Board of Directors Agenda
Friday, September 18, 2020
9 a.m. to 12 p.m.
**Teleconference Special Meeting**

Agenda Highlights

- **Salaries and Compensation Performance and Compliance Audit**

**MEETING ANNOUNCEMENT AMIDST COVID-19 PANDEMIC:**

The Board of Directors special meeting scheduled for Friday, September 18, 2020, will be conducted virtually in accordance with Governor Newsom’s State of Emergency declaration regarding the COVID-19 outbreak, Executive Order N-29-20, and the Guidance for Gatherings issued by the California Department of Public Health. Board Members will primarily participate in the meeting virtually, while practicing social distancing, from individual remote locations.

There are a few options for public participation:

- At the time of the meeting, listen to the audio stream through [sandag.org](http://sandag.org)
- Observe the meeting via Zoom. To participate via Zoom webinar, click the link to join the meeting: [https://zoom.us/j/98278024776](https://zoom.us/j/98278024776)
- To participate via iPhone one-tap: US: +16699006833, 98278024776# or +12532158782, 98278024776#
- To participate via Telephone, dial a number based on your current location: US: +1 669 900 6833 or +1 253 215 8782 or +1 346 248 7799 or +1 301 715 8592 or +1 312 626 6799 or +1 929 205 6099
- Webinar ID: 982 7802 4776
- International numbers available: [https://zoom.us/u/aAHV2pT4u](https://zoom.us/u/aAHV2pT4u)

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**Public Comments:** Persons who wish to address the members on an item to be considered at this meeting, or on non-agendized issues, may email comments to the Clerk at [clerk@sandag.org](mailto:clerk@sandag.org) (please reference: “September 18 Board Meeting” in your subject line and identify the item number(s) to which your comments pertain). Comments received by 4 p.m. on Thursday, September 17, will be provided to members prior to the meeting. If you desire to provide a live verbal comment during the meeting, please join the Zoom meeting either by computer or phone. At the time for public comments, members of the public will be advised to ‘Raise Hand’ if they wish to provide comments. The ‘Raise Hand’ feature can be found on the Zoom toolbar for those who are joining via computer or by entering *9 for those who joining via telephone only. The Clerk will call on members of the public by name for those joining via a computer and by the last three digits of your telephone number for those joining via telephone. All comments received prior to the close of the meeting will be made part of the meeting record.
Welcome to SANDAG. Members of the public may speak to the Board of Directors on any item at the time the Board is considering the item. Public speakers are limited to three minutes or less per person. The Board may only take action on any item appearing on the agenda.

In order to keep the public informed in an efficient manner and facilitate public participation, SANDAG also provides access to all agenda and meeting materials online at sandag.org/meetings. Additionally, interested persons can sign up for email notifications at sandag.org/subscribe.

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如有需要，我们可以把SANDAG议程材料翻译成其他语言。

请在会议前至少72小时打电话(619)699-1900提出请求。

Closed Captioning is available

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Message from the Clerk

In compliance with Government Code §54952.3, the Clerk hereby announces that the compensation for legislative body members attending the following simultaneous or serial meetings is: Executive Committee (EC) $100, Board of Directors (BOD) $150, and Regional Transportation Commission (RTC) $100. Compensation rates for the EC and BOD are set pursuant to the SANDAG Bylaws, and the compensation rate for the RTC is set pursuant to state law.

Mission Statement

The 18 cities and county government are SANDAG serving as the forum for regional decision-making. SANDAG builds consensus; makes strategic plans; obtains and allocates resources; plans, engineers, and builds public transit; and provides information on a broad range of topics pertinent to the region’s quality of life.

San Diego Association of Governments · 401 B Street, Suite 800, San Diego, CA 92101-4231
(619) 699-1900 · Fax (619) 699-1905 · sandag.org
## Board of Directors Special Meeting
### Friday, September 18, 2020

<table>
<thead>
<tr>
<th>Item No.</th>
<th>Action</th>
</tr>
</thead>
<tbody>
<tr>
<td>1.</td>
<td>Public Comments/Communications/Member Comments</td>
</tr>
<tr>
<td></td>
<td>Members of the public shall have the opportunity to address the Board of Directors on any issue within the jurisdiction of SANDAG that is not on this agenda.</td>
</tr>
</tbody>
</table>

**Reports**

| +2. | Salaries and Compensation Performance and Compliance Audit |
|     | Discussion/ Possible Action |
|     | The Board of Directors is asked to consider the Salaries and Compensation Performance and Compliance Audit. |
|     | +2A. SANDAG Office of Independent Performance Auditor |
|     | +2B. SANDAG Management |
|     | +2C. SANDAG Audit Committee |

| 3. | Upcoming Meetings |
|    | Information |
|    | The next Board meeting is scheduled for Friday, September 25, 2020, at 9 a.m. |

| 4. | Adjournment |
|    | Next to an agenda item indicates an attachment |

Overview

As part of the approved audit plan and further requested by members of the Board, the Office of the Independent Auditor (OIPA) performed an audit on Salaries and Compensation Performance and Compliance; and based on results of the risk assessment performed by OIPA, the audit was determined to be a priority.

Key Considerations

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, to ensure that good system controls are in place including written policies and procedures, and to 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 FY 2021 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.

The 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 human resources and payroll system. The data from Ceridian did not reconcile to Integrated Master Budget Model (IMBM) system, which is used for SANDAG 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 (GAGAS) 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 opinion that the material findings, disclosed within the report, were a result of significant weaknesses in SANDAG governance and system of internal controls. Specifically, the OIPA identified that the agency 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.
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.”

**Next Steps**

The OIPA requests that the Board direct SANDAG Management to work with OIPA to develop a Corrective Action Plan and bring it back to the Board for discussion and approval.

As required under AB 805 and GAGAS, the final report will be posted to the OIPA website.

*Mary Khoshmashrab, Independent Performance Auditor*

Key Staff Contact: Mary Khoshmashrab, (619) 595-5323, mary.khoshmashrab@sandag.org

Attachments:
1. OIPA PPT Presentation to the Board
Office of the Independent Performance Auditor

Salaries and Compensation Performance and Compliance Audit

Presented to the Board of Directors on September 18, 2020
The Purpose of an Audit

• Audits provide:
  ➢ Essential accountability and transparency over government programs.
  ➢ Objective analysis and information needed to make the decisions necessary to help create a better future.

