and should not have resulted in an increased salary range and pay for the Chief Financial Officer.

Table 10 shows the increase to the salary range for Department Director of Finance/Chief Financial Officer.

**Table 10 – Changes to Number of Executive Level Positions and Increased Salary and Benefit Costs Resulting from the Reorganization**

Position Title	Minimum Salary	Maximum Salary
Department Director of Finance	\$152,818	\$236,868
Chief Financial Officer	\$168,100	\$260,555
Change in Positional Salary Range	\$15,282	\$23,687

Prior to the reorganization, the TransNet Department Director oversaw Program Performance and Oversight, Financial Programming, and Transnet Project Office divisions within the department. After the reorganization, the TransNet Department Director was still in place, though the position was retitled and moved the department under the Department of Finance Services.

As a result, the decision to downgrade the TransNet Department to a division but leave a Department Director in place is inconsistent with managements assertion that the Chief Financial Officer took on significantly more responsibility and is therefore due an increase in pay.

The OIPA also found that the Executive Director changed the position of Manager of Contracts and Procurement to a Director II level, though the position did not change their job responsibilities, and would continue to oversee a division/section/area.

As a result, SANDAG failed to downgrade the TransNet Department Director and should not have upgraded the Special Counsel position to Director II level positions if these are actually overseeing divisions within the Department of Finance Services.

According to SANDAG's Position Classification Manual, Department Directors focus on the management of a department consisting of multiple divisions, programs, and/or service areas, including but not limited to, assuming responsibility for the preparation and administration of a department budget. Whereas, Directors have responsibility for a division within a department and are responsible to plan, direct, manage, and oversee the operations, services, and activities of the assigned division, including but not limited to, the preparation and administration of the division budget.

According to the Administrative Rules and Regulations Section 5.10 – Reclassification Downward, when a position is reclassified to a classification having a lower salary range and the incumbent employee is appointed to the position so reclassified, the salary rate of such employee will normally remain at the current rate. If the current rate then exceeds the maximum amount of the new range, salary will be frozen at its current level until the incumbent leave the position or the position rate changes.

### Newly Promoted Director II and Director I Level Employees Received Large and Unjustified Salary Increases

The OIPA found a number of Director II and Director I level employee received large and unjustified salary increases upon being promoted. Typically, within government agencies, a newly promoted employee's salary would be set at the minimum or a 10 percent increase above their current salary. The OIPA performed testing and that found that SANDAG overpaid newly promoted employees by **\$193,919**, of which **\$115,609** is unjustified, annually.

Typically, upon promotion, an employee should move to the minimum of the next salary range or receive a pay increase not to exceed 10% of their current salary. Table 11 shows the positions and salary increases granted to employees that were not justified.

SANDAG uses a compensation management tool, which is created and updated annually by the Department of Organization Effectiveness, to set salary ranges and adjust employee compensation. According to the Director of Organizational Effectiveness, the compensation management tool is designed to solve or identify and prevent inequity. The tool doesn't define the amount the amount of the pay increase, rather it defines where the incumbent should be placed within a salary range based on the incumbent's years of experience.

**Table 11 – Promotions In Place the Resulted in Unjustified Annual Pay Increases**

New Position	Employees Former Salary	Minimum Salary Range	New Salary	Unjustified Increase
Chief Operations Officer	\$200,054	\$184,910	\$240,011	\$19,952
Director II, Regional Planning	\$153,504 <sup>14</sup>	\$152,818	\$195,000	\$26,146
Director II, Organizational Effectiveness	\$156,603	\$152,818	\$195,000	\$22,737
Director II, Strategic Communications	\$142,459	\$152,818	\$195,000	\$38,295
Director I, Strategic Projects	\$130,478	\$126,296	\$152,006	\$8,480
<b>Total Unjustified Change In Salaries</b>				<b>\$115,609</b>

The OIPA found that the salaries of the newly promoted employees did far exceeded the amounts shown on the Compensation Tool used by management to set salaries. For example, a review of the management compensation tool showed that for Department Director (Director II) level positions, newly promoted employees with 0-1 years of position experience the annual salary should be set at no more than \$163,273.

According to documents reviewed, the employee was qualified for the position of Department Director of Compensation based on 10 plus years of prior executive-level experience with other organizations. The employee's experience as the Department Director of Communications/Director II, Strategic Communications was 0-1 years. Documents show the employee's salary was increased to **\$195,000**, which was **27.6%** above the minimum salary and **36.9%** increase from the employee's previous

<sup>14</sup> The salary shown for this employee was the salary paid as Acting Department Director of Land Use and Transportation Planning, we could not verify the employees starting salary in Ceridian since the data was incomplete.

compensation as the Acting Communications Manager. Even by its own standards, the OIPA found that SANDAG lacked a basis for increasing the employee's salary to **\$195,000**.

SANDAG's Administrative Rules and Regulation Section 5.8 – Promotions, states that when an employee is promoted to a position of a different classification with a salary range higher than that for the position previously occupied, the employee will normally receive the beginning amount of the new range. If that rate is equivalent to or less than the employee's present salary, the salary rate will normally be set at the discretion of the Executive Director at an amount that is higher than the former salary.

However, the OIPA found that SANDAG does not adhere to the Administrative Rules and Regulations when determining where to place employees within salary ranges upon being hired or promoted because SANDAG lacks formalized procedures for this process.

Instead, according to the Director of Organizational Effectiveness, typically when an employee is promoted, they would receive at least a minimum of 5 percent increase to their salary. They also use the compensation management tool to determine where to place employees within ranges which does not comply with the Administrative Rules and Regulations.

According to best practices<sup>15</sup>, as a local governmental agency, SANDAG Board and Management have a fiduciary responsibility to govern and safeguard the public funds entrusted to the agency. Consequently, SANDAG should have appropriate controls in place to ensure that salaries are appropriately and consistently set for newly hired and promoted employees.

There is significant risk that SANDAG's lack of sound and consistent practices for setting management salaries could result in the public losing trust in the agency and Board and employees. Further, without a formalized controls and procedures in place there is increased risk that employees could abuse SANDAG's compensation program and award unjustified compensation to Executive, management and other staff.

#### **Finding VIII - Recommendations:**

1. SANDAG should update agency documents, including its organizational charts and job titles to reflect accurate employee names, job titles, and other relevant information.
2. Revert salaries for high level positions to salaries prior to the September 2019 salary schedule revisions.
3. SANDAG should complete a needs assessment, which includes a cost benefit analysis for positions added and promotions in place to the level of Chief Executive Director, Director II, and manager to determine whether the number of management positions at the current levels is necessary and can be justified. Further, the reporting structure and hierarchy should be reviewed to ensure consistency and that positions within job classifications are reporting to

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<sup>15</sup> According to the Institute for Local Government – Everyday Ethics for Local Officials, Fiduciary Duties and Public Service

management with the necessary skills and experience to management the workload.

4. Based on the result of the Needs Assessment, management should complete a salary comparison analysis to determine the market value of management positions based on the job duties and responsibilities.

Management's Response begins on page 91, Finding VIII begins on page 119.

The OIPA's comments on the response from SANDAG's Management begins on page 130, comments to findings begin on page 135.

## **IX. SANDAG Failed to Advertise and Competitively Hire for Executive and Management Level Positions**

The OIPA found management did not adhere to Board Administrative Rules and Regulations with respect to open, fair and competitive recruitment, candidate selection, and hiring practices for Executive and Management level positions. Though management stated that exceptions to open, fair and competitive hiring practices are allowed per the Employee Handbook, the OIPA found that the exceptions process within the Employee Handbook is based on changes that management had made to Board policy, and those changes were not approved by the Board.

The OIPA also found that in a memorandum from the Executive Director dated February 14, 2020, stated that in keeping with the Executive Director's delegated authority, the Executive Director selected three existing SANDAG Directors to serve as Chief Deputy Directors. Decisions regarding Executive Team positions were made upon the recommendation of the Senior Leadership Team. Table 12 shows the positions that were appointed rather than competitively hired.

**Table 12 – Positions Filled by Appointment Rather Than Open and Competitive Hiring Practices**

Position Formerly Held By Employee	Newly Appointed Position
Department Director of Administration	Chief Operations Officer
Human Resources	Director II, Organizational Effectiveness
Special Projects Director	Director II, Regional Planning
Communications Manager	Director II, Strategic Communications
Senior Legal Counsel	Director I, Strategic Projects
Principal Regional Planner	Director I, Mobility and Innovation
Manager of Small Business Development	Director I, Diversity and Equity

The document provided included limited or no explanations of why SANDAG appointed rather than competitively hired for these positions. For example, documents show that the Manager of Human Resources was promoted to the Director of Administration based on years of experience and work on SANDAG's Plan of Excellence and Strategic Plan. In another example, SANDAG did not provide justification for why the Director of Administration was selected to fill the Chief Operations Officer role. Further, it is unclear whether the current incumbent met the minimum qualifications of the Chief Deputy Executive Director position.

The OIPA found management had changed sections of the Employee Handbook that allowed the Executive Director exceptions to the competitive recruitment process.

The Employee Handbook is not Board approved. Specifically, the Employee Handbook:

- Section 3.3.1 states that the competitive recruitment and selection process can be disregarded when the Executive Director, or his/her designee, determines that it is in the best interest of SANDAG to promote an existing SANDAG employee.
- Section 3.3.2 states that competitive recruitment does not have to occur when the Executive Director, or his/her designee, determines that it is in the best interest of SANDAG to appoint a particular, qualified individual to ensure continuity of work.

As stated in Finding 1, the creation of Board policies and direction is a responsibility of the Board, and that responsibility cannot be delegated to the Executive Director.

Further, the inclusion of an exception clauses to the hiring process is contradictory to the policy of open and competitive recruitment. This means that if management is able to forgo openly advertising and competently select candidates for any reasons, then SANDAG cannot state that it follows an open, fair, and competitive hiring process. As a result, there is increased risk that an exception process allows management to use unfair and/or non-competitive hiring practices when it suits their needs.

Further, based on review SANDAG's Bylaws, policies, Administrative Rules and Regulations it appears that when SANDAG was created the Board policy followed a merit-based process with regards to hiring similarly found at other governmental agencies.

SANDAG's Administrative Rules and Regulations, which are still in effect state:

- Section 3.1 – General Policy, states the general policy of SANDAG is to ensure that the recruiting, selecting, and hiring of employees is accomplished in an open, competitive, and objective manner and a fully documented and timely manner.
- Section 3.3 – Recruitment, vacancies shall be publicized by appropriate means and applications accepted from all qualified persons.
- Section 3.11 – Promotion, promotion is open to any employee who meets the qualifications for the higher position that is open.

A review of the document found there is no process for exceptions within the Administrative Rules and Regulations.

Since management did not follow a process to fill Executive Management level positions through a fair and open hiring practices, SANDAG cannot ensure that the employees placed in these positions met the minimum qualifications for the positions or confirm that other employees who met the minimum qualifications had been given the opportunity to apply and compete for the position.

Failure to select candidates using an open, fair, competitive and objective process does not allow the organization to ensure it has hired the best candidate for the position. There is also increased risk of favoritism in selection of a job candidates.

SANDAG cannot ensure that its hiring practices are fair, non-discriminatory, in compliance with the U.S. Equal Employment Opportunity Commission (EEOC) and California Fair Housing Act.

### **SANDAG Lacks Fair, Objective, and Competitive Hiring Practices**

Based on interviews with the Director of Organizational Effectiveness, the OIPA found that SANDAG does not consistently score candidates or document the results of the interviews because SANDAG lacks formalized procedures to conduct interviews. The Director of Organizational Effectiveness also stated that while scoring of candidates was not documented, interviewers sometimes orally ranked candidates.

Because of the lack of consistency of processes for selecting candidates and the lack of documentation surrounding interview results, the OIPA could not determine which positions within SANDAG were filled by appointment rather than a competitive recruitment process.

Executive Order 11246 – Equal Employment Opportunity Part II, Subpart B, Section 202, paragraph 1 states that the contractor [SANDAG] will take affirmative action to ensure that applicants are employed, and that employees are treated during employment, without regard to their race, color, religion, sex, sexual orientation, gender identity, or national origin. Such action shall include, but not be limited to the following: employment, upgrading, demotion, or transfer; recruitment or recruitment advertising; layoff or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship. The contractor agrees to post in conspicuous places, available to employees and applicants for employment, notices to be provided by the contracting officer setting forth the provisions of this nondiscrimination clause.” Failure to comply puts the contractor [SANDAG] at risk for the consequences laid out in paragraph 7.

Executive Order 11246 – Equal Employment Opportunity Part II, Subpart B, Section 202, paragraph 7 states that in the event of the contractor’s noncompliance with the nondiscrimination clauses of this contract or with any of such rules, regulations, or orders, this contract may be cancelled, terminated, or suspended in whole or in part and the contractor may be declared ineligible for further Government contracts in accordance with procedures authorized in Executive Order No. 11246 of Sept. 24, 1965, and such other sanctions may be imposed and remedies invoked as provided in Executive Order No. 11246 of September 24, 1965, or by rule, regulation, or order of the Secretary of Labor, or as otherwise provided by law.

There is a significant risk of potential lawsuits related to unfair and discriminatory hiring practices. Also, a lack of transparent hiring practices increases the risk that employee morale is lowered because employees feel they are overlooked for promotions and other job opportunities. There is also increased risk of favoritism in selection of a job candidates.

### **FINDING IX - Recommendations:**

To ensure that SANDAG has fair, objective and competitive hiring practices SANDAG should:

1. SANDAG should identify all employees who were appointed or promoted without undergoing a fair and competitive hiring process.

2. For those positions determined to be filled without a fair and competitive hiring process, SANDAG should perform an evaluation to identify:
  - Whether the position and level of the position is necessary for the organization, this shall be supported a needs assessment, organization chart, span of control review and complete duty statement.
  - Vacate and properly re-advertise the position and follow the competitive hiring process for filling the position.
3. Develop and formalize procedures for openly advertising and competitively hiring for SANDAG positions in accordance with applicable laws and regulations and Board Bylaws, Policies, and Administrative Rules and Regulations, that include but are not limited to,
  - Documenting justification for advertising internally or externally including timeframes for advertisement.
  - Documenting applications and resumes of all job applicants who applied for each open and filled position, including rating of whether candidates met the minimum qualifications.
  - Documenting interview questions, candidate ratings and scores by each interviewer, and justification for candidate selection.

Management's Response begins on page 91, Finding IX begins on page 123.

The OIPA's comments on the response from SANDAG's Management begins on page 130, comments to findings begin on page 135.

#### **X. SANDAG Management Forced Employees into At-Will Employment Contracts Violating Employee Rights**

The OIPA found that the Executive Director changed the status of SANDAG's regular employees' status from full-time to at-will. The OIPA found the Executive Director did not have authority because the change of employees' status is under the purview of the Board of Directors. Further, the change to at-will status does not apply equally to all regular employees within the organization. As a result, some SANDAG employees can be fired without cause, and without the right to appeal, while SANDAG must find cause to terminate others. Consequently, there is a disparity among staff, as certain individuals are assured higher level of job security than their peers.

Administrative Rules and Regulations 1.6 Definitions, states that regular full-time employees are employees who successfully complete their probationary period and who regularly work a minimum of 40 hours per week.

In January 2019, SANDAG's Executive Director and Senior Leadership Team began transitioning regular full-time employees to regular at-will employees. Under the change, employees hired on or after July 1, 2019, either on a full-time or part-time basis, into a position that has been designated as a regular position. Further, employees who transition from positions previously designated as Tolling Operations



are regular at-will employees. However, employees hired as regular employees prior to July 1, 2019 are not considered regular at-will employees.

According to the Director of Organizational Effectiveness only manager level and above that would be subject to employment agreements. However, the OIPA found this was not the case. SANDAG provided templates of a job acceptance letter for non-supervisory and supervisory level employees and employment agreement for manager/principal level and above showing that new and promoted employees would be placed into at-will status. The OIPA found that SANDAG lacked a formalized written procedure for which levels of employees would receive a job acceptance letter only and which employees would be required to sign a contract to ensure that employees are treated consistently.

The template for the At-Will Employment Agreement states the employee voluntarily agrees to accept the position on the terms and conditions, described within the contract, with the full knowledge that the position is a Regular At-Will position and subject to the terms in the contract. By doing so, employee waives any due process and grievance rights set forth in the SANDAG Employee Handbook applicable to employee's former position. Employee further agrees and understands that SANDAG's due process and grievance rights do not apply to the Manager position.

The OIPA also found this change violates the rights of employees to appeal disciplinary actions taken by SANDAG management, as laid forth in the Administrative Rules and Regulations.

Administrative Rules and Regulations Section 8.2 Types of Causes for Disciplinary Actions, states that disciplinary actions are intended to be corrective and progressive in nature with the action fitting the severity of the problem. The following disciplinary actions may be used depending on the severity of the offense and frequency of misconduct:

- Counseling
- Oral Reprimand
- Written Reprimand
- Suspension
- Reduction-In-Pay
- Demotion
- Dismissal

Dismissal is the removal of an employee from the services of SANDAG, and the action is subject to the appeal process, though an employee on probation may be dismissed at any time during the probationary period without cause or the right to appeal.

Administrative Rules and Regulations Section 8.3 Disciplinary Procedures (d) Right to Appeal, states an employee may appeal the decision of the Executive Director to SANDAG's Board of Directors, with a hearing scheduled with the Board as soon as possible. The Board's decision is final.

**Finding X - Recommendations:**

The OIPA recommends that SANDAG:

1. Create and establish policies and aligned with applicable laws and regulation set forth in the Administrative Rules and Regulations to ensure the regular full-time employees' rights are not violated and are consistent.

Management's Response begins on page 91, Finding X begins on page 128.

The OIPA's comments on the response from SANDAG's Management begins on page 130, comments to findings begin on page 135.

## APPENDIX A – Administrative Rules and Regulations

### **What the Administrative Rules and Regulations Say:**

Terminology and provisions used throughout document show the document was adopted and limit the Executive Director's and managements power.

Section 1.1 – Purpose states the document was “adopted” to provide fair and systematic procedures for administering all matters affecting the status and activities of employees.

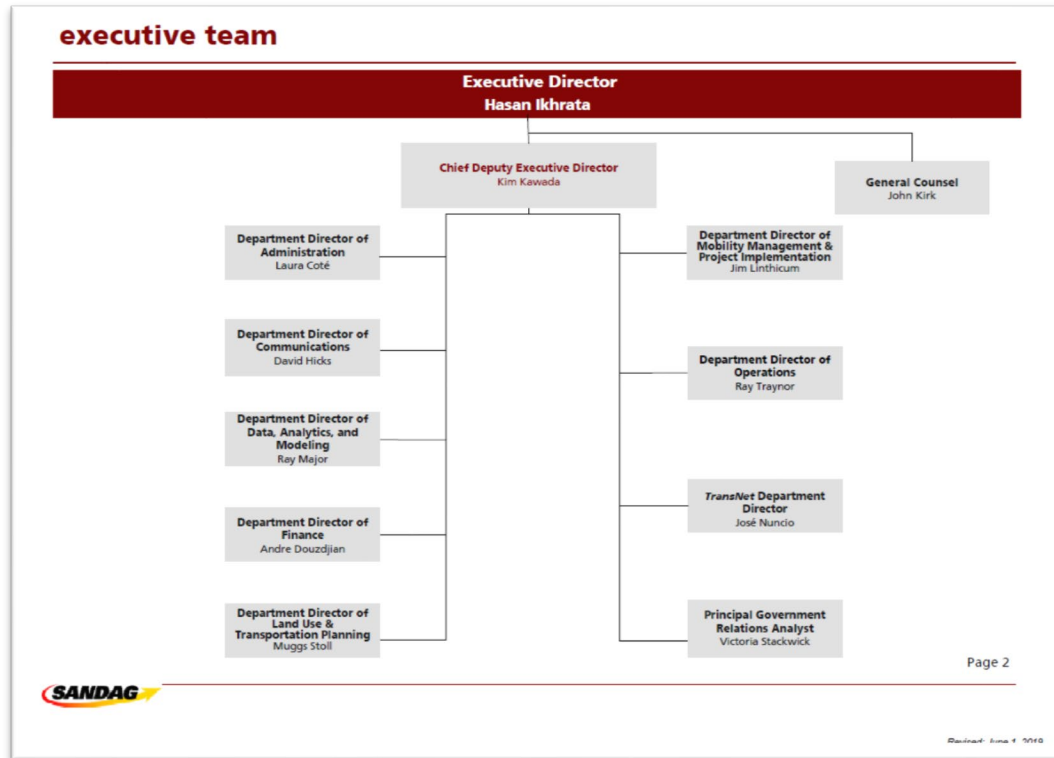
Section 2.1 - Responsibility of the Board of Directors states any decision of the Executive Director regarding the personnel system may be duly appealed to the Board of Directors which will take what action it thinks is reasonable. The Board of Directors may create new classes, and revise or abolish existing classes.