The OIPA follows Government Auditing Standards

Framework for performing high-quality audits

✓ Competence
✓ Integrity
✓ Objectivity
✓ Independence.
## Steps of the Audit Process

1. Preliminary/Planning
2. Fieldwork
3. Reporting
4. Tracking
   - Recommendations (e.g. Corrective Action Plan)

- **Performance** audits measure efficiency and effectiveness
- **Compliance** audits evaluate compliance with applicable laws, regulations and governing policies
What’s in a Finding

1. Condition – *explains what went wrong*
2. Criteria – *explains what should be happening*
3. Cause – *explains why the condition occurred*
4. Effect – *explains the impact of the condition*
5. Recommendations – *addresses the condition and the cause*
• Audit Committee approved this audit as part of the Revised Audit Plan in February 2020 and presented to Board of Directors in March 2020.

• The objective of the audit was to:
  ➢ *evaluate pay scales for competitive talent,*
  ➢ *ensure good system controls are in place,*
  ➢ *determine compliance with laws, regulations, policies, and procedures,*
  ➢ *review other compensation (bonuses, severance packages, and other benefits) provided to SANDAG employees.*
Thank you, especially staff of:

- Human Resources
- Finance
- Information Technology
- General Counsel
- Members of the SANDAG Executive Team and the Executive Director
- Staff and Management throughout SANDAG who participated in agency wide risk assessment and/or audit
An audit of SANDAG’s salaries and compensation has never been performed before.

Audit Highlights accompanies the full report.

<table>
<thead>
<tr>
<th>Background &amp; Overview</th>
</tr>
</thead>
<tbody>
<tr>
<td>In 2019:</td>
</tr>
<tr>
<td>• 390 full time employees and 33 temporary employees</td>
</tr>
<tr>
<td>• $35.5 million allocated for salaries</td>
</tr>
<tr>
<td>• $17 million allocated for employee benefits</td>
</tr>
<tr>
<td>• In FY2021 Budget approx. 40 positions were eliminated.</td>
</tr>
</tbody>
</table>
Audit Summary:

- Significant weaknesses in SANDAG’s governance and system of internal controls.
- Missing key policies and procedures to ensure compliance with laws, regulations, and best practice.
- Previous internal audit function not aligned to ensure issues were presented to the Audit Committee and Board of Directors.

Scope limitation:

- Audit impacted by the lack of data integrity in key human resources and payroll systems.
- Errors in Ceridian system reports. (Ceridian is the human resources and payroll system).
- Ceridian data did not reconcile to SANDAG’s Integrated Master Budget Model (IMBM) system, which is used for SANDAG’s budgeting and salary schedules.
<p>| | |</p>
<table>
<thead>
<tr>
<th></th>
<th></th>
</tr>
</thead>
<tbody>
<tr>
<td>1.</td>
<td>Governance of SANDAG – 4 recommendations</td>
</tr>
<tr>
<td>2.</td>
<td>Severance Payments to Resigned Employees – 3 recommendations</td>
</tr>
<tr>
<td>3.</td>
<td>Bonuses &amp; Salary Increases to Executive Level Employee – 3 recommendations</td>
</tr>
<tr>
<td>4.</td>
<td>Breach of Fiduciary Duty – 6 recommendations</td>
</tr>
<tr>
<td>5.</td>
<td>Weakness in Financial Controls – 6 recommendations</td>
</tr>
<tr>
<td>6.</td>
<td>Disparity in Productivity Program – 4 recommendations</td>
</tr>
<tr>
<td>8.</td>
<td>Increased Number of Executive Managers and their Salaries – 4 recommendations</td>
</tr>
<tr>
<td>10.</td>
<td>Use of At-Will Employment Contracts – 1 recommendation</td>
</tr>
</tbody>
</table>
Management is setting policy for key human resource functions and the Board of Directors does not oversee or approve these policies.

- The Board was not informed of its legal responsibility to oversee and approve administrative policies by management or counsel.
- Missing a detailed paper trail of approvals and revisions made to the Administrative Rules and Regulations through the years.
- Board Bylaws and policies became inconsistent and confusing over time, & changes around administrative policy did not include an impact statements.

Since management is setting policy is should be implementing, a conflict of interest exists. There is significant risk that management could make changes to board policy and override established controls.
Office of the Independent Performance Auditor

Recommendations:

1. Assume ownership of and update the Administrative Rules and Regulations.

2. Strengthen and amend the Board’s Bylaws and Policies.

3. Evaluate retaining General Counsel for the Board to ensure that the Board is kept aware of its responsibility for governance of the agency and documents are properly retained.

4. Require management to acknowledge awareness and compliance with Board Bylaws, Policies and Administrative Rules and Regulations and other direction upon hire and annually thereafter.

Report pages 35-36
Three regular employees were paid approximately $337,598 in severance payments upon their resignation from the agency without Board approval or notification to the Board.

Table 1 - Payments to Resigned Employees

<table>
<thead>
<tr>
<th>Employee Position</th>
<th>Purpose of Payment</th>
<th>Amount Paid</th>
</tr>
</thead>
<tbody>
<tr>
<td>Chief Deputy Executive Director</td>
<td>Severance Payment</td>
<td>$115,991.20</td>
</tr>
<tr>
<td></td>
<td>Unused Sick Leave Paid in Excess of 25% of Balance</td>
<td>$110,519.54</td>
</tr>
<tr>
<td>Director</td>
<td>Severance Payment</td>
<td>$48,781.20</td>
</tr>
<tr>
<td>Director</td>
<td>Severance Payment</td>
<td>$62,306.40</td>
</tr>
<tr>
<td><strong>TOTAL PAYMENT</strong></td>
<td></td>
<td><strong>$337,598.34</strong></td>
</tr>
</tbody>
</table>

- **SANDAG has no policy for paying severance payments to regular employees who resign, and existing policy only allowed management to pay no more than 25% of sick leave balance.**
- **Missing a detailed paper trail documenting why payments were made and how management determined the amount to pay employees.**
One at-will employee was paid $60,002.80 in severance pay upon the employee’s resignation from the agency.