Section 2.2 – Authority of Executive Director states the Executive Director shall be responsible for administration of the personnel system and is hereby deemed to be the appointing authority with the power to appoint, promote, transfer, discipline, and terminate all employees of SANDAG subject to the provisions of this manual.

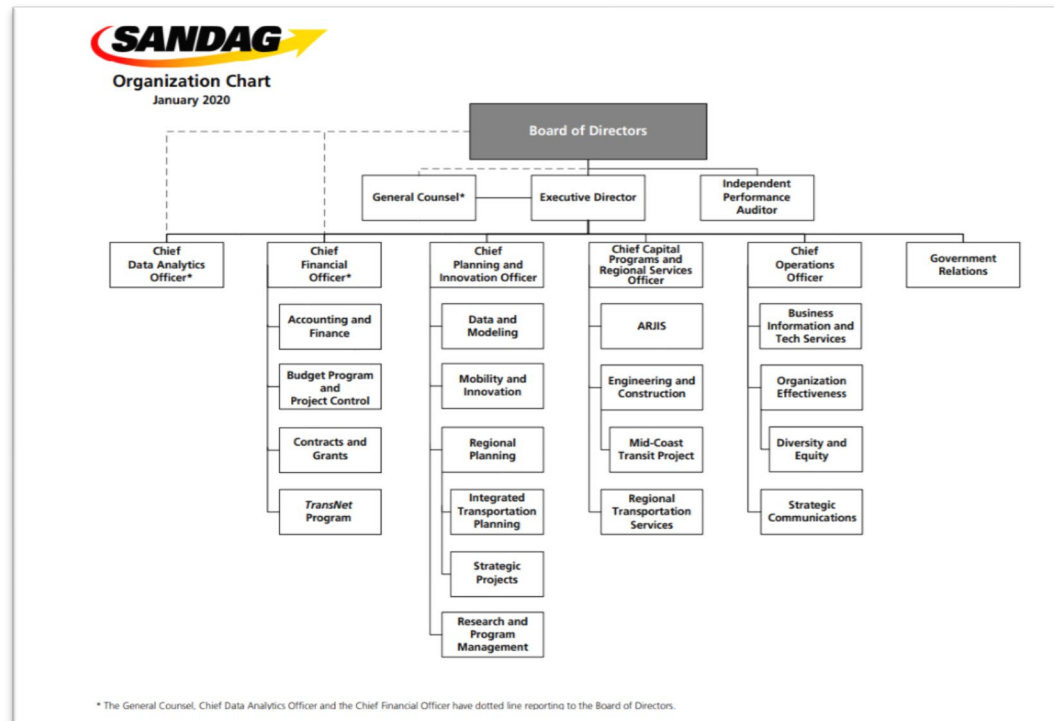
Section 1.3 - Variances states the Executive Director is vested with the power to vary or modify the strict application of the provisions of these rules to avoid injustice.

## APPENDIX B – SANDAG Organizational Chart Before and After Reorganization

### SANDAG’s organizational structure BEFORE the reorganization in September 2019.



### SANDAG’s organizational structure AFTER the reorganization in September 2019.



## APPENDIX C – Bonuses Paid to Employees by Job Title from FY 2014-15 to FY 2019-2020

Job Title	2014	2015	2016	2017	2018	2019	Grand Total
Accountant II						700.00	\$ 700.00
Accounting Specialist I		400.00					\$ 400.00
Accounting Specialist III		400.00					\$ 400.00
Accounting Specialist III		400.00		2,300.00	1,250.00		\$ 3,950.00
Accounting Specialist III				2,100.00	800.00		\$ 2,900.00
Admin Office Specialist				2,200.00			\$ 2,200.00
Admin Office Specialist III		1,000.00					\$ 1,000.00
Admin Office Specialist III	2,000.00	1,200.00					\$ 3,200.00
Admin Office Specialist III		750.00					\$ 750.00
Admin Office Specialist III		750.00					\$ 750.00
Admin Office Specialist III		1,200.00					\$ 1,200.00
Assoc Accountant					1,200.00		\$ 1,200.00
Assoc Accountant						700.00	\$ 700.00
Assoc Accountant		900.00		1,500.00			\$ 2,400.00
Assoc Cont & Proc Analyst	3,000.00	1,600.00					\$ 4,600.00
Assoc Cont & Proc Analyst	2,500.00	2,000.00					\$ 4,500.00
Assoc Cont & Proc Analyst					1,000.00		\$ 1,000.00
Assoc Human Resources Analyst					1,750.00		\$ 1,750.00
Assoc Info Systems Analyst						2,500.00	\$ 2,500.00
Assoc Researcher and Modeler					2,000.00		\$ 2,000.00
Associate Engineer	1,600.00						\$ 1,600.00
Associate Engineer	2,400.00						\$ 2,400.00
Associate Financial Analyst				2,936.00			\$ 2,936.00
Associate Financial Analyst		800.00		2,500.00	1,200.00		\$ 4,500.00
Associate GIS Analyst					1,500.00		\$ 1,500.00
Associate Graphic Designer			250.00				\$ 250.00
Associate Graphic Designer			250.00				\$ 250.00
Associate Graphic Designer	2,600.00	1,250.00		2,400.00	750.00		\$ 7,000.00
Associate Programmer Analyst	2,000.00	1,500.00					\$ 3,500.00
Associate Programmer Analyst	2,000.00	1,500.00					\$ 3,500.00
Associate Public Info Officer			250.00				\$ 250.00
Associate Regional Planner			1,250.00	1,000.00			\$ 2,250.00
Associate Regional Planner						1,000.00	\$ 1,000.00
Associate Regional Planner	500.00						\$ 500.00

Job Title	2014	2015	2016	2017	2018	2019	Grand Total
Associate Regional Planner						1,000.00	\$ 1,000.00
Associate Research Analyst						2,000.00	\$ 2,000.00
Borders Program Manager	3,500.00	1,000.00		2,850.00	1,500.00		\$ 8,850.00
Budget Program Manager	2,500.00	1,800.00					\$ 4,300.00
Business Services Supervisor	1,500.00	2,000.00		3,500.00	1,750.00		\$ 8,750.00
Capital Dev. Project Manager				1,200.00	1,500.00		\$ 2,700.00
Capital Dev. Project Manager				2,800.00	1,700.00		\$ 4,500.00
Capital Dev. Project Manager			2,800.00		500.00		\$ 3,300.00
Capital Dev. Project Manager	4,700.00	2,700.00	1,500.00	4,700.00	2,300.00		\$ 15,900.00
Chief Deputy Executive Director				4,250.00	88,400.00		\$ 92,650.00
Communications Manager					2,000.00		\$ 2,000.00
Creative Services Manager				875.00	1,000.00		\$ 1,875.00
Customer Service Lead	1,000.00						\$ 1,000.00
Customer Service Lead	500.00						\$ 500.00
Department Director, Finance	3,600.00	3,500.00		6,400.00	3,450.00		\$ 16,950.00
Dept Dir Mobility Mgt Proj Imp				7,400.00	3,450.00		\$ 10,850.00
Director of Applied Research				1,500.00	3,250.00		\$ 4,750.00
Director of Rail		2,000.00	2,000.00	7,500.00	3,500.00		\$ 15,000.00
Document Processing Spec III					1,200.00		\$ 1,200.00
Document Processing Spec III					1,200.00		\$ 1,200.00
Executive Assistant/Clerk of the Board			900.00				\$ 900.00
Executive Assistant/Clerk of the Board			900.00	550.00	500.00		\$ 1,950.00
Executive Director	16,800.00	17,400.00	12,000.00				\$ 46,200.00
Finance Manager		2,600.00		5,800.00	3,000.00		\$ 11,400.00
Goods Movement Policy Manager	5,802.66			5,800.00	2,900.00		\$ 14,502.66
Information Systems Manager					2,175.00		\$ 2,175.00
Landscape Maintenance Supv				3,300.00	1,650.00	1,000.00	\$ 5,950.00
Landscape Maintenance Tech				1,800.00	750.00		\$ 2,550.00
Maintenance Field Technician	3,000.00						\$ 3,000.00
Manager of Regional Models					1,750.00		\$ 1,750.00
Manager of Small Bus Dvlpmt	2,500.00	2,600.00		5,500.00	2,750.00		\$ 13,350.00
Marketing Analyst II	450.00						\$ 450.00
Marketing Analyst II			250.00				\$ 250.00
Marketing Communications Mgr			500.00				\$ 500.00
Office Administrator	2,500.00	2,625.00				1,000.00	\$ 6,125.00
Operations Manager			1,500.00				\$ 1,500.00

Job Title	2014	2015	2016	2017	2018	2019	Grand Total
Prin. Mgmt Internal Auditor		1,250.00		5,500.00	2,475.00	2,800.00	\$ 12,025.00
Principal Engineer	1,900.00	2,000.00					\$ 3,900.00
Principal Engineer	1,200.00	3,000.00		5,500.00	2,700.00		\$ 12,400.00
Principal Engineer	850.00	3,400.00	1,000.00	5,500.00	2,700.00		\$ 13,450.00
Principal Engineer	2,800.00	2,800.00		5,750.00	3,000.00		\$ 14,350.00
Principal Engineer	3,400.00						\$ 3,400.00
Principal Regional Planner			1,400.00	3,000.00			\$ 4,400.00
Principal Regional Planner	5,779.62	3,000.00	1,150.00	7,150.00	3,150.00		\$ 20,229.62
Principal Regional Planner	5,779.62	2,350.00					\$ 8,129.62
Principal Regional Planner	6,147.84	3,750.00	1,150.00	5,850.00	3,150.00		\$ 20,047.84
Principal Regional Planner					1,850.00		\$ 1,850.00
Principal Regional Planner	313.44	3,450.00	1,750.00	6,500.00	3,150.00		\$ 15,163.44
Principal Regional Planner	5,600.00						\$ 5,600.00
Principal Regional Planner	5,779.62	5,000.00	1,750.00				\$ 12,529.62
Principal Research Analyst		2,500.00					\$ 2,500.00
Principal Research Analyst					1,750.00		\$ 1,750.00
Principal Research Analyst					2,500.00		\$ 2,500.00
Principal Tech Program Manager	3,200.00	2,400.00	3,200.00				\$ 8,800.00
Project Control Manager	3,800.00	2,000.00		4,000.00	1,750.00		\$ 11,550.00
Project Coordinator	2,000.00						\$ 2,000.00
Project DevImpmt Program Mgr	3,000.00	2,200.00					\$ 5,200.00
Regional Planner I		1,000.00					\$ 1,000.00
Regional Planner II			1,400.00				\$ 1,400.00
Regional Planner II				600.00			\$ 600.00
Senior Accountant					500.00		\$ 500.00
Senior Accountant	2,000.00	2,000.00					\$ 4,000.00
Senior Accountant	1,700.00	650.00					\$ 2,350.00
Senior Engineer	2,200.00	2,000.00		3,000.00	1,500.00		\$ 8,700.00
Senior Engineer		2,500.00		4,400.00	1,900.00		\$ 8,800.00
Senior Engineer	3,800.00	2,400.00					\$ 6,200.00
Senior Engineer	4,600.00	2,300.00		4,800.00	2,300.00		\$ 14,000.00
Senior Engineer		3,700.00	2,500.00	4,500.00			\$ 10,700.00
Senior Engineer	1,200.00	2,600.00					\$ 3,800.00
Senior Engineer	1,200.00	2,000.00		4,400.00	2,000.00		\$ 9,600.00
Senior Engineer	4,500.00						\$ 4,500.00

Job Title	2014	2015	2016	2017	2018	2019	Grand Total
Senior Engineer	3,500.00	2,200.00	500.00	4,400.00	2,000.00	5,200.00	\$ 17,800.00
Senior Engineer				3,600.00	1,900.00		\$ 5,500.00
Senior Engineer				2,200.00	2,300.00		\$ 4,500.00
Senior Engineer	4,600.00						\$ 4,600.00
Senior Engineer				4,600.00	1,800.00		\$ 6,400.00
Senior Legislative Analyst		1,700.00					\$ 1,700.00
Senior Maintenance Field Tech			1,580.00				\$ 1,580.00
Senior Programmer Analyst	2,500.00	1,500.00		2,900.00			\$ 6,900.00
Senior Programmer Analyst					1,100.00		\$ 1,100.00
Senior Regional Planner			1,400.00				\$ 1,400.00
Senior Regional Planner	850.00						\$ 850.00
Senior Regional Planner	3,943.82	2,850.00	550.00	4,500.00	2,250.00		\$ 14,093.82
Senior Regional Planner						1,000.00	\$ 1,000.00
Senior Regional Planner	5,004.00	2,850.00	500.00	4,500.00	2,250.00		\$ 15,104.00
Senior Regional Planner				2,525.00	2,550.00	1,000.00	\$ 6,075.00
Senior Regional Planner	5,004.20	2,850.00	550.00				\$ 8,404.20
Senior Regional Planner		1,550.00					\$ 1,550.00
Senior Regional Planner	1,118.20	2,550.00		4,500.00			\$ 8,168.20
Senior Regional Planner	3,943.82	1,100.00	550.00				\$ 5,593.82
Senior Research Analyst					2,750.00		\$ 2,750.00
Senior Research Analyst				1,000.00	2,500.00		\$ 3,500.00
Senior Researcher and Modeler				1,250.00	2,750.00		\$ 4,000.00
Senior Researcher and Modeler				6,500.00			\$ 6,500.00
Senior Tech Program Analyst	2,500.00	2,300.00		4,400.00	2,250.00		\$ 11,450.00
Senior Transportation Modeler	2,000.00	2,500.00					\$ 4,500.00
Special Counsel	6,600.00	3,657.00		6,200.00	3,175.00		\$ 19,632.00
Special Projects Director	5,000.00						\$ 5,000.00
Sr Financl Programming Analyst				1,000.00			\$ 1,000.00
Sr Information Systems Anyst				1,000.00			\$ 1,000.00
SR8 Landscaping Supervisor	4,000.00	4,300.00	2,880.00				\$ 11,180.00
SR8 Landscaping Technician I		350.00					\$ 350.00
SR8 Landscaping Technician II		1,650.00	900.00				\$ 2,550.00
Toll Operations Supervisor				2,775.00	1,575.00		\$ 4,350.00
<b>TOTALS</b>	<b>190,266.84</b>	<b>148,032.00</b>	<b>49,060.00</b>	<b>210,961.00</b>	<b>211,150.00</b>	<b>19,900.00</b>	<b>\$ 829,369.84</b>



## APPENDIX D – Approved FY 2021 Position Classification/Salary Range Table

CLASS NO.	POSITION CLASSIFICATIONS	ANNUAL SALARY RANGES			MONTHLY SALARY RANGES		
		MIN	MID	MAX	MIN	MID	MAX
A	CLASS SALARY RANGE..... Assistant Intern Toll Plaza Attendant	27,040	36,389	45,738	2,253	3,032	3,812
1	CLASS SALARY RANGE..... Customer Service Representative Landscape Maintenance Technician	31,305	39,914	48,523	2,609	3,326	4,044
3	CLASS SALARY RANGE..... Office Services Specialist I Receptionist I	33,212	42,345	51,479	2,768	3,529	4,290
5	CLASS SALARY RANGE..... Accounting Specialist I Office Services Specialist II Receptionist II	35,235	44,924	54,614	2,936	3,744	4,551
7	CLASS SALARY RANGE..... Accounting Specialist II Customer Service Lead Document Processing Specialist I Landscape Maintenance Lead Office Services Specialist III Receptionist III Toll Operations Specialist I	37,380	47,660	57,940	3,115	3,972	4,828
9	CLASS SALARY RANGE..... Accounting Specialist III Administrative Office Specialist Document Processing Specialist II Toll Operations Specialist II	41,212	52,545	63,878	3,434	4,379	5,323
10	CLASS SALARY RANGE..... Graphic Designer I Information Systems Specialist I	43,272	55,172	67,072	3,606	4,598	5,589
11	CLASS SALARY RANGE..... Customer Service Supervisor Document Processing Specialist III Office Administrator* Toll Operations Supervisor	45,436	57,931	70,426	3,786	4,828	5,869
12	CLASS SALARY RANGE..... Account Executive I Accountant I Administrative Analyst I Business Analyst I Contracts and Procurement Analyst I Financial Analyst I Government Relations Analyst I Grants Program Analyst I Graphic Designer II Human Resources Analyst I Information Systems Specialist II Management Internal Auditor I Marketing Analyst I Paralegal Public Communications Officer I	47,708	60,827	73,947	3,976	5,069	6,162

## SAN DIEGO ASSOCIATION OF GOVERNMENTS

**FY 2021 POSITION CLASSIFICATION/SALARY RANGE TABLE**

CLASS NO.	POSITION CLASSIFICATIONS	ANNUAL SALARY RANGES			MONTHLY SALARY RANGES		
		MIN	MID	MAX	MIN	MID	MAX
13	CLASS SALARY RANGE..... Facilities/Maintenance Coordinator Maintenance Field Technician	50,093	63,869	77,645	4,174	5,322	6,470
14	CLASS SALARY RANGE..... Account Executive II Accountant II Administrative Analyst II Associate Graphic Designer Business Analyst II Contracts and Procurement Analyst II Economic Research Analyst I Executive Assistant I Financial Analyst II GIS Analyst I Government Relations Analyst II Grants Program Analyst II Human Resources Analyst II Information Systems Analyst I Information Systems Specialist III Management Internal Auditor II Marketing Analyst II Public Communications Officer II Regional Planner I Research Analyst I Technology Program Analyst I	52,598	67,062	81,527	4,383	5,589	6,794
15	CLASS SALARY RANGE..... Landscape Maintenance Supervisor Senior Maintenance Field Technician	55,228	70,415	85,603	4,602	5,868	7,134
16	CLASS SALARY RANGE..... Associate Account Executive Associate Accountant Associate Administrative Analyst Associate Business Analyst Associate Contracts and Procurement Analyst Associate Financial Analyst Associate Government Relations Analyst Associate Grants Program Analyst Associate Human Resources Analyst Associate Management Internal Auditor Associate Marketing Analyst Associate Public Communications Officer Economic Research Analyst II Engineer I Executive Assistant II GIS Analyst II Information Systems Analyst II Project Coordinator Regional Planner II Research Analyst II Systems Engineer I Technology Program Analyst II	57,989	73,936	89,883	4,832	6,161	7,490
17	CLASS SALARY RANGE..... Programmer Analyst I Researcher and Modeler I	60,889	77,633	94,377	5,074	6,469	7,865

## SAN DIEGO ASSOCIATION OF GOVERNMENTS

**FY 2021 POSITION CLASSIFICATION/SALARY RANGE TABLE**

CLASS NO.	POSITION CLASSIFICATIONS	ANNUAL SALARY RANGES			MONTHLY SALARY RANGES		
		MIN	MID	MAX	MIN	MID	MAX
18	CLASS SALARY RANGE..... Associate Economic Research Analyst Associate GIS Analyst Associate Regional Planner Associate Research Analyst Associate Technology Program Analyst Business Services Supervisor Capital Development Management Analyst Clerk of the Board Creative Services Supervisor Engineer II Senior Executive Assistant Systems Engineer II	63,933	81,515	99,096	5,328	6,793	8,258
19	CLASS SALARY RANGE..... Associate Information Systems Analyst Maintenance and Facilities Supervisor Programmer Analyst II Researcher and Modeler II	67,130	85,590	104,051	5,594	7,133	8,671
20	CLASS SALARY RANGE..... Associate Engineer Associate Systems Engineer	70,486	89,870	109,254	5,874	7,489	9,104
21	CLASS SALARY RANGE..... Associate Programmer Analyst Associate Researcher and Modeler Customer Service Manager Legal Counsel I Senior Accountant Senior Administrative Analyst Senior Contracts and Procurement Analyst Senior Grants Program Analyst Senior Human Resources Analyst Senior Marketing Analyst Senior Public Communications Officer	74,011	94,363	114,716	6,168	7,864	9,560
22	CLASS SALARY RANGE..... Borders Program Manager* Financial Programming Manager* Project Control Manager* Senior Budget Program Analyst Senior Business Analyst Senior Economic Research Analyst Senior Financial Programming and Project Control Analyst Senior GIS Analyst Senior Government Relations Analyst Senior Management Internal Auditor Senior Regional Planner Senior Research Analyst Senior Technology Program Analyst	77,711	99,082	120,452	6,476	8,257	10,038
23	CLASS SALARY RANGE..... Capital Development Project Manager Legal Counsel II Senior Information Systems Analyst	81,597	104,036	126,475	6,800	8,670	10,540