- The employee’s Employment Agreement cited that if the employee resigned or was let go with cause, no severance payment was due to the employee.

- Missing justification of why management made the payment when the severance payment was not allowable under the terms of the Employment Agreement and the board did not have an approved policy on severance.
Management stated severance payments were made under threat of litigation and salary savings were used to make the severance payments.

- Threats of litigation or claims should be documented and validated by, or under the direction of, the Office of General Counsel. Payments under these circumstances would not be considered severance payments.

- The resigned employees and Executive Director signed agreements, in which employees gave up all claims (past, current, and present) against SANDAG. The agreements were not signed by General Counsel.

- Without a paper trail, it is not possible to evaluate if the employee’s claims against SANDAG had merit or amounts paid were reasonable.
Because there is no policy on severance payments and a detailed paper trail is not available, there is increased risk that these payments will be perceived as waste and abuse of public funds.

**Recommendations**

1. Investigate the legality of the severance payments and failure to report the payments to the Board. (Additional review by OIPA or a contracted experienced fraud investigator)

2. Require management to develop and formalize procedures to:
   - Ensure termination pay is paid consistent with Board Policy.
   - Develop a process to request Board approval for termination pay not included in Board Policy.

3. Require staff to attend training on updated procedures.

Report pages 41-42
Office of the Independent Performance Auditor

Finding III – Bonuses & Salary Increases to Executive Level Employee

An executive level employee received approximately $112,223 in bonuses and salary increases from Jan. to Dec. 2018.

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

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

➢ The full Board of Directors was not made aware of these payments.
➢ Insufficient support and lack of basis for these payments.
None of the documents reviewed stated that these payments were to compensate the employee for “acting” as the Executive Director.

Recommendations:

1. Investigate the legality of the increases and bonus payments and failure to report the payments to the full Board. (Review by independent auditor or fraud investigator)

2. Rescind delegated authority to award merit increases and bonuses until controls are in place.

3. Clarify responsibility to report actions taken on behalf of the Board to the full Board.

Report pages 45-46
Finding IV – Fiduciary Duty

- Board of Directors has not defined special compensation as required by the law.
- Board is not aware of and has not approved the types of special compensation being paid to employees.
- Management benefits are not equitably paid to employees.

Effects include:

- Special compensation amounts are not equitably paid to employees.
- Non-compliance with law. CalPERS does not allow reporting of unapproved special compensation.
Performance Pay information presented to the Board of Directors is not transparent.

- Amounts presented to the Board do not clarify the breakdown of salary, CalPERS, workers comp, and Medicare.

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

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

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

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

No reconciliation is performed to determine the true amount of salaries, CalPERS, Medicare, and Worker’s Comp paid.
Management did not award performance pay as it was presented to the Board.
- Though the Board typically approves a 3-4% increase per year, some employees receive 0% increase while other employees can receive upwards of 17% merit increase per year.
- There is risk that the amount paid for CalPERS, Medicare, and Workers Comp. varies from the Board approved amounts.

Management did not inform the Board of who receives performance pay or how much is paid.
- The Board cannot ensure the money is spent as it is intended.

Supporting documents do not summarize the amounts paid by type of incentive.
- Auditors unable to determine actual amounts paid to employees.
Recommendations

1. Create and promulgate (publish) a Board policy to define special compensation to comply with laws and regulations.

2. Create and promulgate (publish) a Board policy to address the type and timing of the information that should be presented to the board to comply with laws and regulations.

3. Require management to develop and formalize procedures for budgeting and reporting financial information for salaries and compensation in accordance with laws, regulations, and Board Bylaws and policy.

4. Require management to update the methodology and procedures for calculating the total Annual Compensation Pool aligned with the compensation approved by the Board.

5. Require management to develop and formalize a procedure for reconciling the performance incentives paid to the amounts approved by the Board.

6. Require staff to review formalized policies and procedures to ensure awareness of roles and responsibilities.

Report pages 49-50
SANDAG overbilled projects for bonuses paid to former Chief Deputy Executive Director by approximately $57,537.

<table>
<thead>
<tr>
<th>Description of Salary Charged to Projects</th>
<th>Amount</th>
</tr>
</thead>
<tbody>
<tr>
<td>Bonus to former Chief Deputy Executive Director</td>
<td>$44,200.00</td>
</tr>
<tr>
<td>Fringe Benefits</td>
<td>$33,578.76</td>
</tr>
<tr>
<td>Overhead</td>
<td>$23,958.14</td>
</tr>
<tr>
<td>TOTAL</td>
<td>$101,736.90</td>
</tr>
</tbody>
</table>

Reallocating funding intended for transportation and criminal justice projects to pay for fringe benefits and overhead based on bonus amounts could result in decreased funding for projects and loss of public trust in SANDAG.
SANDAG incorrectly reported employee bonuses to CalPERS.

CalPERS reported that SANDAG was unaware that the Board of Directors could not delegate the approval of administrative policies to the Executive Director.

Increased risk that member contributions and retirement benefits may be impacted by incorrectly reporting compensation to CalPERS.

Accounting staff paid high dollar severance payments without sufficient supporting documentation because management told them to.

Staff was aware the documentation was not sufficient.

Without sufficient controls in place there is increased risk of material weaknesses to SANDAG’s financial system. Poor controls can also result in staff processing and approving erroneous and/or potentially fraudulent payments.
Recommendations

1. Require Financial Services to create and formalize procedures to ensure accurate and reliable financial information.

2. Require Financial Services to create and formalize procedures for reporting compensation to CalPERS.

3. Require Financial Services to review bonus allocations to identify and correct amounts incorrectly charged to projects.

4. Require Financial Services to update accounting procedures to address issues identified in the report (clarify procedures, index and date the document, and remove confidential information).

5. Require staff to review new and updated policies and procedures to understand their roles and responsibilities to ensure sound financial practices are in place.