## SAN DIEGO ASSOCIATION OF GOVERNMENTS

**FY 2021 POSITION CLASSIFICATION/SALARY RANGE TABLE**

CLASS NO.	POSITION CLASSIFICATIONS	ANNUAL SALARY RANGES			MONTHLY SALARY RANGES		
		MIN	MID	MAX	MIN	MID	MAX
24	CLASS SALARY RANGE..... Senior Programmer Analyst Senior Researcher and Modeler	85,676	109,237	132,798	7,140	9,103	11,067
25	CLASS SALARY RANGE..... Associate Legal Counsel Communications Manager Manager of Government Relations Operations Manager Principal Business Analyst Principal Economic Research Analyst Principal Regional Planner Principal Research Analyst Project Development Program Manager Risk Program Manager Senior Engineer Senior Systems Engineer	89,960	114,699	139,438	7,497	9,558	11,620
26	CLASS SALARY RANGE..... Information Systems Manager Manager of Financial Programming and Project Control Principal Management Internal Auditor Principal Technology Program Manager	94,458	120,434	146,410	7,872	10,036	12,201
27	CLASS SALARY RANGE..... Manager of Regional Information Services Manager of Regional Models Principal Researcher and Modeler	99,181	126,456	153,731	8,265	10,538	12,811
28	CLASS SALARY RANGE..... Finance Manager Manager of Business Administration and Operations Manager of Contracts and Procurement Manager of Human Resources Principal Engineer	104,140	132,779	161,417	8,678	11,065	13,451
29	CLASS SALARY RANGE..... Senior Legal Counsel	109,347	139,418	169,488	9,112	11,618	14,124
31	CLASS SALARY RANGE..... Deputy General Counsel Director I	126,296	161,027	195,759	10,525	13,419	16,313
33	CLASS SALARY RANGE..... Director II Independent Performance Auditor	152,818	194,843	236,868	12,735	16,237	19,739
34	CLASS SALARY RANGE..... Chief Financial Officer	168,100	214,328	260,555	14,008	17,861	21,713
35	CLASS SALARY RANGE..... Chief Capital Programs and Regional Services Officer Chief Data Analytics Officer Chief Operations Officer Chief Planning and Innovation Officer Executive Strategic Advisor General Counsel	184,910	235,760	286,611	15,409	19,647	23,884
N/A	Executive Director .....	267,205	340,687	414,168	22,267	28,391	34,514

\* This is a grandfathered classification.

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**MANAGEMENT’S RESPONSE**



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 San Diego, CA 92101-4231  
 (619) 699-1900  
 Fax (619) 699-1905  
 sandag.org

August 14, 2020

TO: Mary Khoshmashrab, Independent Performance Auditor

FROM: Hasan Ikhata, Executive Director

SUBJECT: Confidential Management Response to the OIPA Salaries and Compensation Performance and Compliance Audit

MEMBER AGENCIES

- Cities of
- Carlsbad
- Chula Vista
- Coronado
- Del Mar
- El Cajon
- Encinitas
- Escondido
- Imperial Beach
- La Mesa
- Lemon Grove
- National City
- Oceanside
- Poway
- San Diego
- San Marcos
- Santee
- Solana Beach
- Vista
- and
- County of San Diego

ADVISORY MEMBERS

- Imperial County
- California Department of Transportation
- Metropolitan Transit System
- North County Transit District
- United States Department of Defense
- Port of San Diego
- San Diego County Water Authority
- Southern California Tribal Chairmen's Association
- Mexico

On behalf of the SANDAG Management Team, thank you for the opportunity to review the Office of the Independent Performance Auditor's (OIPA's) draft report pertaining to the Salaries and Compensation Performance and Compliance Audit, for the period of July 1, 2015 to June 30, 2020, and through FY 2021 on Projected Cost or Actions (Draft).

Please find enclosed the SANDAG Management Response to the observations and recommendations outlined in the Draft. The Response addresses a number of factual inaccuracies and incorrect conclusions that have resulted from the audit and seeks to provide additional information to the OIPA. We appreciate your attention and consideration of the issues raised in the response and would like to highlight the following:

- All compensation, bonus, and severance decisions discussed in the draft report were made within the discretion provided to SANDAG from the California Legislature, and as delegated to the Executive Director by the SANDAG Board of Directors (Board). Each expenditure was for a public purpose and in furtherance of SANDAG's goal to recruit, retain, and fairly compensate a workforce capable of delivering the agency's work program on behalf of the San Diego region. SANDAG is not a State employer and therefore it is not subject to the State civil service personnel rules or the one year timeline for reversing employee appointments alluded to in the Draft. Instead, SANDAG has developed and maintained, in consultation with several outside experts, a pay-for-performance plan consistent with all rules applicable to its status as a local agency and as delegated by the California Legislature.
- Management will confer with the Board to streamline and improve communication regarding compensation, bonus, and severance decisions, over-and-above the existing annual communication of the salary plan. Additionally, management will continue to train personnel regarding implementation of compensation practices.

- SANDAG's governing document with respect to employment is the Employee Handbook (Handbook), which has been in place for more than a 15 years and which superseded the original Administrative Rules and Regulations that initially applied to SANDAG employees. SANDAG's transition from the Administrative Rules and Regulations was approved through appropriate Board channels and authority for implementation of the Handbook was properly delegated by the Board to the Executive Director. The Handbook is consistent with the delegation from the California Legislature to SANDAG of its governing authority over its employees. SANDAG management is confident the Handbook complies with all applicable rules and regulations but, based on feedback from the OIPA, SANDAG will bring the Handbook before the Board for review, comment, and possible amendment. In order to further cement the importance of the Handbook, management will ensure each employee reviews and acknowledges review of the Handbook on an annual basis.
- Management is grateful for the OIPA's feedback on steps that it needs to take regarding revising job duty statements and will work on preparing and updating those statements. Further, SANDAG was already undertaking efforts to comply with feedback from CalPERS regarding special compensation and anticipates that effort to be completed by year-end.

As leaders, the SANDAG Management Team firmly believes that continuous improvement is important for the agency. So while there are flawed legal assumptions and incomplete information in the audit report, which have in turn led to flawed conclusions, management has noted many of the OIPA's suggested process improvements and a commitment to undertake many of the recommendations is reflected in the response. Management will develop an Action Plan, in consultation with the Board as necessary, to implement changes that will strengthen the overall operations and performance of the organization. The SANDAG Management Team is also hopeful the attached response will demonstrate it complied with the rules and regulations applicable to SANDAG, as a local agency, and that it did not engage in abuse, waste, gross misconduct, or a breach of fiduciary duty nor did it lack the system controls necessary to comply with applicable laws.

The response is marked as confidential and we welcome the opportunity to discuss any questions that may arise from your review of the enclosed information.

Sincerely,

HASAN IKHRATA  
Executive Director

Enclosure





## Management Response

Office of the Independent Performance Auditor's (OIPA's)  
Salaries and Compensation Performance and Compliance Audit,  
for the period of July 1, 2015 to June 30, 2020, and through  
FY 2021 on projected cost or actions

August 14, 2020

### Introductory Remarks

The SANDAG Management Team appreciates the opportunity to respond to the draft of the OIPA's Salaries and Compensation Performance and Compliance Audit (Draft). As management worked to prepare this management response (Response), a few patterns emerged. The Draft contains statements that on many occasions are factually incorrect and potentially misleading because a complete record of the facts and information were not sought or used by OIPA. This may be due to many factors, some of which could be OIPA's desire to prepare this Draft as quickly as possible for the Board, the very new staff within OIPA not having sufficient knowledge of SANDAG and its history to determine the appropriate questions to ask to illicit full information, or OIPA not conducting thorough interviews with all of the people involved in the transactions discussed in the Draft.

Another pattern relates to the accusatorial tone and use of legal terms in the report. OIPA's staff consists of auditors, not legal practitioners, and certainly not judges. On some subjects, the audit findings lack objectivity and seem largely based on OIPA staff's subjective opinions regarding management decisions, often excluding facts that could explain why various discretionary decisions were made. At times, there seems to be an appearance of seeking to reach a pre-determined outcome that concludes in findings of wrongdoing that are not supported by the evidence. The Draft also uses inflammatory statements in bold text. The tone of the report is unjustly judgmental in nature in many areas and it reaches conclusions on legal matters such as what constitutes gross misconduct or fraud and whether SANDAG is subject to statutes applicable to state employees. Some of these matters should be subject to the opinion of attorneys, not auditors. To that end, the Draft fails to acknowledge the multiple outside, independent reviews that SANDAG has commissioned relating to the subject matters in the Draft. Those reviews show that the Executive Director and SANDAG staff have not acted arbitrarily or without legitimate governmental and business interests, but instead the Executive Director and SANDAG staff have acted in reliance on the following outside external experts' opinions which have guided, informed, and ratified SANDAG's actions:

- Annual financial audits, which opine on the accuracy of the records, compliance with accounting methods, and the soundness of financial practices, including internal controls.
  - Classification studies and periodic market-based salary surveys and analysis conducted by the agency's compensation consultants.
-

- Engaging a strategic planning and management consultant via a competitive search process to conduct an organization assessment and assist with implementation of recommendations designed to optimize the overall performance of the agency.

The third pattern concerns OIPA's insistence on attributing mal intent to staff without having gathered complete information. Management had hoped that OIPA would conduct a thorough, fair and balanced assessment of the agency's practices that could lead to program improvements, in order to comply with the OIPA's role that "objectively evaluates and recommends improvements to SANDAG including prioritizing its efforts by continuously facilitating an objective risk assessment." (Board Policy No. 039, Section 6.2). Proof of intent to deceive or misstate on the part of staff is not provided anywhere in the Draft. Yet, incendiary statements such as "management intended to conceal" are weaved into the Draft's narrative. It appears OIPA's interpretations were colored by an element of unwarranted suspicion against staff. Assembly Bill 805's installation of an internal performance auditor role at the agency is an opportunity to improve the agency and create positive outcomes. The Draft is a missed opportunity.

Management are not experts in audit standards but did locate some information that indicates that a peer review of the Draft should be considered to reduce risk for the agency and confirm due professional care was taken. Board Policy No. 039, Audit Policy Advisory Committee and Audit Activities, Section 6.8, mandates that the independent performance auditor follow the most recent version of Generally Accepted Government Auditing Standards (GAGAS) as published by the United States Government Accountability Office. GAGAS requires auditors to "diligently gather information and objectively evaluate the sufficiency and appropriateness of evidence."<sup>1</sup> It also states that the audit team's collective experience and overall understanding must be sufficient to prevent significant inaccuracy or misinterpretation.<sup>2</sup> In addition, Section 6.14 of Board Policy No. 039 requires that:

The independent performance auditor will conduct investigations generally following the procedures recommended by the Association of Certified Fraud Examiners' Manual for any allegations of financial fraud, waste or, impropriety.

The Certified Fraud Examiners Manual contains provisions calling for due professional care, diligence, and standards of reporting that also seem to be applicable.<sup>3</sup> The American Institute of CPAs' Code of Professional

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<sup>1</sup> Section 3.111 "Using the auditor's professional knowledge, skills, and abilities, in good faith and with integrity, to diligently gather information and objectively evaluate the sufficiency and appropriateness of evidence is a critical component of GAGAS engagements."

<sup>2</sup> Section 3.115 "Using professional judgment is important to auditors in determining the necessary level of understanding of the engagement subject matter and related circumstances. This includes considering whether the audit team's collective experience, training, knowledge, skills, abilities, and overall understanding are sufficient to assess the risks that the subject matter of the engagement may contain a significant inaccuracy or could be misinterpreted."

<sup>3</sup> Due Professional Care: "Due professional care requires diligence, critical analysis and professional skepticism in discharging professional responsibilities." Standards of Reporting; Report Content: "1. Certified Fraud Examiners' reports shall be based on evidence that is sufficient and relevant to support the facts, conclusions, opinions and/or recommendations related to the fraud examination. The report shall be confined to subject matter, principles and methodologies within the member's area of knowledge, skill, experience, training or education. 2. No opinion shall be expressed regarding the legal guilt or innocence of any person or party."

Conduct states that its members should be diligent and thorough.<sup>4</sup> Finally, the job description for auditing staff within OIPA requires that the auditors follow the Code of Ethics developed by the Institute of Internal Auditors<sup>5</sup>. That Code of Ethics mandates that auditors, “disclose all material facts known to them that, if not disclosed, may distort the reporting of activities under review” and “engage only in those services for which they have the necessary knowledge, skills, and experience.”<sup>6</sup>

Based on management’s limited knowledge in the area of auditing standards and the potential risks involved with releasing a report that does not have thorough evidentiary and investigatory support, it recommends that the Board hire a firm to conduct a peer review and/or an outside legal review of the Draft to ensure it meets the foregoing standards or any other appropriate standards.

Of final preliminary note, management has concerns that the Draft uses employee job titles in instances where only one person held/holds the position and are thus personnel matters subject to heightened confidentiality. As such, the Office of General Counsel recommends that no portion of the Draft, this Response, or later renditions of either document that contain information regarding personnel, or that could lead to litigation or other legal action against the agency should be released to the public. Discussions regarding these portions of the report can be discussed with the Audit Committee and Board in closed session pursuant to the Brown Act to protect the interests of the agency.

Management has reviewed the results of the audit including the recommendations offered by OIPA and has responded below to the findings of “fact.” A separate document has been prepared with management’s responses to the recommendations in the Draft.<sup>7</sup> Some of the recommendations have been initiated, and management is committed to undertake many others, as part of the agency’s commitment to continual improvement and to support the highest levels of organization performance. The remaining recommendations were contemplated and for the most part are unwarranted as they are either unfounded or duplicative of prior work. Management has prepared a table summarizing and categorizing its responses to the recommendation.<sup>8</sup> There are some recommendations from OIPA on which management would like to follow up with the Board to determine if additional Board involvement is desirable. Where noted, follow up efforts will be incorporated into an Action Plan that can be brought to the Board in the fall.

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<sup>4</sup> Rule 0.300.060 Due Care, subsection .05: “Members should be diligent in discharging responsibilities to clients, employers, and the public. Diligence imposes the responsibility to render services promptly and carefully, to be thorough, and to observe applicable technical and ethical standards.”

<sup>5</sup> See page 26 of the February 28, 2020 Audit Committee report, [https://www.sandag.org/uploads/meetingid/meetingid\\_5358\\_27159.pdf](https://www.sandag.org/uploads/meetingid/meetingid_5358_27159.pdf)

<sup>6</sup> Sections 2.3 and 4.1 of The Institute of Internal Auditors’ Code of Ethics: <https://na.theiia.org/special-promotion/PublicDocuments/Code%20of%20Ethics.pdf>

<sup>7</sup> Attachment A, Summary of Management’s Response to Audit Recommendations

<sup>8</sup> Attachment B, Summary of Management’s Responses to Audit Findings.

## Preliminary Background

To assist readers of this response, management wants to start by addressing a fundamentally faulty assumption in the Draft. SANDAG employees are not subject to the civil service laws that are applicable to state employees. Several areas of the Draft are premised on a misunderstanding of the overall delegation of powers and duties to SANDAG from the Legislature itself and thus it is important for readers to understand from the outset the rules and regulations that actually govern SANDAG, a local governmental agency, as opposed to the rules and regulations that govern state employees (i.e. civil service/state personnel rules). Indeed, the Draft repeatedly analyzes SANDAG's responsibilities and duties as if it were a state agency subject to state personnel rules and disregards SANDAG's state-delegated power to oversee its affairs and set its own personnel rules within general constitutional principles.<sup>9</sup> The OIPA's characterization of SANDAG as a state agency has led to improper conclusions regarding SANDAG's authority and alleged abuse of that authority.

After receiving the Draft, management asked OIPA why more time could not be taken to evaluate the information included in the Draft and reference was made by OIPA to a one-year deadline that is only a few months away that made action by the Board on the Draft a matter of some urgency. It appears OIPA is relying on Government Code section 19257.5. That section of the statutes is part of the Civil Service Act. SANDAG is not subject to civil service laws, however, and the one-year deadline in Government Code section 19257.5 for vacating an employee appointment is not relevant. The one-year deadline is a red herring.

As with other local agencies, the California Legislature has specifically empowered SANDAG with broad discretion to govern its own affairs, except as otherwise limited by the Constitution.<sup>10</sup> With regard to employees, the Legislature has granted the following authority:

[SANDAG] shall have and may exercise all rights and powers, expressed or implied, that are necessary to carry out the purposes and intent of this chapter, including, but not limited to, the power to do all the following:

- (f) To appoint necessary employees, including counsel, and to define their qualifications and duties.
- (g) To enter into and perform all necessary contracts.
- (j) To adopt an annual budget and to fix the compensation of its officers, board members and employees.
- (o) To do any other things necessary to carry out the purposes of this chapter.<sup>11</sup>

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<sup>9</sup> The Draft relies on the incorrect assumption that the civil service laws apply to SANDAG employees, which has in turn resulted in faulty assumptions of wrongdoing by SANDAG staff on the following pages (at a minimum): 7, 61-62, and 64, where OIPA relies on civil service statutes to contend SANDAG did not follow laws regarding recruitment, hiring, evaluation, and other personnel matters, and that there is a one year deadline that allows SANDAG to void employment contracts.

<sup>10</sup> Public Utilities Code sections 132000, et seq.

<sup>11</sup> Public Utilities Code section 132354.

The California Legislature further empowered the Executive Director with administrative authority and provided the Executive Director with the power to appoint employees as may be necessary to carry out the functions of the consolidated agency.<sup>12</sup> SANDAG's Board has reinforced the Legislature's vesting of power in the Executive Director and further delegated its own authority to the Executive Director in the following areas, among others:

The Executive Director shall act as the appointing authority for SANDAG with the authority to appoint, promote, transfer, discipline, and terminate all employees of SANDAG subject to the provisions of SANDAG's Administrative Rules and Regulations.<sup>13</sup>

Enter into agreements not currently incorporated into the budget and make other modifications to the budget in an amount up to \$300,000 per transaction so long as the overall budget remains in balance.<sup>14</sup>

Finally, the SANDAG Bylaws give the Executive Director responsibility for, among other things: the recommendation and submission of an annual SANDAG program budget to the Board of Directors; and execution of the adopted personnel, purchasing, and budgetary systems. The Executive Director also is authorized to perform such other and additional duties as is necessary to carry out the objectives and function of SANDAG and as directed by the Board of Directors.<sup>15</sup>

The SANDAG Executive Director submits an annual budget to SANDAG, which includes compensation and benefits, as well as an overall compensation strategy and plan for the year. The Executive Director then stays within that budget and plan in executing on compensation. The Executive Director also administers the policies in the Employee Handbook regarding the compensation structure. Finally, SANDAG's salary structure has been posted on SANDAG's website for at least the past five years. Therefore, the compensation structure is fully transparent. Further still, the policies, with full transparency to the Board, allow for appointment in lieu of recruitment.

In sum, the California Legislature has delegated to the Board, who has in turn delegated to the Executive Director, responsibility for setting compensation and appointing employees. The Board and the Executive Director acted within this Legislatively authorized and delegated authority in taking the actions identified herein.

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<sup>12</sup> Public Utilities Code section 132355.

<sup>13</sup> Board Policy No. 017, Section 5. Source documents for all cites to Board Policies and Bylaws can be found at [SANDAG.org/Legal](http://SANDAG.org/Legal).

<sup>14</sup> Board Policy No. 017, Section 4.1.

<sup>15</sup> SANDAG Bylaws, Article V, Section 4.b.

## SECTION I

### I.

#### **The Board of Directors Knowingly Delegated Authority Over the Administrative Rules and Regulations to the Executive Director in 2003 and Understood the Consequences of Its Action**

In Section 1 of the Draft, the OIPA states that errors, abuse, waste, and the potential for fraud have occurred due to management “assuming ownership of the Board’s Administrative Rules and Regulations.” This statement, without more information, incorrectly implies the authority of the Board over administrative matters of the agency was somehow usurped by staff. In reality, the Executive Committee recommended, and the Board approved of the former Administrative Rules and Regulations being placed under the authority of the Executive Director. This is a common practice at Metropolitan Planning Organizations such as SANDAG and also is referenced in state law.

Senate Bill (SB) 1703, which consolidated responsibilities previously held by the transit development boards into SANDAG, more than doubled the number of SANDAG employees. It went into effect January 1, 2003 and required the agency to do a significant update to its administrative policies in order to incorporate rights and benefits of former transit agency employees into SANDAG policies. At that time, the administrative policies of the agency were contained in a document known as the Administrative Rules and Regulations. SANDAG was undergoing tremendous change at the time. During the consolidation process, SANDAG and its consultants noted a need to consolidate and clarify policies and practices into a written and easily searchable set of guidance.<sup>16</sup> It was decided that SANDAG should mirror the Metropolitan Transit Development Board’s<sup>17</sup> method of documenting such information in the form of policies approved by the Board.

The Board of Directors adopted Interim Bylaws to incorporate changes arising from SB 1703 on January 10, 2003.<sup>18</sup> The final version of the 2003 Bylaws was adopted on July 25, 2003.<sup>19</sup> Article V, Section 4.a. of both versions of the Bylaws contain the following language:

The Executive Director will be responsible to the SANDAG Board of Directors as set out in the Administrative Rules and Regulations for the administration of SANDAG’s business, including: (1) development of program objectives, definition, directions and priorities; (2) management of SANDAG programs and coordination of staff and support services; (3) the development of financial support programs for SANDAG activities; (4) the recommendation and submission of an annual SANDAG program budget to the Board of Directors; and (5) execution of the adopted personnel, purchasing, and budgetary systems. The Executive Director shall perform such other and additional duties as is necessary to carry out the objectives and function of SANDAG and as directed by the Board of Directors.

<sup>16</sup> Note that all Board and Committee reports and minutes cited to in this report were obtained from SANDAG’s server known as the M drive, in areas searchable by all SANDAG staff, including the OIPA. Due to the age of some of the documents, electronic versions of reports provided here are unsigned versions. Signed versions of the reports are only available in storage and due to the short timelines involved, readily available unsigned versions are provided instead.

<sup>17</sup> Now known as Metropolitan Transit System (MTS).

<sup>18</sup> Attachment C, Minutes of the Board of Directors Meeting for January 10, 2003.

<sup>19</sup> Attachment D, Minutes of the Board of Directors Meeting for July 25, 2003.

In 2003, the Deputy General Counsel began the process of drafting documents known as Board Policies and bringing them to the Executive Committee and then Board for adoption. One of the groups of policies brought to the Executive Committee for a recommendation to the Board, was new Board Policy No. 017, Delegation of Authority. The October 24, 2003 Board report<sup>20</sup> shows that Board Policy No. 017 was recommended by the Executive Committee and that the only change suggested by the Board to any of the policies the Executive Committee requested was to expand, not restrict the delegated authority of the Executive Director.

In December 2006, changes to Board Policy No. 017 were recommended for approval by the Executive Committee to the Board, following the Board discussion and suggestions.<sup>21</sup> The changes were shown to the Board in tracked changes format as shown here:

The Executive Director shall act as the appointing authority for SANDAG with the authority to appoint, promote, transfer, discipline, and terminate all employees of SANDAG subject to the provisions of SANDAG's administrative manuals, policies, and procedures ~~Rules and Regulations~~.<sup>22</sup>

The 2006 Board report explains the relevant change to the language as follows:

This change is an update requested by the Human Resources Manager who is in the process of reorganizing and renaming SANDAG administrative manuals and policies. Instead of referring to "SANDAG's Administrative Rules and Regulations," the provision would instead reference "SANDAG administrative manuals, policies, and procedures."

A later update to the Bylaws shows a corresponding change to remove reference to the Administrative Rules and Regulations and instead more generally refer to administrative policies. The change from the 2003 version to the current version of the language from Article V, Section 4.a. is shown in tracked changes format below:

The Executive Director will be responsible to the SANDAG Board of Directors as set out in ~~Board Policies and administrative policies the Administrative Rules and Regulations~~ for the administration of SANDAG's business, including: (1) development of program objectives, definition, directions and priorities; (2) management of SANDAG programs and coordination of staff and support services; (3) the development of financial support programs for SANDAG activities; (4) the recommendation and submission of an annual SANDAG program budget to the Board of Directors; and (5) execution of the adopted personnel, purchasing, and budgetary systems. The Executive Director shall perform such other and additional duties as is necessary to carry out the objectives and function of SANDAG and as directed by the Board of Directors.

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<sup>20</sup> Attachment E, Board Report from October 24, 2003 and Minutes of the Board of Directors Meeting, October 24, 2003.

<sup>21</sup> Attachment F, Board Report from December 2006 with Board Policy No. 017 tracked changes attached.

<sup>22</sup> Management notes that this language change was approved by the Board in December 2006 and confirmed in December 2008, when annual updates to Board Policies were brought to the Board, however, when a change to Board Policy No. 017 was made in February 2012, a clerical error occurred and staff incorrectly has been using a pre-2006 version of the policy to make amendments since 2012. Since none of the amendments since 2012 have shown a redline changing the language back to the Administrative Rules reference, this clerical error will be corrected so that Board Policy No. 017 accurately shows "administrative manuals, policies, and procedures."

Records from the Executive Committee and Board of Directors meetings establish that the Board members had full knowledge of the name change for the Administrative Rules and Regulations and that they wanted the Executive Director to have authority over the administrative policies of the agency. OIPA states that it did not find evidence that the Board voted to repeal or amend the Administrative Rules and Regulations, but a review of the records shows that amendments to the relevant language indeed took place with full Board knowledge and approval.

Public Utilities Code section 132335, which was included in SB 1703 shows the intent of the Board as well as the California Legislature was for the Executive Director to have authority over the agency's employees, subject to the direction and policies of the Board:

Administrative authority for the consolidated agency [SANDAG] shall be vested in the office of the executive director, subject to the direction and policies of the consolidated agency as approved by the board. The executive director shall serve at the pleasure of the board and may appoint employees as may be necessary to carry out the functions of the consolidated agency.

The language in the statute is entirely consistent with the language currently in Board Policy No. 017 and the Bylaws. Finally, the Board reaffirmed its delegation of authority through the Executive Director's current contract, executed in 2018, which provides discretion to the Executive Director. The Board's delegation of these matters to the Executive Director of the agency also is consistent with the methods used at the other Metropolitan Planning Organizations (MPOs) in the state. The Southern California Association of Governments (SCAG), the Metropolitan Transportation Commission, which has consolidated with the Association of Bay Area Governments (MTC), and the Sacramento Area Council of Governments (SACOG), all have delegated responsibility for hiring, firing, promotions, and administrative policies to the Executive Director of their respective agencies.<sup>23</sup>

### **The Board Maintains Sufficient Controls Over the Executive Director, Who in Turn Has an Appropriate Amount of Control Over the Personnel Matters of the Agency**

OIPA states that having management oversee the administrative policies of the agency has led to insufficient controls on personnel matters such as promotion, hiring, and pay, but OIPA fails to acknowledge that the Executive Director's discretion is subject to appropriate checks and balances. The administrative policies of the agency are key documents setting forth limits and boundaries on the authority of the Executive Director and management over personnel matters, but the Executive Director (and thus SANDAG) is also subject to, and complies with nondiscrimination laws, SANDAG governance documents, budget processes, and the Board of Director's authority.

Further, the Executive Director's purview over the Employee Handbook and the administrative policies attached to it as appendices, does not result in a lack of controls. The Executive Director position is a contract position and was never subject to the provisions in what was once in the Administrative Rules and Regulations or what is now in the document that took its place, the Employee Handbook. Section 1.7 of those documents state: "These Rules do not apply to the Executive Director, who serves under contract at the will of SANDAG's Board

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<sup>23</sup> Based on staff interviews with these agencies during the week of August 3, 2020. Note that the only exception to this is for the portion of SACOG's employees covered by a collective bargaining agreement.



of Directors.”<sup>24</sup> Thus, the Executive Director has no conflict in setting or imposing the policies in the Employee Handbook and the position serves as a gatekeeper on behalf of the Board.

### **OIPA is Mistaken in Believing that the Current General Counsel Was Remiss for Not Having Complete Knowledge Regarding the Former Administrative Rules and Regulations**

OIPA states that the current General Counsel was unaware of the existence of the Administrative Rules and Regulations and had no knowledge of when the document was approved by the Board. OIPA also states it is unclear why the current General Counsel is not aware of the Administrative Rules and Regulations since a job description for Deputy General Counsel from August 2005 showed that one of General Counsel’s job duties included administrative rules and regulations. This lack of historical knowledge is understandable since the current General Counsel was not hired until June 2006, after the Administrative Rules and Regulations had been superseded, and did not become General Counsel until January 2012. The employee currently serving as the agency’s Director and Legal Counsel, Contracts and Grants, was hired in part due to her experience with public employment law, and served as Deputy General Counsel (2000-2005), General Counsel (2005-2012), and Special Counsel (2012-2019) for the agency. It is her job description that shows responsibility for employment law and administrative policies, not the current General Counsel.<sup>25</sup> If OIPA had consulted with the agency’s current General Counsel, or Director and Legal Counsel, Contracts and Grants, it would have learned the history of the Administrative Rules and Regulations as identified herein, and OIPA could have therefore avoided its plainly erroneous findings premised on the faulty assumption that the Administrative Rules and Regulations were not being heeded or that they were subverted by staff.

### **The General Counsel Advised the Board to the Extent Necessary Regarding Delegation of Authority**

OIPA’s report states that “[a]s a steward of the Board, General Counsel should have advised the Board against permitting the previous Executive Director to change policy that was in place to limit the Executive Director’s authority.” The records show, however, the Executive Committee and Board members were well aware of the proposed changes and resulting impact when they approved the policy changes. The Board confirmed in the contract language of the Executive Director’s contract and in the language of SB 1703 that they wanted the Executive Director to have control over the administrative policies of the agency for personnel.

Any shift of “power” from the Board to the Executive Director position was done with full knowledge of the Board members. There is no evidence of a significant reduction in the clarity of the bylaws, policies, or manuals, or of greatly increased confusion as to what documents limited the authority of the Executive Director. SANDAG’s Board members oversee their home agencies, and in many cases, their own businesses. It seems highly unlikely that they were or are not sophisticated enough to understand their actions.

There have been multiple occasions when the Board has had the opportunity to revisit the delegation of authority to the Executive Director. For example, the job announcement developed for the Executive Director recruitment, and approved by the Board in January 2018, includes the following language: “Under policy direction from the Board of Directors, the Executive Director will plan, direct, manage, administer, and review

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<sup>24</sup> See Attachment G, excerpt from 2005 Administrative Rules and Regulations, and excerpt from 2020 Employee Handbook, Section 1.7.

<sup>25</sup> See Attachment H 2004 Job Description for Deputy General Counsel, and Attachment I, 2011-2015 Job Descriptions for Deputy General Counsel, General Counsel, and Special Counsel.

the activities and operations of SANDAG.” Then, after the current Executive Director was hired, Section 4.1 of Board Policy No. 017 was amended by the Board, to increase the delegated authority of the Executive Director from \$100,000 to \$300,000, allowing him to enter into transactions and make other modifications to the budget so long as the overall budget remains in balance.<sup>26</sup> These actions by the Board show clear intent and understanding of the extent of the Executive Director’s authority.

### **There Has Been No Wrongdoing or Abuse of Power**

The OIPA contends in the Draft that there has been an “abuse of power” as a result of the Board not having control over the hiring, promotion, pay, classification, and terms of resignation for employees. As will be discussed throughout this response, the documentation provided in OIPA’s report is incomplete and the findings are therefore erroneous. The Executive Director has been delegated authority to engage in the actions at issue in the Draft and there is no support for the contention that he has abused that authority. (*Berkeley Police Assn. v. City of Berkeley* (1981) 117 Cal.App.3d 109, 110-112 [City manager, to whom discretion had been given to appoint, discipline or remove officers and employees, did not act corruptly or arbitrarily when he made a hiring decision that he thought was in the best interest of the City]; *Lucas v. Santa Maria Public Airport Dist.* (1995) 39 Cal.App.4th 1017, 1026 [airport district acted within its discretion in setting salary]; *San Joaquin County Employees' Assn., Inc. v. County of San Joaquin* (1974) 39 Cal.App.3d 83, 87-88 [“in the area of employment, public agencies must compete, and if to so compete they grant benefits to employees for past services, they are not making a gift of public money but are taking self-serving steps to further the governmental agency's self-interest in recruiting the most competent employees in a highly competitive market.]; *Jarvis v. Cory* (1980) 28 Cal.3d 562 [Salary appropriation bill which awarded a lump-sum payment to certain state employees based on work already performed was not invalid as a gift of public funds serving no substantial public purpose in violation of this section, in that adjustments made by bill served substantial public purposes of ensuring continued recruitment and retention of qualified and competent state employees, avoiding legal disputes over colorable equal protection claims, providing funds to allow salary-setting bodies to fulfill their duties, and resolving continuing uncertainty about proper salary levels.])

Instead, it is management’s position that:

- From time to time, employees have resigned and when the Executive Director believed, based on advice from legal counsel, those employees had potential claims against the agency, they were sometimes provided compensation in exchange for a covenant not to sue the agency.
- There is no evidence that employees were paid bonuses that were not based on performance and merit as permitted by the Board.
- There is no evidence that performance incentive payments to employees have created an inequity.
- There is no evidence that payment of management benefits has created an inequity.
- There is no evidence that senior management position titles were changed as a method to boost pay; instead there is evidence that all position titles were merited based on the additional responsibilities they were given as a result of a promotion.

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<sup>26</sup> Attachment J, Board Report and minutes from January 25, 2019.

- SANDAG employees that have at-will status without resort to a formal administrative hearing process have signed contracts agreeing to that status and the civil service statutes applicable to state employees are not applicable to SANDAG employees.
- Employees, including at-will employees, have not lost their ability to file a grievance with management. This right exists pursuant to Chapter 9 of the Employee Handbook and when applicable, pursuant to the Discrimination and Harassment Prevention Policy, which is an appendix to the Employee Handbook.
- During the reorganization following the hiring of the Executive Director in December 2018, some executive, director, and management level employees were appointed without an open, competitive hiring process. This is permitted by the current Employee Handbook as it was under the former Administrative Rules and Regulations, Section 3.4.3:

Vacancies for regular employee positions shall be publicized by appropriate means and applications accepted from all qualified persons. Exceptions to this requirement are as follows: . . . 3.4.3 When the Executive Director determines that it is in SANDAG’s best interest to promote an existing SANDAG employee.<sup>27</sup>

- There is no evidence or law that establishes that it is improper to set a promoted employee’s salary above the bottom of the range for the classification.
- SANDAG management relied on outside consultants who are experts in their respective fields of employee compensation, reorganization, law, financial accounting standards, and auditing to review SANDAG processes and assist with management decision making.

## II.

### **Severance Compensation Payments Were Reasonable in Light of the Litigation Risk Avoided by Such Payments**

OIPA’s finding in this area - that severance pay is improper when an employee resigns in the absence of a formal claim or lawsuit - is made without reference to any criteria (law, regulation, contract, grant agreement, standard, measure, expected performance, defined business practice, or benchmark) against which employment separation conditions are to be measured. Instead, the OIPA establishes a self-defined criteria that such payments should only be made upon a filing of a formal claim or lawsuit, and that such payments are *de facto* improper when an employee’s formal vehicle of separation is a resignation, even if that resignation is in lieu of an involuntary termination. The severance payments were proper based on the fact of each individual’s situation and they were not a gift of public funds.

First, settlement of a potential litigation risk is not a gift of public funds. “It is well settled that the primary question to be considered in determining whether an appropriation of public funds is to be considered a gift is whether the funds are to be used for a public or private purpose. If they are to be used for a public purpose, they are not a gift within the meaning of this constitutional prohibition. [Citation.]” (*Jordan v. California Dept.*

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<sup>27</sup> Attachment K, Excerpt from 2005 Administrative Rules and Regulations.

*of Motor Vehicles* (2002) 100 Cal.App.4th 431, 450.)<sup>28</sup> “The settlement of a good faith dispute between the state<sup>[29]</sup> and a private party is an appropriate use of public funds and not a gift because the relinquishment of a colorable legal claim in return for settlement funds is good consideration and establishes a valid public purpose.” (*Id.*)<sup>30</sup>

Second, contrary to OIPA’s conclusion, a formal lawsuit, government tort claim, or agency-filed claim is not required for there to be a risk of litigation for which a settlement would be prudent. Nor is there a requirement that severance payments only be granted to employees “when the employer discharges or removes the employee without cause.” (See Draft, p. 25.) Threatened litigation alone provides a basis for resolution of a claim. To hold otherwise would unnecessarily entangle the agency in litigation before it could resolve a claim and would also increase the value of a settlement because the employee may have retained an attorney and spent additional funds in filing a claim. Finally, to require an employee to seek out an attorney and file a claim prior to obtaining a severance could increase the litigation risk to SANDAG. For example, if an employee approaches an attorney regarding a potential claim, that attorney may suggest additional claims, thus increasing the risk of exposure to SANDAG in potential litigation. Where, as here, counsel for SANDAG identified legitimate litigation and risk concerns, it was more prudent to resolve those claims in advance of litigation rather than prompt the employee to seek out an attorney and identify those claims as well as others.

Finally, the circumstances in each of the situations at SANDAG warranted severance payments and were therefore for a public purpose. A threshold question in the audit should have been whether the separated employees had a colorable claim against SANDAG. The audit does correctly note that each of these Directors signed a full release of claims against SANDAG as a condition of receiving the noted separation compensation,

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<sup>28</sup> The OIPA relied on this case to support its conclusion that the severance payments at issue in the audit were a gift of public funds. The specific facts in *Jordan* do not exist in the facts before us, and therefore the ultimate holding finding an improper gift of public funds in *Jordan* is inapplicable. Specifically, *Jordan* involved settlement of a fee dispute and the settlement significantly exceeded the maximum legal exposure and thus was a gift of public funds. Here, however, the severance payments did not exceed maximum exposure and were far below even the attorneys’ fees that would be required in defending against claims by the employees should they have filed a lawsuit in lieu of releasing all potential claims and significantly less than any award and resulting plaintiff’s fees and costs if any of the employees had prevailed in such a lawsuit. Therefore, the general principle that a settlement of potential litigation risk is not a gift of public funds if the settlement was for a public purpose applies to the severance payments, which were proper.

<sup>29</sup> Note use of the word “state” in the context of citing this case, is not an agreement by management that SANDAG is a state entity.

<sup>30</sup> Further still, the OIPA’s analysis regarding “gift of public funds” ignores the plain terms of the relevant constitutional provisions. Notably, the OIPA does not even quote from the California Constitution itself on pages 28-29, but instead has copied, without attribution, from a conference outline prepared by an attorney presenting at the League of California Cities seminar in October 2016. ([https://www.cacities.org/Resources-Documents/Member-Engagement/Professional-Departments/City-Attorneys/Library/2016/Annual-2016/10-2016-Annual\\_Forboth\\_Gift-of-Public-Funds\\_Spoile.aspx](https://www.cacities.org/Resources-Documents/Member-Engagement/Professional-Departments/City-Attorneys/Library/2016/Annual-2016/10-2016-Annual_Forboth_Gift-of-Public-Funds_Spoile.aspx).) As the actual text of the Constitution indicates, the prohibition on the gift of public funds specifically prohibits the *Legislature* from making a gift or authorizing a gift of public funds. (California Constitution, Article XVI, section 6.) It does not prohibit a local agency from utilizing its discretion in settling potential claims nor does it prohibit a public entity from exercising discretion vested in that public entity, such as that vested in SANDAG to make and enter into contracts, set compensation and the like. (See *Social Workers Union Local 535 v. Los Angeles County* (1969) 75 270 Cal.App.2d 65 [Sections of the State Constitution prohibiting gifts of public monies and the retroactive payment of extra compensation to public employees only limit the powers of the legislature itself and those powers of local government delegated to it by the legislature and has no application to charter powers which are constitutional in origin, such as the power of the Los Angeles county board of supervisors to alter the compensation of county employees.])

but does not analyze what benefit SANDAG received from such releases as compared to the severance compensation payments.