6. Require SANDAG employees to acknowledge they read and understand their fiduciary duties as described in Board Policy No. 041, their obligation to report fraud, waste, and abuse and their protection as whistleblowers as provided in Board Policy 039.
Finding VI – Disparity in Productivity Program

- Significant disparity in the amounts of performance incentives paid to staff and management from FY 2015-16 to FY 2019-20.
- Documents showed that merit increases, equity payments, and bonuses are not equitably paid to staff.

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

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

Some employees held more than one job title, in which, they were awarded a bonus.
Performance Incentives were not justified by performance evaluations.

Executive Director’s or Senior Leadership’s approvals of performance incentives was not documented.

Recommendations

1. Require management to develop and seek the Board’s approval of special compensation tables annually as required by law.

2. Require management to develop and formalize a procedure to identify the performance ratings that employees must obtain to receive performance incentives.

3. Require staff to review formalized procedures.

4. Require Financial Services to develop and formalize a procedure to reconcile performance incentives paid to amounts approved by management.

Report page 60
Insufficient procedures and methodology for using comparable salary surveys.

Lack of complete job duty statements.

Recommendations

1. Establish and formalize policies and procedures to regularly complete salary comparison surveys and analysis.

2. Request management conduct a job analysis by gathering, documenting and analyzing information about job duties.

3. Request management develop job duty statements.

Report pages 62-63
A number of changes were made to the organization as a result of the reorganization, which included:

- Significantly increased size of executive team without increasing productivity.
- Lack of support for increases to salary ranges of executive management.
- Top level managers received large salary increases though job duties were unchanged.
- Newly promoted employees to director level positions received large and unjustified salary increases.
Office of the Independent Performance Auditor

Finding VIII – Increased Number of Executive Managers and Salaries (cont.)

Recommendations

1. 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. Complete a Needs Assessment, which includes a cost benefit analysis to determine whether the number of management positions at the current levels is necessary and justified.

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 using other government’s that are similar in type and/or size that also receive government retirement benefits.

Report pages 73-74
Office of the Independent Performance Auditor  
Finding IX – Non-Competitive Hiring

SANDAG does not ensure positions are openly advertised and candidates are competitively hired.

- Several management positions were filled by appointment.
- Lack of documented procedures for openly advertising and competitively hiring candidates.

Recommendations

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

2. For those positions not competitively hired identify whether the position and level of the position is necessary for the organization and 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.

Report pages 76-77
SANDAG’s regular employee status was changed from regular full-time to At-Will without Board oversight or approval. At-Will status does not apply equally to all employees.

**Recommendation**

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.
Key Takeaways

1. Promotions and salary increases reflected in the FY2020-21 budget are for promotions and salary increase that occurred at the end of FY2019-20.

2. SANDAG should develop Board Policies to clearly define the administrative and delegated authority of management.

3. SANDAG should develop procedures developed to ensure adherence to Board Policies and a good system of controls are in place.

4. SANDAG should ensure sufficient documentation exists for actions taken.
If certain information is prohibited from public disclosure or is excluded from a report because of its confidential or sensitive nature, auditors should disclose in the report that certain information has been omitted and the circumstances that make the omission necessary.

Employee titles and salaries & compensation are **NOT** prohibited from disclosure or confidential or sensitive information.

*And this information is already available to the public...*


Source: Government Auditing Standards
Audits

- Audits are unbiased and objective examinations of records, operations, and/or performance of an organization. Auditors verify existence, reliability, accuracy, and authorization of documents.
- Auditors cannot rely on assumptions and must support their conclusions based on audit work performed.

Note: Audit staff within the OIPA have previously performed complex audits of salaries and compensation, contracts and procurement, grant funding, governance, timekeeping, fraud, waste, and abuse and more for state and local governments in the southwestern U.S. over the past 25 years.

Legal Opinions

- An opinion letter is a formal expression of a judgment or advice based on an expert’s special knowledge.
- Refers to a document containing a lawyer’s understanding of the law that applies to a particular case.
- If facts are not supplied, assumptions must be included in narration.
- Opinions are not based on a review of existence, reliability and/or accuracy information provided by the client.
- Disclaimers release experts from liability if their opinion is wrong. Opinions expressed are not a guarantee of a particular outcome.

Source: uslegal.com
SALARIES AND COMPENSATION PERFORMANCE AND COMPLIANCE AUDIT

AUDIT No. 2021-1br

August 2020

Independent Performance Auditor, Mary Khoshmashrab, MSBA, CPA
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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 Ikhrata 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. KHOSHMASHRAB, MSBA, CPA
Independent Performance Auditor
Office of the Independent Performance

cc: Members of the Board of Directors
    Members of the Audit Committee
    Hasan Ikhrata, 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

AN EMPHASIS ON ACCOUNTABILITY AND TRANSPARENCY
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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.
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 agendize, fully discuss, and approve salary and special compensation tables. Management failed to be transparent in presenting budget and financial information to the Board.
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.
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.
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 Directors 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 Directors positions are as follows:

<table>
<thead>
<tr>
<th>Former Position</th>
<th>Retitled Position</th>
</tr>
</thead>
<tbody>
<tr>
<td>Chief Deputy Executive Director</td>
<td>Chief Operations Officer</td>
</tr>
<tr>
<td>Department Director of Operations</td>
<td>Chief Planning and Innovation Officer</td>
</tr>
<tr>
<td>Department Director of Mobility Management &amp; Project Implementation</td>
<td>Chief Capital Program and Regional Services Officer</td>
</tr>
</tbody>
</table>

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 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’ efforts 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 one-time 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:

- 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**

<table>
<thead>
<tr>
<th>Component</th>
<th>Description</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>Control Environment</strong></td>
<td>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.</td>
</tr>
<tr>
<td><strong>Risk Assessment</strong></td>
<td>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.</td>
</tr>
<tr>
<td><strong>Control Activities</strong></td>
<td>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.</td>
</tr>
<tr>
<td><strong>Information and Communication</strong></td>
<td>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.</td>
</tr>
<tr>
<td><strong>Monitoring Activities</strong></td>
<td>Ongoing monitoring to ascertain that all components of internal control are present and functioning; ensures deficiencies are evaluated and corrective actions are implemented.</td>
</tr>
</tbody>
</table>

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\(^1\) 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.

\(^1\) 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

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\(^2\) 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.

\(^2\) 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 Administer 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\(^3\), 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.

\(^3\) 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 be 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 policies 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\(^4\). 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 result 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.

\(^4\) 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 appraised 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.


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

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. 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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5 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 management's 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 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

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

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.

- 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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6 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.


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 agendize, 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 agendized 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**

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

**Total** | **$6,466,219** |

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

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

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 agenized 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. Require 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\(^7\). 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.

\(^7\) 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

<table>
<thead>
<tr>
<th>Description of Salary Charged to Projects</th>
<th>Amount</th>
</tr>
</thead>
<tbody>
<tr>
<td>Bonus to former Chief Deputy Executive Director</td>
<td>$44,200.00</td>
</tr>
<tr>
<td>Fringe Benefits</td>
<td>$33,578.76</td>
</tr>
<tr>
<td>Overhead</td>
<td>$23,958.14</td>
</tr>
<tr>
<td><strong>TOTAL</strong></td>
<td><strong>$101,736.90</strong></td>
</tr>
</tbody>
</table>

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. 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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8 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, 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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9 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.
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>
<thead>
<tr>
<th>Fiscal Year</th>
<th>Total Annual Compensation Pool Approved by the Board</th>
</tr>
</thead>
<tbody>
<tr>
<td>2014-15</td>
<td>$1,150,000</td>
</tr>
<tr>
<td>2015-16</td>
<td>$1,330,000</td>
</tr>
<tr>
<td>2016-17</td>
<td>$1,350,000</td>
</tr>
<tr>
<td>2017-18</td>
<td>$1,200,000</td>
</tr>
<tr>
<td>2018-19</td>
<td>$1,300,000</td>
</tr>
<tr>
<td>2019-20</td>
<td>$1,650,000</td>
</tr>
<tr>
<td>TOTAL</td>
<td>$7,980,000</td>
</tr>
</tbody>
</table>

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\textsuperscript{10}, 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

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

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.

\textsuperscript{10} See Appendix C for a complete list of bonuses paid by position by fiscal year.

\textsuperscript{11} 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. 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 correlate 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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12 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**

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

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.


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.


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

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.

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. Figures 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**

<table>
<thead>
<tr>
<th>Prior to Reorganization</th>
<th>After Reorganization</th>
</tr>
</thead>
<tbody>
<tr>
<td>• Executive Director – 1 position</td>
<td>• Executive Director – 1 position</td>
</tr>
<tr>
<td>• Chief Deputy Executive Director – 1 position</td>
<td>• Chief Executive Directors – 5 positions</td>
</tr>
<tr>
<td>• Department Director – 8 positions</td>
<td>• Director II – 11 positions</td>
</tr>
<tr>
<td>• General Counsel – 1</td>
<td>• Director I – 7 positions</td>
</tr>
<tr>
<td><strong>Executive Team - 11 employees</strong></td>
<td>• General Counsel – 2 positions</td>
</tr>
<tr>
<td><strong>Executive Team - 26 employees</strong></td>
<td></td>
</tr>
</tbody>
</table>

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.

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13 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.
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

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

![Diagram showing the reorganization structure of the Department of Regional Planning](image-url)
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 through 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

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

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**

<table>
<thead>
<tr>
<th>Position Title</th>
<th>Minimum Salary</th>
<th>Maximum Salary</th>
</tr>
</thead>
<tbody>
<tr>
<td>Department Director of Finance</td>
<td>$152,818</td>
<td>$236,868</td>
</tr>
<tr>
<td>Chief Financial Officer</td>
<td>$168,100</td>
<td>$260,555</td>
</tr>
<tr>
<td>Change in Positional Salary Range</td>
<td>$15,282</td>
<td>$23,687</td>
</tr>
</tbody>
</table>

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 management's 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

<table>
<thead>
<tr>
<th>New Position</th>
<th>Employees Former Salary</th>
<th>Minimum Salary Range</th>
<th>New Salary</th>
<th>Unjustified Increase</th>
</tr>
</thead>
<tbody>
<tr>
<td>Chief Operations Officer</td>
<td>$200,054</td>
<td>$184,910</td>
<td>$240,011</td>
<td>$19,952</td>
</tr>
<tr>
<td>Director II, Regional Planning</td>
<td>$153,504</td>
<td>$152,818</td>
<td>$195,000</td>
<td>$25,146</td>
</tr>
<tr>
<td>Director II, Organizational Effectiveness</td>
<td>$156,603</td>
<td>$152,818</td>
<td>$195,000</td>
<td>$22,737</td>
</tr>
<tr>
<td>Director II, Strategic Communications</td>
<td>$142,459</td>
<td>$152,818</td>
<td>$195,000</td>
<td>$38,295</td>
</tr>
<tr>
<td>Director I, Strategic Projects</td>
<td>$130,478</td>
<td>$126,296</td>
<td>$152,006</td>
<td>$8,480</td>
</tr>
<tr>
<td><strong>Total Unjustified Change In Salaries</strong></td>
<td></td>
<td></td>
<td></td>
<td><strong>$115,609</strong></td>
</tr>
</tbody>
</table>

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

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14 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 practices15, 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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15 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 manage 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.


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

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

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 and 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