Comparing the amount of severance compensation payments to the value of the waiver of claims would have been a valid area of inquiry, considering counsel's opinion as to the value of the claims and the cost to secure legal counsel to defend them, and whether the amount of such payments constituted "waste" (defined in the GAGAS Audit Standards as "the act of using or expending resources carelessly, extravagantly, or to no purpose").

The audit notes that the Director of Organizational Effectiveness communicated that the separation compensation was paid under the threat of litigation, but no inquiry was made by OIPA as to the legal analysis that was done by the Office of General Counsel – analysis that was guided by consultation with outside counsel with expertise in employment law. Instead, OIPA states that management failed to provide a justification for the claims. A diligent and objective audit would have requested enough information to know whether there should be further investigation into the legal justification. Instead the Draft implies that no justification existed and a wrongful gift of public funds occurred.

The Draft does not provide a complete picture because it fails to note any of the risk factors that were analyzed by legal counsel. The Draft could have reported on the factors that were considered in determining the reasonableness of the payments - the longstanding tenure of each of the Directors, (which would go toward analyzing a claim for back wages) the high level of their performance assessments prior to their separation, SANDAG's then-existing protected nature of all positions including those in management, the specific facts underlying the former Directors' separation, and whether any of them was represented by legal counsel in advocating their claims.

As noted in the Draft, the consideration for one settlement did include payment of sick pay beyond that to which the employee was entitled as a matter of right per the Employee Handbook. SANDAG conferred with outside counsel with expertise in employment law in its negotiation with the former employees, and in this instance the employee was represented by their own counsel. In the course of negotiations, the employee's counsel sought a combination of money and sick leave in excess of that to which the employee was already due as a matter of right. SANDAG's outside counsel negotiated on SANDAG's behalf to minimize the payment of both of these categories, and ultimately obtained a settlement that was, in outside counsel's professional opinion, a favorable settlement for SANDAG in light of the risk presented by the employee's potential claims. As noted in a legal compendium of California law often cited by the courts,<sup>31</sup> even when there is no right to payment of accrued sick leave, employers may agree to do so as part of a settlement where a claim could be made that termination was wrongful and thus the employee was wrongfully denied the opportunity to utilize all sick time and receive the resulting retirement benefit from that sick time.

While management would hope that in seeking to minimize risk and settle employment claims it could reasonably rely on the professional opinion of outside counsel with expertise in employment law without that advice being challenged by OIPA without any legal expertise, a relevant inquiry in an audit of this transaction could have included whether the value of the total compensation consideration provided to each employee was reasonable compared to the value of their full release of claims against SANDAG. This is an issue which

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<sup>31</sup> California Practice Guide: Employment Litigation (The Rutter Group 2020); Section 18 – Settlement Considerations.

was not the focus of OIPA's inquiry. Instead, the OIPA substituted its legal judgment for that of both internal legal counsel and an external employment law legal expert. Management welcomes independent counsel with expertise in employment law to opine upon this matter and advise the Board.

In the case of the referenced manager who resigned in July 2020, management appreciates OIPA's initial inquiry of General Counsel as to the reasoning for the payment when the employee resigned, as well as inclusion of General Counsel's brief analysis of the potential claims of the employee (constructive discharge and workplace illness) and how the three-months' compensation settlement coupled with the employee's waiver of claims reasonably mitigated the risk of those claims. Nonetheless, OIPA reached its own legal conclusion that payments were an unlawful gifts of public funds without considering any of the relevant legal factors discussed above.

OIPA acknowledges that both the Board Chair and Vice-Chair were notified by email from the Executive Director of his intent to authorize the severance compensation in exchange for the release of claims as described above, but implies wrongdoing because it was not provided with the response of the Board Chair or Vice-Chair. No request was made by OIPA as to whether any such response was provided, or as to the content of the phone conversation between the Executive Director and the Board Chair and Vice-Chair on the subject of the employee's departure as noted in the email.

Here, the Legislature empowered SANDAG to set compensation and to resolve employee claims through its delegation of authority in the Public Utilities Code. Therefore, through this delegation, the funds spent were within SANDAG's discretion and not improper.

### **The Executive Director Properly Exercised His Administrative Authority in Authorizing Separation Compensation as a Condition of the Employees' Separation**

Pursuant to California Public Utilities Code 132355, "Administrative authority for the consolidated agency shall be vested in the office of the executive director, subject to the direction and policies of the consolidated agency as approved by the board." The Board's delegation to the Executive Director and his staff in various respects, including the following:

- Board Policy No. 017, Section 1: Adoption of a budget by the Board shall automatically authorize the Executive Director to enter into any agreements or take any other actions necessary to implement the budget items or other actions approved by the Board.
- Board Policy No. 017, Section 5: The Executive Director shall act as the appointing authority for SANDAG with the authority to appoint, promote, transfer, discipline, and terminate all employees of SANDAG subject to the provisions of SANDAG's Administrative Rules and Regulations.
- Bylaws Article V. Section 4.b.: The Executive Director will be responsible to the SANDAG Board of Directors as set out in Board Policies and administrative policies and manuals for the administration of SANDAG's business, including: (1) development of program objectives, definition, directions and priorities; (2) management of SANDAG programs and coordination of staff and support services; (3) the development of financial support programs for SANDAG activities; (4) the recommendation and submission of an annual SANDAG program budget to the Board of Directors; (5) execution of the adopted personnel, purchasing, and budgetary systems.

Additionally, in adopting the FY 2020 Budget, in Resolution RTC-2019-04 the Board authorized the Director of Administration, who serves under the Executive Director “to make, if applicable, such personnel changes, Position Classification and Salary Range Table adjustments, and other employee compensation package adjustments for which funding is provided in the adopted FY 2020 Program Budget and as may be amended by the Board of Directors.” Similar language is included in each year’s budget delegating authority for compensation package adjustments to staff.

Based upon this broad delegation of authority and as more fully stated above, it is management’s belief that the Executive Director was authorized to enter into the referenced separation agreements agreeing to pay severance compensation – budgeted from the FY 2020 Salaries and Benefits budget – in exchange for the waiver of all claims by the separated employees.

### III.

#### **The Payment of Bonuses to the Former Chief Deputy Executive Director Were Made on the Basis of Merit and Were Authorized by the Former Chair and Vice Chair of the Board of Directors**

OIPA has made a serious and unfounded allegation of gross misconduct against SANDAG management with respect to the compensation awards made to the former Chief Deputy Executive Director (Chief Deputy), going as far as accusing management of breach of fiduciary duty. Breach of fiduciary duty is a legal conclusion with legal ramifications if various elements of fact are established. Here the elements are not met. Even if they were (they are not), the OIPA is not qualified or authorized to issue a legal opinion. The people involved in making the decisions did so in the best interest of the agency, received no benefits themselves from the decisions, and were transparent with the Chair, who represented the Board at the time.

The OIPA’s opinion rests on its reliance on incomplete information. By asking questions of the former Chair (Del Mar City Councilmember, Terry Sinnott) or seeking additional documentation from staff, the OIPA could have obtained a more complete picture for the Board and Audit Committee. The OIPA’s opinion that management circumvented agency policy and sought approval from a single Board member for decisions regarding compensation for the former Chief Deputy, and that the payments made to the Chief Deputy were not substantiated, is based on incomplete and therefore misleading information. In contrast, it is management’s opinion that the individuals with authority to make employee compensation decisions were actively and appropriately engaged and that compensation awards to the former Chief Deputy were both reasonable and justified.

The Board’s formal means of adopting the annual program budget is through a resolution. For FY 2019, the SANDAG budget was adopted per Resolution RTC 2018-04.<sup>32</sup> That same resolution also delegated authority for making compensation adjustments to the Director of Administration: “The SANDAG Director of Administration is authorized to make, if applicable, such personnel changes, Position Classification and Salary Range Table adjustments, and other employee compensation package adjustments for which funding is provided in the adopted FY 2019 Program Budget.” As a part of the FY 2019 Budget, the Board approved

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<sup>32</sup> See Resolution beginning at page 6-4 of the FY 2019 Program Budget.

updated salary range tables as well as a compensation adjustment pool of approximately \$1.3M.<sup>33</sup> The same or similar process was also followed in previous and subsequent budget cycles.

As already stated in this Response in earlier sections, oversight for the agency's compensation program, including approval for employee compensation adjustments, is also vested in the Executive Director per Public Utilities Code section 132355, which states that "Administrative authority for the consolidated agency shall be vested in the office of the executive director, subject to the direction and policies of the consolidated agency as approved by the board." This administrative authority is delegated to the Chief Deputy Executive Director per Section 2 of Board Policy No. 017, which states; "Any authority delegated to the Executive Director shall automatically vest with a Chief Deputy Executive Director when business must be conducted in the absence of the Executive Director." At the time in question, however, it seemed to management and Chair Sinnott that having the former Chief Deputy, or staff reporting to the Chief Deputy, make the decisions regarding the Chief Deputy's pay during this time period would be self-serving and inappropriate.

Therefore, management, including the Director of Administration, sought advice from Board leadership. The SANDAG Board of Directors serves as the governing body of the consolidated agency per Public Utilities Code section 132351.1, and the Board may delegate its authority to other officers. Further, the SANDAG Board of Directors Chair is vested with general supervision over the Board's affairs per the Article V, Section 1.a. of the SANDAG Bylaws. In light of the unusual circumstances during the period August 2017 through November 2018 when the Executive Director position was vacant, Board leadership's involvement in overseeing compensation for the Chief Deputy, while she also carried out the duties of the Executive Director position, was reasonable. It provided an added level of transparency by involving Board leadership, avoided conflict of interest for staff, and maintained operations of the agency on seamless basis. This prevented the Director of Administration, who reported directly to the Chief Deputy, and the Chief Deputy herself from acting in a manner that could be perceived as self-serving in authorizing her own compensation adjustment.<sup>34</sup>

The audit report describes five payments made to the Chief Deputy during calendar year 2018 and claims all were unsubstantiated and lacked appropriate approval. Three of the payments were provided under the agency's established performance management and pay-for-performance practices and were relatively consistent with the merit increases and/or bonuses awarded to other employees. This includes the merit increase/bonus combination paid in January 2018 that was based on the Chief Deputy's FY 2017 Performance Evaluation, and the merit increase approved in December 2018 based on the Chief Deputy's FY 2018 Performance Evaluation. In addition to these amounts, Chair Sinnott initiated action and worked with the Director of Administration to compensate the Chief Deputy for the additional duties the Chief Deputy had assumed following the resignation of the Executive Director in August 2017.

The decision to pay the additional bonuses to the former Chief Deputy during the 15 month period during which the Executive Director position was vacant began as verbal consultations between Board leadership, the Director of Administration, and General Counsel, to understand the agency's customary and permitted pay practices. These discussions and communication culminated with Chair Sinnott's preparation of written notifications to the Chief Deputy describing the basis upon which the two bonuses were awarded (the first in

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<sup>33</sup> See February 23, 2018 Board of Directors Meeting Agenda, Item 14, Staff report page 8, as well as FY 2019 Program Budget, Chapter 11, page 11-4.

<sup>34</sup> See, Attachment L, Confidential Sinnott Memo.



June 2018 and the second in November 2018). Management has documentation confirming coordination between the Director of Administration and Board leadership with respect to the compensation decisions for the Chief Deputy. Also former Chair Sinnott has provided a confidential written memo to management that outlines his factual recollections and support for the discretionary decisions that were made regarding compensation for the Chief Deputy.<sup>35</sup> Since the extra compensation reflected payment for additional services rendered, it was not an improper gift of public funds. (See *Johnston v. Rapp* (1951) 103 Cal.App.2d 202, 207 [increased compensation for additional work is not an improper gift of public funds]; see also *Miller v. City of Sacramento* (1977) 66 Cal.App.3d 863, 868 [City council was authorized to create position and set compensation for position, absent limitation of that power by the Legislature].)<sup>36</sup>

#### IV.

##### **Management Benefits Were Disclosed to the Board**

With respect to items of special compensation, as defined in California Code of Regulations, Title 2, section 571 (CCR 571), it has been management's long-standing interpretation that the authority delegated to the Executive Director through Board Policy No. 017, and in turn, the Executive Director's approval of the Employee Handbook, which contains compensation policies, met the requirements for 'approval by the governing body' as described in CCR 571. Until very recently, management believed this documentation was sufficient to meet CalPERS' requirements. A recent review of agency practices by CalPERS, however, clarified that CalPERS has different expectations regarding the Board's role in approving policies pertaining to special compensation. Management has already agreed to take action to address this matter.

The Draft insinuates management has deliberately "hidden" compensation and benefits information from the Board and from the public. Management refutes this assertion. Each annual program budget document includes a Personnel Cost Summary that provides the anticipated costs for employee salaries and benefits for the upcoming fiscal year; this document also contains a revised expense estimate for the prior fiscal year, and actual expenses for the fiscal year prior to that. Further, attachment 5 to the Revised FY 2021 Program Budget report, presented to the Board of Directors on May 8, 2020, specifically describes the change in management benefits:

As part of the agency reorganization implemented in late 2019, and in consideration for accepting a change in terms and conditions of employment, the management benefit offered to Executive-level employees was increased. No other changes are recommended to the employee benefits program for FY 2021.<sup>37</sup>

The total amount budgeted for management benefits in FY 2021 is shown as a separate line item in the FY 2021 Personnel Cost Summary.<sup>38</sup>

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<sup>35</sup> Attachment L, Confidential Sinnott Memo.

<sup>36</sup> It is worth noting that SANDAG still paid significantly less in compensation during this 15-month period by having the Deputy Executive Director perform duties in her own role and from the Executive Director role, and compensate her accordingly for the extra work, rather than hire a separate interim Executive Director.

<sup>37</sup> Attachment M, Revised FY 2021 Program Budget report, Attachment 5.

<sup>38</sup> Attachment N, FY 2021 Personnel Cost Summary.

## **Management Previously Disclosed to the Board Special Compensation Is Not Currently Defined in a Board-Approved Document**

As discussed above, management became aware in May 2020 that CalPERS desires that SANDAG provide a resolution or other form of Board-approved document defining special compensation. Correspondence notifying the Board of this requirement was provided to the Board of Directors, via email, on July 10, 2020.<sup>39</sup> Management has begun the process of creating a new policy on this topic, which will be brought to the Board of Directors for approval in fall 2020.

## **SANDAG Management Notified the Board of Its Responsibility to Approve Compensation**

With respect to approval of the annual Salary Range Table, it has been management's long-standing interpretation that including this document as part of the approval of the annual program budget, supported by staff reports specifically describing any recommended changes, combined with the authority delegated to the Executive Director under Board Policy No. 017, adequately met the requirements of all applicable laws and regulations. The Draft states the approved Salary Range Table is not posted to the SANDAG website; this is inaccurate. The approved Salary Range Table is available from the Careers sections of the website ([sandag.org/jobs](http://sandag.org/jobs)) and has been available since 2015. Management will examine standing practices relative to 2 CCR § 570.5 and other applicable laws and implement changes as necessary.

## **SANDAG Management Presented Budget and Financial Information to the Board at Several Board Meetings**

Management disagrees with the OIPA's opinion regarding transparency of budget and financial information to the Board. Consistent with Board Policy No. 017, which delegates administrative responsibility to the Executive Director, summary-level information is provided to the Board as part of the annual program budget. Written staff reports developed to support the Board's consideration of the budget include a section or an attachment describing the staffing, pay-for-performance, compensation, and benefits programs, highlighting any significant changes or recommendations. These items also are summarized in verbal reports that staff presents to the Executive Committee and Board. Further, one of the chapters in the annual program budget document contains all Personnel/Human Resources items. Staff is prepared to answer Board member questions on any of these items during consideration and approval of the annual program budget and at other times during the year.

OIPA has formed the opinion that the standing practice of identifying the total anticipated cost of annual compensation adjustments as part of the annual program budget is a willful act on behalf of management to misrepresent the funds that will be used to support the pay-for-performance program. OIPA did not enquire as to why this had become agency practice, which necessarily means OIPA's contention of wrongdoing is unsupported. The practice was implemented many years ago to address Board member questions regarding the "true cost of merit increases." The calculation of the annual compensation adjustment pool, which includes costs for salary increases as well as increased costs to salary-based benefits such as retirement, Medicare, and workers compensation, is fully documented as part of the annual budget development process and the information is readily available upon enquiry. An example of the calculation from the FY 2020 budget is shown below.

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<sup>39</sup> Attachment O, July 10, 2020 Correspondence to the Board of Directors.

### Components of FY 2020 Compensation Adjustment Pool

(based on a 4% base salary increase)

	<u>Salary</u>	<u>Retirement</u>	<u>Medicare</u>	<u>Work Comp</u>
Anticipated Cost - Pre Base Pay Increase	\$34,093,303	\$7,847,508	\$494,353	\$331,751
Anticipated Cost – Post Base Pay Increase	\$35,460,762	\$8,119,544	\$511,525	\$343,327
Compensation Adjustment Pool	\$1,367,459	\$272,036	\$17,172	\$11,576
Total Cost of Base Pay Increases	\$1,668,244			

OIPA also is critical of management’s practice of using base salaries to calculate the anticipated total cost of the compensation adjustment pool because costs for retirement, Medicare, and workers compensation would not be applicable to bonus awards. At the time the annual program budget is prepared in January each year, management has not determined which employees, if any, may be eligible for a performance bonus. Therefore, for budgeting purposes, the pool is calculated assuming all eligible employees will receive a base pay increase. Thus, OIPA’s criticism is an unfounded assumption that staff intended malfeasance, when the evidence shows that staff merely followed past practice and currently available information at the time it prepares the annual program budget.

#### V.

#### **Management Allocated the Expenses for the Bonuses Paid to Former Chief Deputy Executive Director Consistent with Past Practices that Have Been Approved by Other Auditors**

In management’s opinion, the expenses associated with bonuses paid to the Chief Deputy were correctly allocated. Since most of the Executive Director’s functions were carried out by the former Chief Deputy between August 2017 and November 2018, the expenses were allocated consistent with the prior practice of allocations based on functions carried out by the Executive Director. Staff has received questions from Caltrans and outside financial auditors on the allocation method used for the Executive Director in prior audits and the auditors were satisfied with the justification for the allocations. Due to this history, the discretionary decision that was made by staff was reasonable. To ensure this, management will review this matter with the agency’s outside financial auditors. Remedial steps will be taken if it is subsequently determined that any expenses should have been charged in a different manner.

#### **Management Has Already Agreed to Take the Necessary Steps to Correct Any Errors with CalPERS Regarding the Former Chief Deputy’s Bonuses**

OIPA has restated the outcome from a recent review conducted by CalPERS. Management can confirm that staff is actively engaged in addressing the deficiencies that have been noted, including taking any appropriate remedial action determined to be necessary. Correspondence to this effect was provided to the Board of Directors, via email, on July 10, 2020.

## **Adequate Supporting Documentation and Internal Controls Are in Place**

The Payroll/Budgeting team and Human Resource team have long-standing practices with respect to communication during the annual budgeting process and coordination of payroll transactions, including the use of Payroll Action Forms (PAFs). PAFs are prepared by Human Resources upon documented approval of employment-related transactions by management; they are then emailed from Human Resources to Payroll so that Payroll staff always have a point of contact to assist with any questions. Payroll staff frequently seek guidance/ clarification from Human Resources if they are unsure about a requested transaction.

On an annual basis, SANDAG has a financial audit performed by an outside audit firm. An independent audit of the financials also includes a review of the internal controls of the agency. The existing practice of Human Resources transmitting requests to Payroll via a PAF, with no additional back-up documentation, has been reviewed multiple times by the financial auditors and has not been found to be deficient. Human Resources used to provide copies of back-up documentation to Payroll. This practice was ultimately stopped in order to limit the volume of confidential records that had to be maintained/secured by both departments. An effort is underway, however, to improve upon this process by using an encrypted server. This will allow Human Resources to share documents with Payroll containing confidential data.

## **VI.**

### **Records that Were Not Reviewed by OIPA Establish that Merit Increases, Equity Payouts, and Bonuses Were Equitably Distributed to Employees**

Management takes exception to OIPA's opinion that compensation has not been equitably distributed to employees. The Draft emphasizes performance bonuses and suggests a pattern of unfairness in their award to employees. The report neither provides the necessary context for the agency's compensation program nor addresses the allocation of merit increases, which are the largest components of the compensation adjustment pool. OIPA's opinion is not based on a complete review of the records and therefore leads to an incorrect conclusion.

SANDAG has a long-standing pay-for-performance or merit-based program where employees are rewarded commensurate to management's overall assessment of contributions made to the agency. As stated, SANDAG was authorized to implement this program by grant of discretion from the Legislature. Variances in performance levels are reflected in pay increases and bonuses awarded to employees. Further, equity adjustments are a tool used by management to bring an employee's salary closer to the expected market rate based upon their work experience and job performance. As such, there is variance in the amount of equity pay needed for any given employee, which in turn, contributes to the range of a base pay increases awarded to the employee group. Management recognizes the opportunity to refine the agency's compensation-related policies to include information such as the range of salary increases, per the examples referenced in the audit report and is committed to implementing this improvement.

The audit report asserts there has been an unequal distribution of performance bonuses paid to employees, and attributes this to a lack of definition for performance standards. From management's perspective, the agency has clear criteria for the 4-point rating scale used by managers and executives to evaluate the

achievement of goals; this criteria was established more than 10 years ago.<sup>40</sup> OIPA did not request information pertaining to this element of the Performance Management program during the audit. Further, management adds that in a pay-for-performance system, merit increases, not bonuses, are the primary tool used for rewarding employee achievement of goals and maintaining the competitiveness of individual employee salaries relative to market. OIPA's emphasis on the number of bonuses awarded, without reference to the number of merit increases awarded, and the suggestion that only a portion of employees are fairly rewarded for performance, is a distortion of fact.

The audit report states "Management also failed to define and get Board approval for the amounts that can be awarded under the pay for performance program. Without a defined amount of merit increases and bonuses, management can award unlimited amounts to certain employees each year." Management disagrees with this statement. As previously discussed in this Response, each annual program budget approved by the Board of Directors defines a specific percentage increase to fund a compensation adjustment pool (to be used collectively for merit increases, performance bonuses, flexibly-staffed position promotions, and equity adjustments), including an estimate of the total cost of the increase.

The audit report also states it is not "a prudent use of public dollars" for government employees to be paid cash bonuses, stating it is 'rare and uncommon' for employees of federal, state, and local agencies to receive this type of compensation. SANDAG does not have the same type of compensation program commonly used by other public agencies, typically a step-system, therefore different tools, such as merit increases and performance bonuses, are used for rewarding employees. It is appropriate for SANDAG to create a compensation scheme that appropriately awards, incentivizes, and retains key employees. (75 Ops.Cal.Atty.Gen. 20, (1992) ["providing incentives for the retention of employees and increasing their efficiency" can serve a public purpose]; *San Joaquin County Employees' Assn., Inc. v. County of San Joaquin* (1974) 39 Cal.App.3d 83, 87-88 ["in the area of employment, public agencies must compete, and if to so compete they grant benefits to employees for past services, they are not making a gift of public money but are taking self-serving steps to further the governmental agency's self-interest in recruiting the most competent employees in a highly competitive market.]; *Jarvis v. Cory* (1980) 28 Cal.3d 562 (Salary appropriation bill which awarded a lump-sum payment to certain state employees based on work already performed was not invalid as a gift of public funds serving no substantial public purpose in violation of this section, in that adjustments made by bill served substantial public purposes of ensuring continued recruitment and retention of qualified and competent state employees, avoiding legal disputes over colorable equal protection claims, providing funds to allow salary-setting bodies to fulfill their duties, and resolving continuing uncertainty about proper salary levels]; *California League of City Employee Ass'ns v. Palos Verdes Library Dist.* (1978) 87 Cal.App.3d 135, 139-140 [longevity benefits were appropriate expenditures].) Further, management's compensation philosophy was fully disclosed and discuss with the Board of Directors in May 2012, providing the necessary accountability and transparency.

### **Adequate Justification for Awarding Performance Incentive Pays Exists and Management Is Taking Steps to Strengthen the Process**

Consistent with remarks contained in the Draft, management acknowledges the need to increase accountability among employees, supervisors, managers, and executives for the timely completion of performance evaluations. SANDAG management began strategizing fundamental changes to its performance

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<sup>40</sup> Attachment P, 4-point rating scale used to evaluate SANDAG employee performance.

management practices more than 12 months ago, including the use of new software tools to support supervisors and employees with this activity. Carving out the funds necessary to allocate staff resources, procure the software, transition databases, rewrite procedures, and train supervisors and employees is a substantial undertaking. The FY 2021 budget already contains funds for this work effort. Improved completion rates and timeliness for performance evaluations are among the objectives.

It is OIPA's opinion that there is inadequate justification regarding the award of bonuses. Management disagrees with this assessment. One of the agency's established practices with respect to the recommendation of performance bonuses, is that the supervisor, manager, and Director must prepare a memo describing the outstanding performance and over-and-above achievement of goals by the employee upon which a bonus be considered. These memos are reviewed, and bonus amounts approved, by the Executive Director or delegate as part of the comprehensive review of annual compensation adjustment recommendations. The bonus memos are retained by Human Resources, and the basis for the bonus is included in communication to the recipient employee. OIPA did not request documentation or detailed information about the justification of performance bonuses as part of the audit and as a result, has drawn an inaccurate conclusion.

The Draft includes the statement "performance ratings did not correlate to the amount of the bonuses awarded to staff" and cites examples of apparent discrepancies. It is management's recollection that there have been occasions when an employee may be granted both a merit increase and performance bonus, with appropriate and substantiated justification (as described above), however, when this occurs the combined value of the additional compensation is commensurate with performance outcomes and consistent with rewards offered to similarly situated employees. OIPA has not conducted a full examination of the records and has emphasized only a portion of facts in the Draft, resulting in a faulty conclusion.

### **Approvals of Performance Incentive Recommended and Awarded to Employees Is Sufficiently Documented**

Management disagrees with OIPA's assessment that the preparation and approval of merit increases and performance bonuses is not documented. Agency practices were described to OIPA orally, including information about the oversight role of the Executive Director and Chief Deputy and the communication of approvals. OIPA did not request examples of approval documents during the audit. OIPA could have asked for additional information or documentation or told staff this was an area of concern for OIPA. This would have led staff to supply more records. OIPA has drawn conclusions without requesting or reviewing all available information. This being said, management acknowledges the opportunity to introduce additional controls with respect to documented approval of annual compensation adjustments (merit increases, performance bonuses, and equity adjustments). Since SANDAG does not have a compensation adjustment pool for FY 2021, staff will develop and introduce new procedures for FY 2022.

### **Bonuses Reconcile with Approved Bonus Amounts**

The Draft describes discrepancies between the amount of approved employee bonuses and the amounts actually paid. In response to the analysis described in the Draft, Human Resources verified bonus approval records and believes all bonuses have been paid correctly, consistent with the information reported by Payroll. Additional information can be provided to OIPA upon request. Management acknowledges the opportunity to

introduce additional controls and procedures with respect to recordkeeping and the communication of compensation information between Human Resources and Payroll staff.

## VII.

### **OIPA's Lack of Understanding of SANDAG's Complex Responsibilities and the Methodology that Should Be Used in Conducting Comparable Salary Surveys Has Led to Inaccuracy in the Draft**

Maintaining a robust Classification and Compensation system is a core element of the SANDAG Human Resources program. Management relies on consultants with technical expertise to support the various aspects of these programs. For example, with consultant assistance, the agency conducts periodic classification studies to comprehensively review and update the definitions and requirements for all agency positions; maintenance activities occur in between studies. With respect to compensation, SANDAG uses consultants to conduct salary surveys to maintain market competitive pay rates to attract and retain a high caliber workforce and to prepare recommendations for the agency's pay-for-performance program that is used to reward employees for their contributions.

The OIPA's discussion regarding maintenance of SANDAG salary ranges demonstrates a lack of understanding of the technical elements of compensation program management, as well as failure to gather complete information and accurately report information provided by staff about the methodology and practices SANDAG has adopted. For example, the Draft states SANDAG "did not rely on comparable governmental agencies of the same size or functions" when conducting salary surveys. This is inaccurate. Staff provided OIPA with data files prepared by the agency's outside compensation consultant during the FY 2016 and FY 2019 salary surveys. With respect to the FY 2019 survey results, staff also provided a summary of gathered data organized into three market groups (labeled Southern California, Other Regional Agencies, Private Sector) and advised OIPA the Southern California data set was used as the basis for evaluating the overall market competitiveness of existing salary ranges. For reference, the entities included in the Southern California market are City of San Diego, County of San Diego, Los Angeles County Metropolitan Transportation Authority, North County Transit District, Port of San Diego, Riverside County Transportation Commission, San Diego County Regional Airport Authority, San Diego County Water Authority, Southern California Association of Governments, and Transportation Corridor Agency. This group of agencies was selected by management and the consultant because they are comparable in size and complexity to SANDAG.

The Draft also states "SANDAG did not include all of its positions in its salary comparison surveys" and that "critical positions . . . are missing from the analysis." OIPA's comment demonstrates a lack of understanding of fundamental salary benchmarking processes and practices. Salary surveys typically include the core positions of an organization that are reasonably expected to exist in comparable entities. Other positions may be included in the survey depending on market and/or agency conditions, for example, when there are recruitment or retention issues. It is not standard practice to benchmark every position when conducting a salary survey. All SANDAG positions are reviewed when determining an appropriate salary range, not just those that are benchmarked to outside organizations. Internal equity and the relative value of a position to SANDAG are additional factors considered by management when evaluating assignment to a salary range. Given the highly technical nature of compensation data collection and analysis, and the expertise needed to conduct sound and

defensible salary surveys and establish salary ranges, SANDAG typically uses consultants to perform and support this work.<sup>41</sup>

The OIPA criticizes the methodology and basis used for recommending FY 2021 salary ranges and states “this does not reflect current market conditions.” Based on the Draft language, it appears OIPA has failed to verify, acknowledge, and report several key pieces of information provided to it by staff:

1. OIPA staff was informed that market data from two reliable compensation resources, the World at Work Annual Salary Budget Survey and the Mercer 2019/2020 US Compensation Planning Survey, was used to support the proposed salary range increases;
2. OIPA staff was informed that the proposed salary range increase was consistent with historical market data provided by the SANDAG compensation consultant and with past practice used to maintain the market competitiveness of salary ranges; and
3. OIPA has not acknowledged that the proposed increase to the FY 2021 salary ranges was prepared in early 2020 prior to the economic impacts of the COVID-19 health emergency and was subsequently withdrawn by staff as a recommendation in the FY 2021 program budget.

Management is unaware of any professional training OIPA staff may have in the field of salary surveys. For the Board’s reference though, management notes that SANDAG contracts with CPS HR Consulting (CPS HR) to perform work related to Classification and Compensation program management. Established as a self-supporting public agency in 1985, CPS HR provides a full range of human resource products, services, and consultation to more than 1,200 public sector and non-profit clients throughout North America. SANDAG began working with CPS HR in 2014.

### **Although SANDAG Job Duty Statements Could Be Improved, They Are Not Materially Deficient**

The report from OIPA discusses the agency’s current practices with respect to duty statements (SANDAG uses the terminology “job description”) and management acknowledges this is an area for improvement. That said, management takes exception to the over-generalizations included in the Draft that are based on limited occurrences or one-time events and statements of deficiencies. It is possible OIPA’s remarks stem from a lack of technical knowledge with respect to classification program management.

An illustration of OIPA’s limited knowledge in this area is the statement that the agency’s Classification Specifications (Class Specs) are “not aligned with laws and best practices” with further remarks noting insufficiencies. SANDAG’s Class Spec template was developed with guidance from expert consultants and contains all standard/best practice elements; the template was reviewed and updated during the last Classification Study, completed in 2016. OIPA seems to be confusing the concept of a Class Spec, which include examples of essential job functions, essential qualifications, and the minimum education and experience qualifications required for all positions assigned to the classification, with that of a duty statement

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<sup>41</sup> The OIPA’s conclusion that the salary ranges are inappropriate is misplaced. Courts will not interfere with a public agency’s determination that salaries are consistent with prevailing wages unless the action is fraudulent or so palpably unreasonable and arbitrary as to indicate an abuse of discretion as a matter of law. (See *City and County of San Francisco v. Boyd* (1943) 22 Cal.2d 685, 690.) Given the extensive salary surveys and analysis, SANDAG’s salary structure cannot be an abuse of discretion as a matter of law.



or job description, which are used to define the specific duties and responsibilities assigned to an individual position. OIPA has reached an inaccurate conclusion based on incomplete information and a difference in nomenclature.

Further, OIPA has not acknowledged the agency's existing practice with respect to the preparation of detailed position announcements that contain specific, custom descriptions of responsibilities, qualifications, and experiences (that tie back to the Class Spec) that are used for the recruitment and selection of candidates, and that are further developed into job descriptions as part of the new employee onboarding procedure. SANDAG's job descriptions have been prepared by staff with professional certifications and training in human resource management and administration.

## SECTION 2

### **The FY 2021 Budget Shows Lower Salaries and Benefits than the FY 2020 Budget and OIPA's Draft Cites to Irrelevant Information Relating to FY 2019**

OIPA starts Section 2 by stating that:

In May of 2020, the Board of Directors asked the OIPA to verify whether an increase to Administrative Salaries and Benefits in the FY 2021 Recommended Annual Program Budget was a result of pay increases to staff. Management's proposed total salaries and benefits costs was approximately \$51.6 million. Based on our review, the OIPA was able to confirm that the increase is, in fact, a result of salary increases due the reorganization that occurred in September 2019, which resulted in added positions for each layer of management, significantly increased Executive Leadership team, and unjustified salary increases and promotions to top management.

OIPA has mischaracterized facts and figures here. First, the FY 2021 Administrative Salaries and Benefits budget went down 2.6% in comparison to the FY 2020 Program Budget, not up as implied by the OIPA. Second, the Board's objective in asking the OIPA to examine the draft FY 2021 salary and benefit costs was to determine if any compensation increases for staff had been included in the FY 2021 Program Budget. The OIPA's May 15, 2020 report to the Board stated that the review of the proposed salary and benefits data was "inconclusive." The Draft notes that, in fact, the increase was due to salary increases in September 2019; this is not even relevant to the Board's inquiry as it concerns raises from the prior fiscal year, that were within the FY 2020 budget for salaries and benefits approved by the Board in spring 2019. Third, had the OIPA simply looked at staff salaries at the end of FY 2020, and compared to the beginning of FY 2021, OIPA could have accurately reported that there were no compensation increases, which is what staff reported in the FY 2021 Final Budget.

## VIII.

### **All Executive-Level Positions Are Actively Engaged in Agency Leadership and All Job Title Changes Are Justified by the Increased Duties Assigned**

OPIA states the SANDAG Executive Team was “greatly expanded” from 11 to 26 members as a result of the fall 2019 agency reorganization, implying there was a significant increase in the number of executive-level positions at SANDAG. In management’s opinion, OIPA has not considered all available information in drawing this conclusion. During discussions pertaining to the executive-level positions in the analysis phase of the audit, staff alerted OIPA to the existence of a position control document. The position control document is the inventory of approved and budgeted positions within the agency and is used as the input to the program budget each fiscal year. OIPA chose not to request or make reference to this available documentation. Rather, the OIPA selected various organization charts to support the OIPA’s opinion that the agency is “top heavy.”

The approved FY 2020 Program Budget included 23 executive-level positions (including the Executive Director and the Independent Performance Auditor). The approved FY 2021 Program Budget included 27 executive-level positions. Two of the four newly added positions are Limited-Term in nature and are not expected to be part of the agency’s management structure after 2-3 years; the other two positions were reclassifications of existing positions and do not represent a net increase to the total number of staff positions. As to the observation that the Executive Team “greatly expanded,” this is true, but as noted, not due to additional positions. Under the previous management structure, only certain executive-level positions were considered members of the Executive Team. As part of the leadership and oversight changes introduced during the 2019 reorganization, and to promote team cohesion and ensure clarity around agency initiatives and priorities, management redefined the term “Executive Team” to include all executive-level positions. In other words, prior to fall 2019, there were executive level positions that were not included in the Executive Team. If OIPA had reviewed additional documentation, and had more knowledge of the agency, it would likely have realized the assumption that all executives were part of the Executive Team, was inaccurate.

The OIPA infers that since there’s been no recent changes to SANDAG’s legislative mandates and authorities, there’s no justification for the restructuring of the executive team. OIPA fails to acknowledge the justification provided in a February 19, 2020 memo from the Executive Director to the OIPA (prepared in response to the OIPA’s SANDAG Organizational Structure: Summary Analysis and Recommendations report, January 2020), describing the systematic process used to analyze the organization and the goals underpinning the resulting organizational design. The OIPA’s comments infer some of SANDAG’s executives are not needed. Additionally, OIPA compares SANDAG to organizations that lack the same broad scope of work and complexity of responsibilities as SANDAG as expressed by its designated authorities and mandates. Both of these courses of thought are flawed as there is plenty of evidence supporting the uniqueness of SANDAG and its needs to reorganize and expand on an Executive Team that had not significantly changed in structure in many years.

The Board’s 2018 Plan of Excellence<sup>42</sup> included a commitment to examine the agency’s organization structure; this work was included as part of the strategic planning project undertaken in 2019. SANDAG hired an expert

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<sup>42</sup> <https://www.sandag.org/index.asp?fuseaction=about.excellence>

third party management consultant<sup>43</sup> to guide the project. The work included input provided by the Board of Directors, stakeholders, public, and staff and led to a set of recommendations designed to optimize SANDAG's overall performance through improvements to structure, operations, and culture. The organizational design portion of the work was a thoughtful and deliberative process. In management's opinion, the realignment of agency departments and other leadership changes have put a structure in place to better position SANDAG to execute on its mandates and authorities; to address issues of culture; and to grow organizational capabilities in new areas identified by the Executive Director; and to make the organization more effective through increased collaboration, innovation, and adaptability.

There's no better example of the increased collaboration than the work conducted by SANDAG in reaching a historic agreement to finally solve the ground transportation problem with the San Diego International Airport. The region struggled for more than four decades to address the congestion, air quality, and limitations on growth resulting from the lack of connectivity between the airport and the region's ground transportation system. With the agency reorganization, and an emphasis on increasing collaboration, staff worked cooperatively with partner agencies to develop and execute an agreement between the San Diego County Regional Airport Authority (SDCRAA), the Port of San Diego, the City of San Diego, and SANDAG that commits the agencies to work together for the first time to address a public transit connection to the airport, and commits the SDCRAA to contribute \$0.5B toward the solution.

In February 2019, the Board of Directors directed staff to stop development of the 2019 Regional Plan, which had not been able to reach the emissions reduction targets established by the State of California. Using a number of innovative methods, from data-driven planning, to human centered design, agile project management, and close coordination with representatives from the technology and innovation sectors, employees working under the guidance of the reorganized leadership team was enabled to deliver a bold, new vision for the region's transportation system, which is envisioned to address long-standing deficiencies around congestion and equity while meeting stricter legal mandates; and are preparing the 2021 Regional Plan in only two years, when the normal process takes four years.

In March 2020, the global pandemic swept across the nation resulting in the California Governor issuing an executive order for residents to shelter in place. SANDAG's Information Technology, Human Resources, and Business Operations teams, working under direction of the reorganized leadership team, demonstrated flexibility and adaptability in the face of a rapidly evolving health emergency. Within three business days, leadership developed, implemented, and executed a plan to pivot all non-essential SANDAG employees to a remote work setting. The foundation work that had been done in the prior months to establish modernizing the agency's technology infrastructure and service delivery methods as a priority agency initiative, completely unrelated to the pandemic, was a key enabler that allowed the organization to adapt quickly and comprehensively to the evolving environment brought on by COVID-19. A new mind-set and skill-set involving the disciplined sharing of information, the use of virtual stand-up meetings, and a focus on accountability – all resulted in the agency successfully shifting more than 90% of employees to work-from-home arrangements, while maintaining project deadlines and commitments and continuing programs and services.