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

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<td>Marketing Analyst II</td>
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<td>Public Communications Officer II</td>
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<td>Regional Planner I</td>
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<td></td>
<td>Technology Program Analyst I</td>
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<tr>
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<td>Associate Grants Program Analyst</td>
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<td>Economic Research Analyst II</td>
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<td></td>
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<td>Executive Assistant II</td>
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<td>GIS Analyst II</td>
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<td>Project Coordinator</td>
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<td>Systems Engineer I</td>
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<td>Technology Program Analyst II</td>
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<td>MONTHLY SALARY RANGES</td>
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<td>Capital Development Project Manager</td>
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<td>Senior Programmer Analyst</td>
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<td>Senior Researcher and Modeler</td>
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<td>CLASS SALARY RANGE.................................................................................................</td>
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<td>Communications Manager</td>
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<td>Manager of Government Relations</td>
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<td>Operations Manager</td>
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<td>Principal Business Analyst</td>
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<td>Principal Economic Research Analyst</td>
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<td>Principal Regional Planner</td>
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<td>Principal Research Analyst</td>
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<td>Senior Engineer</td>
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<td></td>
<td>Principal Management Internal Auditor</td>
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<td>Principal Technology Program Manager</td>
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<td>CLASS SALARY RANGE.................................................................................................</td>
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<td></td>
<td>Manager of Regional Information Services</td>
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<td>Manager of Regional Models</td>
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<td></td>
<td>Principal Researcher and Modeler</td>
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<td>Manager of Business Administration and Operations</td>
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<td>Manager of Contracts and Procurement</td>
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<td>Manager of Human Resources</td>
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<td></td>
<td>Principal Engineer</td>
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<td>Senior Legal Counsel</td>
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<td>CLASS SALARY RANGE.................................................................................................</td>
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<td>Chief Capital Programs and Regional Services Officer</td>
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<td>Chief Data Analytics Officer</td>
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<td>Chief Operations Officer</td>
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<td>Chief Planning and Innovation Officer</td>
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<td>Executive Strategic Advisor</td>
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<tr>
<td>N/A</td>
<td>Executive Director</td>
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* This is a grandfathered classification.
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MANAGEMENT’S RESPONSE
August 14, 2020

TO: Mary Khoshmashrab, Independent Performance Auditor

FROM: Hasan Ikhrata, Executive Director

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

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.”

It also states that the audit team’s collective experience and overall understanding must be sufficient to prevent significant inaccuracy or misinterpretation. 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. The American Institute of CPAs’ Code of Professional

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1 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.”

2 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.”

3 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. 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. 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.”

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. 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. 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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4 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.”


6 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

7 Attachment A, Summary of Management’s Response to Audit Recommendations

8 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. 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. 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.

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9 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.

10 Public Utilities Code sections 132000, et seq.

11 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. 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.

- 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.

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.

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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12 Public Utilities Code section 132355.

13 Board Policy No. 017, Section 5. Source documents for all cites to Board Policies and Bylaws can be found at SANDAG.org/Legal.

14 Board Policy No. 017, Section 4.1.

15 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. It was decided that SANDAG should mirror the Metropolitan Transit Development Board’s 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. The final version of the 2003 Bylaws was adopted on July 25, 2003. 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.

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.

Now known as Metropolitan Transit System (MTS).


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\textsuperscript{20} 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.\textsuperscript{21} The changes were shown to the Board in tracked changes format as shown here:

\begin{quote}
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.\textsuperscript{22}
\end{quote}

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

\begin{quote}
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.”
\end{quote}

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:

\begin{quote}
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.
\end{quote}

\textsuperscript{20} Attachment E, Board Report from October 24, 2003 and Minutes of the Board of Directors Meeting, October 24, 2003.

\textsuperscript{21} Attachment F, Board Report from December 2006 with Board Policy No. 017 tracked changes attached.

\textsuperscript{22} 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.

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.

23 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.” 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. 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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25 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. 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.

26 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.27

• 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.)

“The settlement of a good faith dispute between the state[29] 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.)[30]

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,

28 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.

29 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.

30 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_Forbath_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) 75-770 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, 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

31 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. 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

32 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. 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.

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

33 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.

34 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. 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].)  

**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.  

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

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35 Attachment L, Confidential Sinnott Memo.  
36 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.  
37 Attachment M, Revised FY 2021 Program Budget report, Attachment 5.  
38 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. 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) 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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39 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)

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

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.\textsuperscript{40} 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.

\textbf{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

\textsuperscript{40} 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. 41

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.

41 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\(^{42}\) 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

\(^{42}\) [https://www.sandag.org/index.asp?fuseaction=about.excellence](https://www.sandag.org/index.asp?fuseaction=about.excellence)
third party management consultant\textsuperscript{43} 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.

\textsuperscript{43} 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 on 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\(^44\) 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\(^45\), 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\(^46\)), 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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\(^44\) [https://www.gosbcta.com/about-us/about-sbcta/](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.


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. 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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47 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:

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. 1396a(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 in 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.48

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.49 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.50

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

48 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.

49 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.”

50 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

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<tr>
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<th>FY 2017</th>
<th>FY 2018</th>
<th>FY 2019</th>
<th>FY 2020</th>
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</thead>
<tbody>
<tr>
<td><strong>Competitive Recruitments Conducted</strong></td>
<td>39</td>
<td>37</td>
<td>37</td>
<td>31</td>
</tr>
<tr>
<td><strong>New Employees Hired</strong></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Competitively Selected</td>
<td>66</td>
<td>68</td>
<td>63</td>
<td>58</td>
</tr>
<tr>
<td>Appointed without Competition</td>
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<td>1</td>
<td>3</td>
<td>14</td>
</tr>
<tr>
<td><strong>Employee Promotions</strong></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Competitively Selected</td>
<td>9</td>
<td>11</td>
<td>21</td>
<td>15</td>
</tr>
<tr>
<td>Appointed without Competition</td>
<td>4</td>
<td>4</td>
<td>7</td>
<td>29</td>
</tr>
</tbody>
</table>

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

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51 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, the Temporary, Intern, Part-time, and Seasonal (TIPS) category in 2005, and the Tolling Operations Personnel (TOP) category in 2012. 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, undermines the Draft’s statements that the disparity in employment status will lead to disruption and morale issues.

52 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.

53 Effective July 1, 2019, the TOP category ceased to exist.

54 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.

55 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.
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.

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...
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 responsibly. 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 taken 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 confidentially 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.
Salaries and Compensation Performance and Compliance Audit

Overview
SANDAG Management has reviewed the Salaries and Compensation Performance and Compliance Audit performed by the Office of the Independent Performance Auditor and developed the attached responses to its observations and recommendations.

SANDAG staff is also drafting an action plan to implement many of the recommendations identified in the audit and any further recommendations that may be requested by the Board.