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<sup>43</sup> This consultant firm, Performance Works, was evaluated as the most qualified and best value firm to SANDAG following a competitive procurement. The principal consultant that advised SANDAG on reorganization and executive level needs has more than 15 years of experience with organizational planning, workplace strategy, and change management, and is a published author on these topics.

The OIPA's contentions about SANDAG being "top heavy" are made without reference to any form of expert guidance, best practice, or benchmark by which one might determine an optimal number of executives to lead an organization of SANDAG's size and its wide ranging and somewhat unique mandates and authorities. Instead, the OIPA introduces a confounding comparison of the San Bernardino County Transportation Authority (SBCTA) to SANDAG. The inference is that the number of executives should be determined based the size of the organization or the size of the annual budget and since SBCTA has a similar number of employees and annual budget, the inquiry can end there.

According to the OIPA the SBCTA has 11 executives compared to SANDAG's 27 executives. The OIPA goes on to state the SBCTA and SANDAG have similarly sized FY 2021 budgets of \$973M and \$1,1793M respectively. What the OIPA fails to mention, however, are the significant dissimilarities between the mission of SBCTA and the mission of SANDAG. The SBCTA is a relatively small organization when compared to SANDAG, having five authorities and mandates<sup>44</sup> that it must carry out to achieve its mission. In comparison, SANDAG is a significantly more complex organization, and has a much broader scope, with a total of 30 authorities and mandates,<sup>45</sup> such as COG, CTA, CMA, RTC, SAFE, MPO, RPTA, SR-125 toll road, I-15 toll facility, Regional Toll Authority, Regional Census Data Center, ARJIS, Intergovernmental Review, Regional Housing Needs Assessment, Regional Beach Sand Replenishment, criminal justice clearinghouse, Service Bureau (fee-for-service), North County Multiple Habitat Conservation Program and so on. For FY 2021, the SBCTA has 65 staff (as reported in the SBCTA FY 2020-21 Budget<sup>46</sup>), with 11 of those designated as executives, resulting in an executive-to-staff ratio of 1:6 (16.9 percent). In FY 2021, SANDAG has a staff of 353 with 27 executives, resulting in an executive-to-staff ratio of 1:13 (7.6 percent), or 45 percent fewer executives per staff than the comparison referenced by the OIPA.

In addition, management contacted executive level staff at MTC and SCAG, neither of which have the same responsibilities as SANDAG, but both of which are at least as comparable as SBCTA. MTC reported a management to staff ratio of 1:21 and SCAG reported a ratio of 1:6. Again, the SANDAG ratio is 1:13.

In short, management relied upon experts to assist SANDAG in reorganizing in the most effective way possible, while preparing to meet all of its past obligations and new ones that are on the horizon. The upcoming responsibilities will be no small lift and the Board has entrusted management with preparation for these new risks and obligations. Responsibilities include development of a new border crossing into Mexico, as well as redevelopment of the Central Mobility Hub (assuming environmental clearances occur), development of partnerships with the private sector for public-private partnerships under Board Policy No. 040 to assist in bringing new revenue sources to the agency; and expanding data sharing and increasing capabilities in data science and analytics. Management is proud of its accomplishments under the new management structure, and those initiatives have greatly enhanced the region and SANDAG's mission. Management confirmed that the executive-to-staff ratio at SANDAG is lower than at other comparable agencies, indicating that SANDAG is not top heavy. On the other hand, OIPA has relied on a comparison with one other agency that actually is not

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<sup>44</sup> <https://www.gosbcta.com/about-us/about-sbcta/>; authorities are Council of Governments, County Transportation Commission, local transportation authority, service authority for freeway emergencies, and local congestion management agency.

<sup>45</sup> [https://www.sandag.org/uploads/publicationid/publicationid\\_4680\\_27586.pdf](https://www.sandag.org/uploads/publicationid/publicationid_4680_27586.pdf)

<sup>46</sup> <https://www.gosbcta.com/wp-content/uploads/2020/06/FY2020-2021-Annual-Budget-Adopted-1.pdf>

comparable, and based on their resumes, none of OIPA's staff are experts in organizational effectiveness or the ideal ratio of employees to management for an agency with SANDAG's responsibilities.

### **Management Engaged in a Thorough Needs Assessment and Developed an Actionable Staffing Plan to Achieve the Reorganization Objectives**

The Draft attempts to describe the overall changes that have been implemented in the past 12 months with respect to the agency's Executive Team. As previously stated, a comprehensive agency reorganization effort was initiated in July 2019 to establish an internal leadership team to ensure appropriate oversight and management of the agency as well as a department structure to improve operational effectiveness. The need for the reorganization was driven by the Executive Director's observation of potential risks to the agency resulting from leadership and management practices in need of enhancement, insights gained during the early stages of the strategic planning project, and to ensure the agency is accountable and has the capacity to perform its regional responsibilities.

The redesign of the organization structure was an iterative process and took place over several months. The Executive Director sought assistance and guidance from management consultants as well as trusted advisors both within and outside the agency. The reorganization discussions culminated in an outline of the optimal structure for the agency and the Executive Director requested a staffing plan be developed to achieve the new structure. The plan relied primarily on using the 23-existing executive-level positions that were included in the FY 2020 program budget and was achieved as follows:

- 9 positions were unchanged or had relatively minor changes to the scope of responsibilities (this includes the Executive Director and Independent Performance Auditor; some job titles were updated to more accurately reflect the roles)
- 9 positions were significantly changed with respect to the scope and nature of assigned responsibilities, such that reclassification of the position to a higher-level salary range was warranted
- 5 positions were significantly changed with respect to the scope and nature of assigned responsibilities and remained at the same relative level in the organization
- 2 positions were reclassified from senior or manager level positions to the Director I level
- 2 limited-term positions were added in FY 2020 to support key strategic initiatives and priority projects; these are not envisioned as long-term positions.

A reconciliation of the agency's executive-level positions, pre- and post-reorganization, has been provided as an attachment to this report.<sup>47</sup> The document also contains the underlying justification for the reclassification of positions. The justification information, in substantially the same form, was provided to OIPA during the audit.

The Draft contests a number of decisions made by management with respect to the reorganization and implies management used unscrupulous tactics to achieve its goal to establish a new department structure. The language in the Draft goes as far as to unfairly disparage certain individuals on the Executive Team. From management's perspective, all available tools, processes, and resources were employed to achieve what is highly regarded as a successful reorganization. The current Executive Team has been in place for approximately

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<sup>47</sup> Attachment Q, Reconciliation of Executive-level Positions and Reclassification Justifications.

nine months. The synergies and collaboration that were anticipated in the design have been demonstrated and will continue to mature as the agency continues to deliver on its regional responsibilities. At the individual level, each Executive has successfully demonstrated the capacity and capability to perform their assigned job duties, and there are many examples that could be cited that suggest Executive Team members are exceeding expectations.

### **Management Has Adequate Support for Increases to Executive Management’s Salaries**

The Draft report makes the assertion that “SANDAG did not perform a salary comparison survey for newly created positions before setting the salary ranges.” In an earlier section of this Response, management articulated that performing salary surveys that include every position in an organization is not a standard or best practice. Compensation experts recommend that only positions that are reasonably expected to exist in the comparison market be benchmarked. SANDAG followed this practice in conjunction with the reorganization by requesting that the agency’s outside compensation consultant re-benchmark the executive-level positions that were included in the 2018 salary survey; this included the Chief Deputy Executive Director, Department Director of Communications, Department Director of Finance, and Department Director of Land Use and Transportation Planning. The collected data was used to verify the market competitiveness of existing ranges.

The Executive Director made all compensation decisions for the executive-level positions during the 2019 reorganization consistent with his authority as stated herein. Factors such as an individual’s career history, relevant experience, demonstrated job performance, and pay equity were among the primary drivers in determining salary offers; other factors such as the position’s value/impact to the organization, consequence of error, market competitiveness, and alignment to the agency’s future vision were also contemplated. The Draft report opines that some of the promoted executives received unjustified pay increases. Management is unsure how the OIPA could draw such a conclusion based on the limited nature of the enquiry conducted. Further, the OIPA has suggested a traditional compensation practice of limiting promotional increases to a maximum of 10 percent. Such a methodology would not support the agency’s goal of ensuring pay equity on the basis of gender and ethnicity, as required by law. Nor would it support the agency’s goal of attracting, retaining, and rewarding an engaged, capable, and productive workforce and paying market rates for essential roles within the organization.

## **IX.**

### **Management’s Promotion Decisions Were Within Their Delegated Authority and Were Made with the Goals of Efficiency and the Best Interests of the Agency in Mind**

The OIPA has made a serious and unsubstantiated accusation of gross misconduct regarding management’s hiring and selection practices, particularly with respect to the agency reorganization that occurred in 2019. The accusation seeks to substitute unsubstantiated opinions of OIPA staff for the professional judgement of management acting with the benefit of expert consultant advice. The OIPA has evaluated management’s actions relative to the requirements of the State of California’s Civil Service Rules, which are not applicable to SANDAG. This is a fundamental error and in management’s opinion, demonstrates the OIPA’s lack of knowledge and understanding of SANDAG’s status as a regional government agency. SANDAG is not an arm

of state government, and the laws, regulations, and requirements by which SANDAG must operate are confusing to the untrained. Further, because the OIPA does not acknowledge the Employee Handbook as the agency's current policy document with respect to employment matters and has not objectively evaluated management's actions relative to the standards and expectations described within, it once again has reached a faulty conclusion.

**The State of California Civil Service Rules and the State's Merit System Services (MSS) Program Rules Do NOT Apply to SANDAG, There Is No One Year Limitation Period to Worry About, and OIPA Has Recommended a Course of Action that Could Expose the Agency to Litigation**

OIPA'S "Overview of Relevant Rules and Laws" appears to have been copied verbatim from the [California State Auditor's Audit Report Number I-2019-1](#) without attribution. This is significant as the cut and pasted language from the state's report - including its "Overview of Relevant Rules and Laws" heading title leads the reader to believe it is applicable to SANDAG, when in actuality, the State Civil Service Act does not apply to SANDAG at all. What OIPA has cited as relevant law is Article VII, Section 1 of the California Constitution, which applies only to employees of the State of California. As that section states:

- (a) The civil service includes every officer and employee of the state except as otherwise provided in this Constitution.
- (b) In the civil service permanent appointment and promotion shall be made under a general system based on merit ascertained by competitive examination.

While the state civil service rules may provide a model for the employment policies of local agencies, the OIPA should understand that application of the civil service rules as audit criteria against which to measure SANDAG's actions is wholly improper. Merely deleting the word "State" from the published report and inserting "SANDAG" in its place does not establish valid criteria.

Likewise, while certain local government agencies are subject to the state's Merit System Services (MSS) Program, administered by the California Department of Human Resources, application of these rules to a local agency is predicated upon that agency's receipt of specified types of federal funding pursuant to California Government Code sections 19800 – 19811. As specified in Government Code Section 19800:

The (California) Department of Human Resources is hereby vested with the jurisdiction and responsibility of establishing and maintaining personnel standards on a merit basis and administering merit systems for local government agencies where such merit systems of employment are required by statute or regulation as a condition of a state-funded program or a federal grant-in-aid program established under federal laws, including, but not limited to: the Social Security Act, as amended; the Public Health Service Act; and the Federal Civil Defense Act, as amended." These rules are referred to as the Federal Grant-in-Aid Merit System Requirements, and are mandated by the Federal Intergovernmental Personnel Act of 1970 (42 U.S.C. §§ 4728– 4763). This Act sets prescribed standards for merit systems for programs funded under one of the statutes or regulations specified in Appendix A of the Federal Office of Personnel Management's Standards for a Merit System of Personnel Administration (5 C.F.R. 900, Subpart F). The following federal aid programs are listed in the referenced Appendix A, thus triggering application of the state's MSS Program:

1. Food Stamp, Food Stamp Act of 1977, as amended; 7 U.S.C. 2020(e)(6)(B)
2. Employment Security (Unemployment Insurance and Employment Services), Social Security Act (Title III), as amended by the Social Security Act Amendments of 1939, Section 301, on August 10, 1939, and the Wagner-Peyser Act, as amended by Pub. L. 81-775, section 2, on September 8, 1950; 42 U.S.C. 503(a)(1) and 29 U.S.C. 49d(b)
3. Grants to States for Old-Age Assistance for the Aged (Title I of the Social Security Act); 42 U.S.C. 302(a)(5)(A)
4. Aid to Families with Dependent Children, (Title IV-A of the Social Security Act); 42 U.S.C. 602(a)(5)
5. Grants to States for Aid to the Blind, (Title X of the Social Security Act); 42 U.S.C. 1202(a)(5)(A)
6. Grants to States for Aid to the Permanently and Totally Disabled, (Title XIV of the Social Security Act); 42 U.S.C. 1352(a)(5)(A)
7. Grants to States for Aid to the Aged, Blind or Disabled. (Title XVI of the Social Security Act); 42 U.S.C. 1382(a)(5)(A)
8. Medical Assistance (Medicaid), Social Security Act (Title XIX), as amended, section 1902 (a)(4)(A); 42 U.S.C. 1396(a)(4)(A)
9. State and Community Programs on Aging (Older Americans), Older Americans Act of 1965 (Title III), as amended by the Comprehensive Older Americans Act Amendments of 1976, section 307 on October 18, 1978; 42 U.S.C. 3027(a)(4)
10. Federal Payments for Foster Care and Adoption Assistance, (Title IV-E of the Social Security Act); 42 U.S.C. 671(a)(5)
11. Occupational Safety and Health Standards, Williams-Steiger Occupational Safety and Health Act of 1970; Occupational Safety and Health State Plans for the Development and Enforcement of State Standards; Department of Labor, 29 CFR 1902.3(h)
12. Occupational Safety and Health Statistics, Williams-Steiger Occupational Safety and Health Act of 1970
13. Robert T. Stafford Disaster Assistance and Emergency Relief Act (42 U.S.C. 5196b), as amended; 44 CFR 302.4

Upon inquiry, OIPA would have determined that SANDAG is not a recipient of any of these federal aid programs and is not subject to the State of California's MSS Program. As noted in Government Code Section 19802, in the absence of receipt of any of the referenced federal funding sources, "Nothing in this chapter shall prevent any local agency from establishing its own merit system and determining thereunder the personnel standards to be applicable to its employees . . . ."

Public Utilities Code § 132355, which governs SANDAG, states:

Administrative authority for the consolidated agency shall be vested in the office of the executive director, subject to the direction and policies of the consolidated agency as



approved by the board. The executive director shall serve at the pleasure of the board and may appoint employees as may be necessary to carry out the functions of the consolidated agency.

As is discussed in detail elsewhere in this Response, the SANDAG Employee Handbook contains the only relevant procedures that should be considered as criteria in a good-faith assessment of management's hiring practices. The OIPA instead conflates rules of the State civil service system and other rules of unstated origin with those stated in the Employee Handbook to create inaccurate and misleading criteria.<sup>48</sup>

The OIPA has recommended that SANDAG vacate employment contracts that it alleges were entered into in bad faith or as a result of a mistake of law or fact.<sup>49</sup> Management believes this recommendation is based on OIPA's misguided belief that Government Code section 19257.5 applies. That statute, which allows a state agency to vacate the appointment of an employee within one year when there has been bad faith or a mistake of law or fact associated with the appointment, applies to employees of the state, not SANDAG employees. Furthermore, there has been neither bad faith, nor a mistake of law or fact, and the OIPA's inaccurate allegation and resulting recommendation, if taken, would expose SANDAG to litigation by its employees for breach of contract.

### **The Referenced Hiring Decisions Were Consistent with the Standards of the Employee Handbook**

Section 3 of the Employee Handbook sets forth the relevant criteria for assessment of the properness of the noted hiring decisions. The relevant provision provides:

The Executive Director is authorized to fill vacancies with qualified persons; the general policy of SANDAG is to ensure that the recruitment, selection, and hiring of Regular employees is accomplished in an open, competitive, and objective manner, and in a fully documented and timely fashion; and vacancies for Regular employee positions shall be filled via competitive recruitment processes except under specified circumstances including when the Executive Director determines that it is in the best interest of SANDAG to promote an existing SANDAG employee.<sup>50</sup>

The OIPA appears to take exception to any hiring or promotion decisions taken in the absence of a full and open process, opining that "this exception process allows SANDAG management to use unfair and non-competitive hiring practices when it suits their needs." While the exception is "non-competitive" by its very nature as an exception to the rule requiring competition, there is no basis for the OIPA's determination that it is inherently unfair. It does not allow SANDAG to stray from its Equal Employment Opportunity mandates (nor

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<sup>48</sup> By way of example, the state civil personnel rules require certain scoring criteria for candidates, competitive recruitment processes, a specific pay scale, and the like. The OIPA's findings of gross misconduct and abuse in these areas are based entirely on the unwarranted conclusion that SANDAG is subject to these state civil personnel rules. Because SANDAG is not subject to these rules, it is not required to follow the competitive recruitment, candidate scoring, or pay scale rules, among others, and it was instead free to follow its own standards derived from its legislatively-delegated authority.

<sup>49</sup> See, OIPA recommendation on page 64 of the Draft that SANDAG should, "[v]acate and properly re-advertise the position and follow the competitive hiring process for filling the position."

<sup>50</sup> Employee Handbook, Section 3.3.1.

does SANDAG stray from these mandates), which are regularly audited by the federal government. SANDAG has consistently been found to be compliant with these regulations, most recently in August of 2018 during a triennial review conducted by the Federal Transit Administration (FTA). OIPA does not offer any factual basis for why any particular hiring decision was either unfair or was not in the agency’s best interest. Instead it seeks to impose its own rules or those of state government without any legal basis.

SANDAG’s hiring practices are entirely consistent with those of other MPOs. Management contacted executives at other MPOs, such as MTC and SCAG, and confirmed that those agencies use competitive recruitments, but also allow the Executive Director and those with delegated authority to make appointments and promotions without competition when they deem it in the best interest of the agency.

**SANDAG’s Hiring Practices Are Fair, Objective, and Competitive**

SANDAG has a long-standing commitment to fair and equitable hiring practices, consistent with federal and state law. The agency has demonstrated sustained success in attracting and retaining a high-caliber workforce capable of delivering the agency’s complex work program on behalf of the San Diego region. SANDAG has not been subject to a claim of unfair or discriminatory hiring in at least 20 years, and overall, the SANDAG employee population is representative of the San Diego region workforce with respect to gender and ethnicity. These outcomes are a testament to the strength and effectiveness of the agency’s staffing program. Given the content of the audit report, it appears OIPA has myopically focused on the unique events associated with the 2019 reorganization to cast aspersions about the agency’s hiring and selection practices. In management’s opinion, an objective assessment would have considered historical data about the number of individuals selected for employment or promotion via competitive processes. Information supporting the agency’s past practices is provided below.

**SANDAG Competitive Selections – FY 2017 to FY 2020**

	<b>FY 2017</b>	<b>FY 2018</b>	<b>FY 2019</b>	<b>FY 2020</b>
<b>Competitive Recruitments Conducted</b>	39	37	37	31
<b>New Employees Hired</b>				
Competitively Selected	66	68	63	58
Appointed without Competition <sup>51</sup>	2	1	3	14
<b>Employee Promotions</b>				
Competitively Selected	9	11	21	15
Appointed without Competition	4	4	7	29

The audit report purports SANDAG has a “lack of consistency of processes for selecting candidates.” OIPA staff were provided with a verbal overview of the processes and activities that SANDAG has established and routinely uses to advertise job openings, consider applicants, and select candidates. In fact, the Independent Performance Auditor has successfully hired four employees in the past year following the agency’s established recruitment and selection processes. OIPA has drawn the conclusion that SANDAG “lacks formalized

<sup>51</sup> Most non-competitive new hire appointments were annuitants, rehired employees, and a few were sourced through temporary staffing firms when the firm provided only one qualified candidate. The law does not prohibit SANDAG from conducting non-competitive hiring and promotion decisions.

procedures to conduct interviews” due to the absence of a numerical scoring element in the evaluation of candidates in this phase of the selection process. OIPA has not acknowledged the other activities that typically occur prior to, during, and following interviews, all designed to identify well-qualified candidates in a fair, consistent, and equitable manner. OIPA has attempted to discredit SANDAG’s recruitment and selection program without any reasonable basis or justification and without citing to any requirement that numerical scoring be used during interviews. The audit report also states OIPA “could not determine which positions within SANDAG were filled by appointment rather than a competitive recruitment process.” Information to perform such an analysis was not requested by OIPA but is available upon request.