Hasan Ikhrata, Executive Director

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Attachments:
1. Draft Management Response, dated August 14, 2020
2. Revised Final Management Response, dated September 2, 2020

Action: Discussion/Possible Action
The Board of Directors is asked to consider the Salaries and Compensation Performance and Compliance Audit.
August 14, 2020

TO: Mary Khoshmashrab, Independent Performance Auditor

FROM: Hasan Ikhrata, Executive Director

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

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.” It also states that the audit team’s collective experience and overall understanding must be
sufficient to prevent significant inaccuracy or misinterpretation. 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. The American Institute of CPAs’ Code of Professional

1 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.”

2 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.”

3 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. 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. 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.”

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. 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. 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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4 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.”


6 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

7 Attachment A, Summary of Management’s Response to Audit Recommendations

8 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.9 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.10 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.11

9 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.

10 Public Utilities Code sections 132000, et seq.

11 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. 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.

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.

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.

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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12 Public Utilities Code section 132355.
13 Board Policy No. 017, Section 5. Source documents for all cites to Board Policies and Bylaws can be found at SANDAG.org/Legal.
14 Board Policy No. 017, Section 4.1.
15 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. It was decided that SANDAG should mirror the Metropolitan Transit Development Board’s 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. The final version of the 2003 Bylaws was adopted on July 25, 2003. 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.

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16 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.

17 Now known as Metropolitan Transit System (MTS).


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\(^\text{20}\) 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.\(^\text{21}\) 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.\(^\text{22}\)

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 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.


\(^{21}\) Attachment F, Board Report from December 2006 with Board Policy No. 017 tracked changes attached.

\(^{22}\) 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.

**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.

23 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.
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. 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


25 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. 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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26 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.27

- 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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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.

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.

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.

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_Forbatch_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,31 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

31 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 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 authorization of 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. 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

32 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.  

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.  

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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33 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.

34 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. 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].)

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 2021.37

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

35 Attachment L, Confidential Sinnott Memo.

36 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.

37 Attachment M, Revised FY 2021 Program Budget report, Attachment 5.

38 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. 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) 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.

39 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)

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

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. 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 discussed 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
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. 41

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.

41 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

OIPA 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 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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42 https://www.sandag.org/index.asp?fuseaction=about.excellence
third party management consultant\(^{43}\) 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.

\(^{43}\) 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 on 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 $1,179M 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 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, 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), 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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44 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.


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. 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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47 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:

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 in 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.48

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.49 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.50

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

48 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.

49 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.”

50 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**

<table>
<thead>
<tr>
<th></th>
<th>FY 2017</th>
<th>FY 2018</th>
<th>FY 2019</th>
<th>FY 2020</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>Competitive Recruitments Conducted</strong></td>
<td>39</td>
<td>37</td>
<td>37</td>
<td>31</td>
</tr>
<tr>
<td><strong>New Employees Hired</strong></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Competitively Selected</td>
<td>66</td>
<td>68</td>
<td>63</td>
<td>58</td>
</tr>
<tr>
<td>Appointed without Competition</td>
<td>2</td>
<td>1</td>
<td>3</td>
<td>14</td>
</tr>
<tr>
<td><strong>Employee Promotions</strong></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Competitively Selected</td>
<td>9</td>
<td>11</td>
<td>21</td>
<td>15</td>
</tr>
<tr>
<td>Appointed without Competition</td>
<td>4</td>
<td>4</td>
<td>7</td>
<td>29</td>
</tr>
</tbody>
</table>

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

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51 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 2002,52 the Temporary, Intern, Part-time, and Seasonal (TIPS) category in 2005, and the Tolling Operations Personnel (TOP) category53 in 2012.54 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,55 undermines the Draft’s statements that the disparity in employment status will lead to disruption and morale issues.

52 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.

53 Effective July 1, 2019, the TOP category ceased to exist.

54 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.

55 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.
SUMMARY OF MANAGEMENT RESPONSES TO AUDIT RECOMMENDATIONS

The Draft Salaries and Compensation Performance and Compliance Audit report (Draft) contained 37 recommendations for consideration by management and/or the SANDAG Board of Directors. As described below, 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. Some of the recommendations require further consideration, while others were contemplated and for the most part are unwarranted. Management intends to develop and communicate an Action Plan to support implementation of the recommended changes.

Finding I Recommendations: Refer to Draft p. 24

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.

   Management Response:
   The Administrative Rules and Regulations no longer exist as a separate document, however, at the Board’s direction, management will bring the Employee Handbook or other administrative policies to the Board to determine whether there are portions it wishes to review or amend. A timeline for completion of this activity will be included in the Action Plan developed in response to this audit.

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,
   - To reflect 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.

   Management Response:
   The Administrative Rules and Regulations no longer exist as a separate document, however, at the Board’s direction, management will bring the Employee Handbook or other
Continue administrative policies to the Board to determine whether there are portions it wishes to review or amend. A timeline for completion of this activity will be included in the Action Plan developed in response to this audit.

3. Evaluate retaining General Counsel for the Board to conduct legal research, prepare ordinances, resolutions, memoranda, administrative rules and regulations, and advise the Board of Directors, and keep the Board appraised of its obligations for following applicable laws and regulations.

Management Response:
Management is confused by this recommendation. Not only does it seem to be outside of OIPA’s purview to determine the adequacy of current counsel, it also indicates a lack of understanding of the role of the Office of General Counsel (OGC) for the agency as it implies the OGC is unable to render independent or sufficient advice to the Board. As with all attorneys for public entities, the law is clear on the topic of who the client is for a public agency attorney. It is the governing body of the agency. The California Rules of Professional Conduct currently provide that where an organization is a client, “a member shall conform his or her representation to the concept that the client is the organization itself acting through its highest authorized officer, employee, body, or constituent overseeing the particular engagement.”¹ The highest body of the organization is the Board of Directors. The rules also caution lawyers to inform representatives of the organization that the lawyer represents the organization, not the individual, “whenever it is or becomes apparent that the organization’s interests are or may become adverse to those of the constituent(s) with whom the member is dealing.”² Thus, all attorneys hired to advise SANDAG owe their duty of loyalty to the Board of Directors and are required to provide advice to the Board as a whole rather than serving the interests of individual staff. Hiring other attorneys, unfamiliar with the unique aspects of the SANDAG, to provide overlapping services with those already provided by the OGC, is not a recommendation that the General Counsel of the agency supports.