## X.

### **Employees Were Offered Promotions and/or Additional Benefits in Exchange for Employment Contracts with New Terms and Conditions as Permitted by Law**

OIPA asserts several unsubstantiated conclusions regarding the decision to transition SANDAG Regular employees to at-will status. Initially, OIPA states the Executive Director was not authorized to introduce such a change. Management’s response to Finding 1 in the audit report describes the actions taken by the Board of Directors to delegate administrative authority to the Executive Director, thus voiding this component of OIPA’s argument. Next, OIPA contends the decision to introduce the at-will status for those classified as “Regular” employees in the Employee Handbook creates a problematic disparity among staff. This contention is not supported by the facts.

SANDAG has successfully operated with a mix of for-cause and at-will employees for almost 20 years. If OIPA had conducted and/or presented a complete assessment of the employment status conveyed to the four types of employee positions used by the agency, the Draft report may have reflected that SANDAG initially introduced the Limited-Term position category in 2002,<sup>52</sup> the Temporary, Intern, Part-time, and Seasonal (TIPS) category in 2005, and the Tolling Operations Personnel (TOP) category<sup>53</sup> in 2012.<sup>54</sup> Employees holding any of these positions were hired on an at-will basis. Currently, approximately 59% of SANDAG’s current employee population is hired on an at-will basis. This information was provided to OIPA, but not included in the Draft. The 18 year history of SANDAG having at-will employees, the fact that a majority of agency employees are at-will, and the fact that 79% of employees report feeling engaged (i.e. having purpose and making meaningful contributions) to SANDAG,<sup>55</sup> undermines the Draft’s statements that the disparity in employment status will lead to disruption and morale issues.

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<sup>52</sup> The Executive Committee and Board agreed to allow limited term employees to be "employed for a specified period of time related to a specific project or grant funded program" as part of their recommendation and approval of the FY 2002 budget.

<sup>53</sup> Effective July 1, 2019, the TOP category ceased to exist.

<sup>54</sup> The category of TIPS employees was added for the first time as part of the 2005 amendments to the Employee Handbook and the TOP employee category was added following the purchase of the SR 125 toll road franchise as part of the 2012 amendments to the Employee Handbook.

<sup>55</sup> Attachment R, Excerpt from 2018 Employee Engagement Survey.

OIPA states there is no formalized procedure for determining when an employment contract versus an offer of employment letter is used as the instrument for extending a job offer. This is incorrect. Management has provided clear direction to Human Resources as to when employment contracts are to be utilized in the administration of the staffing program.

Finally, OIPA states that voluntary acceptance of at-will terms and conditions of employment violates an employee's rights to appeal disciplinary actions. While it is true that employees in the state civil service have this right pursuant to state law, SANDAG employees are not covered by this law. California employment laws allow for employees and employers to agree to at-will employment terms. (*Lucas v. Santa Maria Public Airport Dist.* (1995) 39 Cal.App.4th 1017, 1026 [airport district's contract with its general manager was proper].) Additionally, OIPA has not acknowledged that at-will employees have the right to file a grievance with management on a range of other matters to provide a check on any potential abuse of discretion by management. These rights exist pursuant to Chapter 9 of the Employee Handbook and when applicable, pursuant to the Discrimination and Harassment Prevention Policy, which is an appendix to the Employee Handbook.

## COMMENTS – SANDAG’s Independent Performance Auditor’s Comments on the Response from SANDAG’s Management

The OIPA thanks SANDAG management for its response and the additional information it provided during the report phase of the audit.

However, the OIPA would also like to address the numerous unfounded comments in management’s response, which includes:

- Auditors lack objectivity and the auditor’s opinions of management actions are subjective.
- Auditors excluded facts.
- Auditors reached pre-determined conclusions.
- Auditors had unwarranted suspicion of staff.
- Auditor’s conclusions are based on a lack of thorough evidentiary and investigatory support.
- Management’s call for the OIPA to have a peer review of the office before the audit report has been finalized.<sup>16</sup>

Management’s seeks to discredit the OIPA in an obvious tactic to shift the report reader’s attention away from management’s role in the issues identified in the audit report.

We remind the reader that the OIPA was statutorily created by AB 805 after leaders within the government sought to provide more oversight, hold management accountable, and restore public trust in SANDAG. Management’s accusations related to the OIPA’s lack of objectivity, subjective opinions, and suspicion towards staff are baseless and unsupported. Further, management appears to slander the OIPA and staff by stating that the work performed was not in accordance with professional auditing standards.

During the reporting stage of this audit, staff within the OIPA were subjected to instances of what appeared to be retaliatory and hostile tactics to discredit staff and the Office of the Independent Performance Auditor. SANDAG management engaged in this behavior, rather than cooperating and providing evidence that would allow the OIPA to further refine the issues presented in the audit report. Though the OIPA will not disclose the instances of inappropriate behavior by SANDAG management that occurred within our comments on management’s response, the OIPA found this behavior to be unprofessional and unusual given management’s assertion that it

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<sup>16</sup> The OIPA questions why management perceived it was necessary to include several paragraphs related to the requirements and experience of auditors necessary to perform audits, the background of this report included the professional standards used to perform the audit, and the inclusion of this information seems improper and out of place in management’s response to issues identified within the report regarding SANDAG’s performance and compliance related to salaries and compensation for the agency within the audit report.

intends to strengthen controls within the organization. Further, rather than provide additional documentation, the management response includes numerous claims that could not be substantiated through supporting documentation and/or management's justifications of actions that the OIPA found questionable and/or lacking in good faith with SANDAG's Board of Directors, employees, various stakeholders, and the general public whose tax dollars are used to fund the agency.

According to the 2018 Government Auditing Standards (Yellow Book or generally accepted government auditing standards (GAGAS)) Application Guidance: GAGAS Conceptual Framework Approach to Independence Section 3.35 "For consideration of auditor independence, offices or units of an audit organization, or related or affiliated entities under common control, are not differentiated from one another. Consequently, for the purposes of evaluating independence using the conceptual framework, an audit organization that includes multiple offices or units, or includes multiple entities related or affiliated through common control, is considered to be one audit organization. Common ownership may also affect independence in appearance regardless of the level of control."

The Yellow Book Section 3.42 states that examples of circumstances that create undue influence threats for an auditor or audit organization include existence of the following:

- a. External interference or influence that could improperly limit or modify the scope of an engagement or threaten to do so, including exerting pressure to inappropriately reduce the extent of work performed in order to reduce costs or fees.
- b. External interference with the selection or application of engagement procedures or in the selection of transactions to be examined.
- c. Unreasonable restrictions on the time allowed to complete an engagement or issue the report.
- d. External interference over assignment, appointment, compensation, and promotion.
- e. Restrictions on funds or other resources provided to the audit organization that adversely affect the audit organization's ability to carry out its responsibilities.
- f. Authority to overrule or to inappropriately influence the auditors' judgment as to the appropriate content of the report.
- g. Threat of replacing the auditor or the audit organization based on a disagreement with the contents of an audit report, the auditors' conclusions, or the application of an accounting principle or other criteria.
- h. Influences that jeopardize the auditors' continued employment for reasons other than incompetence, misconduct, or the audited entity's need for GAGAS engagements.

In its response, SANDAG's management states that patterns emerged in the audit, including that statements in the report were factually incorrect and potentially

misleading because complete records and information were not sought or used by the OIPA. On the contrary, the OIPA made numerous requests to management for supporting documentation. When made available by management, the OIPA used documentation as the basis for completing audit steps, procedures, and testing. When documents were not made available by SANDAG management and staff, the OIPA followed up in writing and performed interviews with staff and management to perform audit work. As a result, and as disclosed in the audit report, the OIPA relied on inquiry, review, and analysis of supporting documentation to conclude as to the performance and compliance of SANDAG with respect to salaries and compensation for the agency.

Throughout its response, management states it has limited knowledge of auditing and auditing standards, and states that auditors are “not legal practitioners, and certainly not judges.” To clarify the role of auditors in government, the Yellow Book states that audits provide essential accountability and transparency over government programs. Government auditing provides the objective analysis and information needed to make the decisions necessary to help create a better future. The professional standards in the Yellow Book provide a framework for performing high-quality audit work with competence, integrity, objectivity, and independence to provide accountability and help improve government operations and services.

The Yellow Book also directs auditors of the requirements for assessing and addressing fraud throughout the audit engagement. Whether an act is, in fact, fraud is determined through the judicial or other adjudicative system and is beyond the auditor’s professional responsibility. Which is why, within the report, the OIPA included recommendations to the Board that additional reviews should be performed based on the likelihood that fraud, waste, or abuse occurred.

SANDAG also asserts that the OIPA’s report includes an accusatorial tone and use of legal terms in the report. Based on GAGAS, the tone and layout of the audit report is entirely consistent with auditing standards. As such, and with the numerous examples of management override, abuse, and waste of taxpayer dollars, the OIPA took an appropriate tone and made clear the effects of SANDAG’s actions on employees and to other stakeholders as required by professional auditing standards. As shown in our report, the OIPA used a wide variety of techniques to enhance the clarity and understandability of the audit report for its readers. It is understandable that SANDAG management may feel that this approach is “inflammatory”, however this statement is once again directed to discredit the OIPA and the audit report, and shift scrutiny of issues identified in the audit report.

The Yellow Book lays forth that the purpose of the audit report is to clearly communicate the result of the audit to those charged with governance (SANDAG’s Board of Directors), the appropriate officials of the audited entity (SANDAG’s management) and the appropriate oversight officials (various stakeholders at various levels of government and the general public) and to facilitate follow-up to determine whether appropriate corrective actions have been take to address issues that were identified in the report. Clarity means the report is easy for the intended user to read and understand, though legal terms were necessary in some instances, the OIPA defined technical terms, abbreviations, and acronyms for readers. The Yellow Book also suggests that auditors use highlights, summaries, titles, topic sentences, and visual aids to bring the reader’s attention to the overall message.

With respect to the OIPA's failure to address multiple outside, independent reviews that SANDAG has commissioned, and paid for with taxpayer funding, this assertion by management is entirely unfounded. Specifically, if during the fieldwork phase of the audit, when management asserted that it had made decisions based on work performed by consultants or other entities outside of the agency in order to make decisions for the agency, and provided supporting documentation, then the OIPA included the supporting documentation in the OIPA analysis. It is important to note that SANDAG management's decision-making process, whether based on external or internal analysis and information, is the sole responsibility of the management.

Further, with respect to management's statements that the OIPA attributed mal intent to staff without having gathered complete information. This too, is an incorrect statement by management. In the context of GAGAS, the OIPA applied the requirements and application guidance of Findings, which requires that when auditors identify findings, they should develop criteria, condition, cause, and effect of the findings to the extent that these elements are relevant and necessary to achieve the audit objectives.

The development of a finding includes the detection of waste, which is related primarily to mismanagement, inappropriate actions, and inadequate oversight, and abuse which is behavior that is deficient or improper compared to the behavior that a prudent person would consider reasonable and necessary business practices given the facts of circumstances. In the cases where SANDAG management's actions were wasteful or abusive, the OIPA reported this information as required by GAGAS.

Finally, with respect to management's concerns that the Draft Audit Report uses employee job titles in instances where only one person holds office, and therefore the personnel matters are subject to heightened confidentiality. The OIPA reviewed and found that confidential and sensitive information will not be presented within the Final Report. Specifically, the OIPA redacted employee numbers that were presented within the Draft Report that could be used by management to identify employees within the findings and implement recommendations. As for position titles, the information is already a matter of public record, and is therefore not confidential or sensitive in the context of the audit.

As stated, the OIPA followed GAGAS to evaluate SANDAG's internal controls and adherence to applicable laws, regulations and policies with respect to salaries and benefits. The OIPA requested that SANDAG's management provide their response to the audit results within 11 days – management was invited to review the findings, provide additional supporting documentation, and engage the OIPA to seek clarification and/or guidance in developing a response and plan of action to address the recommendations.

SANDAG's management disclosed the confidential Draft Audit Report to non-management personnel without the appropriate use of non-disclosure agreements and incurred additional costs to taxpayers to perform a review of the Draft Audit Report and to develop management's response during the management response phase of this audit. Specifically,

- Management consulted with on-call outside counsel though SANDAG currently employees General Counsel, Special Counsel, and a Deputy General Counsel in addition to additional legal staff within the office. A review of the



contract with the consultant showed that the consultant is not utilized for specialty areas of the law, rather the consultant is on call to perform several of the same duties for which SANDAG's General Counsel and its staff was hired to perform. Thus, hiring external legal counsel to respond to the Draft Audit Report resulted in an additional cost to taxpayers.

Prior to the start of this audit, SANDAG's Executive Director informed the Board of Directors that the OIPA should seek state mandated reimbursement or SANDAG should increase SANDAG's membership fees in order to fund positions within the OIPA. Yet, management incurred additional costs to the agency to defend the issues identified in the report. The result of lack of funding for the OIPA, which provides oversight for a government agency with an annual budget of approximately \$1.3 billion, is that OIPA auditors frequently worked 60 plus hour weeks to deliver the Draft Audit Report to the Board of Directors by the requested August 2020 deadline.

- Management provided a prior SANDAG employee with the Draft Audit Report, only requesting the employee sign a non-disclosure and pro-bono agreement after providing the Draft Audit report. The former employee has retired from service but was the consultant responsible for evaluating and suggesting changes to SANDAG's organizational structure. *A fact that SANDAG did not disclose during the fieldwork stage of the audit.* Further, a review showed that SANDAG had improperly substituted the employee as a subcontractor on an existing contract in order for the reorganization assessment to be performed. SANDAG's management stated that consultant/subconsultant did not provide a finished work product that was used by management to perform the reorganization of management.

As SANDAG could not provide a basis or supporting documentation for the use of the former employee as the consultant, and the former employee could be used for future consulting engagements, the OIPA noted that the use of the former employee to review the Draft Audit Report and support legal in its development of a management response on a pro-bono presents a serious potential for conflict of interest for SANDAG and the prior employee for future engagements with SANDAG.

- Management also informed OIPA that other outside parties were provided portions of the confidential draft report that had not signed a confidentiality statement.

To provide clarity and perspective, we are commenting on SANDAG management's response to our audit. Based on our review of supporting documentation, and the information provided by SANDAG management, the OIPA made changes to the body of the Findings II and VI.

In addition, the OIPA disagrees with SANDAG's assertions that management's actions are allowable or justifiable. The basis for the findings within the report are based on the OIPA's review of the laws, regulations, Board documents and supporting documentation provided by SANDAG. As reported, in many cases, the OIPA found management's actions were inconsistent with the fiduciary responsibilities of a governmental agency funded by taxpayers.

Management's response includes several points that are not relevant to the findings, are incorrect, or the opinion of management that are not supported by documentation. The OIPA's position is that the information contained within the body of the report are supported by the OIPAs workpapers. For those areas where additional clarification was needed within the report, the OIPA has included comments below. The numbers below correspond to the numbers we have placed in the margin of management's response.

- Comment 1** Finding I - Based on our review of supporting documentation, and the information provided by SANDAG management, the OIPA made changes to the body of the finding and included additional recommendations within the report to clarify that the role of the Board is to govern the agency, and that the responsibility to govern cannot be delegated.
- Comment 2** While management's response states that Board and Committee reports and minutes cited to in this report were obtained from SANDAG's server known as the M drive, in areas searchable by all SANDAG staff, including the OIPA. During an interview with General Counsel, the OIPA informed General Counsel that auditors were unable to identify the records pertaining to the creation and/or abolishment of SANDAG's Administrative Rules and Regulations. During inquiry, General Counsel stated that SANDAG does not have the M drive anymore, however all of the Board Policies are maintained.
- Comment 3** As stated in the report, SANDAG was statutorily created by SB 1703, and pertinent sections of the PUC were referenced within the report. With respect to the Board of Director's governance of SANDAG and other MPO's throughout California, the OIPA did not evaluate and compare the SANDAG's governance structure to that of MPO's within California, because the statutorily authority for the governance of SANDAG is provided for in SB 1703 and clarified in AB 361. Consequently, the OIPA used existing legislation in the evaluation of SANDAG's governance processes rather than comparison to MPOs.
- Comment 4** The OIPA would like to inform readers that the system of checks and balances in government was developed to ensure that no one branch of government would become too powerful. Checks and balances divides power between the three branches of government—legislative, executive and judicial—and includes various limits and controls on the powers of each branch.

The OIPA did not review SANDAG for appropriate “checks and balances” of the Executive Director’s authority to set or impose policies for the agency as SANDAG is not one of the branches of governments. Rather, the OIPA reviewed current practices for appropriate internal controls and/or compliance with applicable law, regulations, policies and best practices.

The Draft Audit Report was amended to include the response made by management and clarify that under applicable sections of the PUC, the Board of Directors cannot delegate its responsibility to govern the agency to SANDAG’s Executive Director.

**Comment**  
**5** As stated within the report, the OIPA would like to remind readers that Board was not responsible for the creation or approval of SB 1703. Rather the Legislative Process is the process of government by which bills are considered and made laws. The California State Legislature is made up of two houses: the Senate and the Assembly. There are 40 Senators and 80 Assembly Members representing the people of the State of California.

Further, a review of the documents provided do not demonstrate or contain wording that supports management’s assertion that the Board wanted the Executive Director to have authority over the administrative policies of the agency.

**Comment**  
**6** Management states that the OIPA contends in the Draft that there has been an “abuse of power” as a result of the Board not having control over the hiring, promotion, pay, classification, and terms of resignation for employees. Further, management asserts that the OIPA’s report is incomplete and the findings are therefore erroneous.

In Finding I, the OIPA reported that management had improperly assumed control of responsibilities for governing the agency. Specifically, management assumed control of the Administrative Rules and Regulations, which served to clarify the boundaries of the Executive Director’s authority to appoint, promote, transfer, discipline, and terminate employees.

Finding I also addressed that the consequences of management setting Board policy. Specifically, management was able to override established controls the Board had set with respect to hiring, promotion, pay, classification, and terms of resignation for employees. The OIPA amended the report to clarify the effects of the issues identified within the body of the report.

Management asserts that OIPA’s report is incomplete, however management did not provide additional supporting documentation or specify the information that was missing from the Draft Audit Report within this section of its response. As a result, OIPA could not verify whether documentation reviewed by the OIPA was incomplete.

The OIPA amended the finding to include additional criteria to clarify that the creation of Board policies and direction is a responsibility of the Board, and that responsibility cannot be delegated to the Executive Director.

**Comment 7** Finding IX - The Draft Audit Report did not state or imply that SANDAG was an arm of the State, but rather that as a public agency that is funded by taxpayers, SANDAG's current practices are not aligned with the practices of other governmental agencies, including the State, with respect to hiring.

Based on additional information provided by management during the reporting phase of the audit, the OIPA amended the finding to clarify that management did not adhere to Board policy for fair, open, and competitive hiring.

**Comment 8** The OIPA did not rely on Government Code Section 19257.5 and is not aware of SANDAG's reasons for citing the code. As was made clear to SANDAG management on a number of occasions, the Board requested the OIPA to complete the Salaries and Compensation Audit by July 2020. Further, there are some time sensitive audit recommendations that the Board should consider, but the OIPA notes that those recommendations are not related to the aforementioned code.

**Comment 9** Finding IX, the report was amended to clarify that management's changes to Board policies and direction related to hiring practices, within the Employee Handbook, were not Board approved. SANDAG's Board is responsible for the governance of the agency, and the Board's responsibility to govern the agency cannot be delegated to management.

Though, in its response management acknowledges that the OIPA is one of the areas within the agency that followed SANDAG's established recruitment and selection process. However, because SANDAG did not have established scoring procedures for candidate, the OIPA had to develop additional procedures and questions to ensure that the process was fair.