Furthermore, it must be noted that the OIPA also serves the Board of Directors. While the OIPA is independent, this independence is from management, not from the Board of Directors or its advisory body, the Audit Committee. This is reflected in Board Policy No. 39, which states that the IPA reports to the Audit Committee and serves the Board of Directors, as well as the IPA’s employment agreement with SANDAG, in which the IPA has agreed to “abide by all policies and decisions made by SANDAG.” As stated by the California Court of Appeal, a conflict of interest in a public agency necessitating independent legal counsel arises only when one body is independent of the agency’s governing body as has final decision-making authority that is not appealable to that governing body.³

¹ Rule 3-600, Cal. Rules of Prof. Conduct.
² Rule 3-600, Cal. Rules of Prof. Conduct.
4. **Require SANDAG management to acknowledge that they are aware of and complying with the Board Bylaws, Policies, Administrative Rules and Regulations, upon being hired and on an annual basis thereafter.**

   Management Response:
   Current employment practices include orienting new employees to the Employee Handbook and various administrative policies. Management is generally agreeable to requiring employees to acknowledge compliance with the Bylaws, Board Policies, Employee Handbook, and other administrative policies each year. A timeline for completion of this activity will be included in the Action Plan developed in response to this audit.

**Finding II Recommendations:** Refer to Draft p. 29

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.**

   Management Response:
   It is the opinion of General Counsel that the severance compensation payments and granting of additional sick leave made in exchange for the separated employees’ release of all claims against SANDAG, constituted the settlement of potential claims by the employees against SANDAG and as such was an appropriate use of public funds, and that the amount of the settlement was reasonable in light of the risk avoided by it. It is further the opinion of General Counsel that mandating the initiation of formal litigation or claims procedures as advocated by OIPA would result in additional risk to the agency in the form of increased outside counsel costs and increased settlement amounts driven by claimant’s need to compensate their own attorneys to initiate such proceedings. Management is open to the concept of hiring outside counsel with expertise in employment law to review General Counsel’s opinion.

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.**

   Management Response:
   Management welcomes the Board’s input on any need to modify or establish more explicit delegated authority for negotiating severance agreements with employees, including any conditions on the exercise of that authority.
3. Require staff responsible for implementing procedures related to termination pay training on updated procedures.

Management Response:
Management agrees that all staff must remain trained both on existing and updated procedures in their areas of responsibility. A timeline for completion of this activity will be included in the Action Plan developed in response to this audit.

**Finding III Recommendations:** Refer to Draft p. 33
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 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.**

Management Response:
Upon direction, management will cooperate in any the Board of Directors’ investigation. Management recommends that if there is still concern that an employee acted with any malfeasance after any additional investigation occurs, that a closed session be held involving legal counsel so that the Board can be advised of whether the legal requirements for a valid cause of action of breach of fiduciary duty have been met and whether a claim against any person(s) is warranted.

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.**

Management Response:
Management does not concur with this recommendation but will be responsive to any future direction from the Board regarding delegated authority with respect to salary increases and bonuses under the agency’s pay for performance program.

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 Response:
Management does not concur that anything improper was done by the former Chair and Vice Chair, however, upon direction, management will support the Board of Directors if it decides to formulate and adopt policies designed to provide clarification regarding roles and responsibilities of Board officers and achieving increased levels of transparency.
Finding IV Recommendations: Refer to Draft p. 37

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.**

   Management response:
   Management acknowledges the requirement for the Board of Directors to adopt a policy defining items of special compensation, consistent with California Code of Regulations, Title 2, section 571(b). A timeline for completion of this activity will be included in the Action Plan developed in response to this audit.

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 agendized resolution at least annually, properly date approved schedules, and post the approved schedules on SANDAG’s website.

   Management response:
   If requested by the Board, management will examine existing practices relative to applicable laws and regulations and implement changes as necessary with respect to the approval of salary schedules and special compensation. A timeline for completion of this activity will be included in the Action Plan developed in response to this audit. It is management’s opinion that the existing SANDAG Salary Range Table is appropriately dated; it also is readily available upon request and has been posted to the Careers section of the SANDAG 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.**

   Management response:
   If requested by the Board, management will review practices and procedures, and prepare additional documentation, regarding budgeting and reporting of salaries and benefits information to the Board of Directors.

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.**

   Management response:
   Management will review practices and procedures, and prepare additional documentation, regarding development of the annual compensation adjustment pool.
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 with laws and regulations.**

Management response:
Management will evaluate whether further procedures for managing and reconciling awards made to employees from the annual compensation adjustment pool is appropriate. A timeline for completion of this activity will be included in the Action Plan developed in response to this audit. In management’s opinion, there is no law or regulation that requires post-payment accounting or approval of compensation awarded to employees.

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 response:
Management commits to ensuring that employees understand their roles and responsibilities with respect to approval of salary schedules and special compensation. A timeline for completion of this activity will be included in the Action Plan developed in response to this audit.

**Finding V Recommendations:** Refer to Draft p. 41

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.

Management response:
Management will review procedures for allocating costs associated with bonus awards with SANDAG’s financial auditor and make any corrections or procedural updates needed. A timeline for completion of this activity will be included in the Action Plan developed in response to this audit.
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.

Management response:
Management will review and update procedures for reporting special compensation to CalPERS. A timeline for completion of this activity will be included in the Action Plan developed in response to this audit.

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.

Management response:
Management will review and update procedures for reviewing and allocating bonuses to projects. A timeline for completion of this activity will be included in the Action Plan developed in response to this audit.

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.

Management response:
Management will undertake a comprehensive review of accounting procedures and make updates as necessary. A timeline for completion of this activity will be included in the Action Plan developed in response to this audit.

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.

Management response:
Management will commit to ensuring that employees understand their roles and responsibilities with respect to financial practices. A timeline for completion of this activity will be included in the Action Plan developed in response to this audit.

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 response:
Management will implement an employee acknowledgment process with respect to Board Policy Nos. 039 and 041. A timeline for completion of this activity will be included in the Action Plan developed in response to this audit.
Finding VI Recommendations: Refer to Draft p. 47

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.

   Management response:
   Management acknowledges the requirement for the Board of Directors to adopt a policy defining items of special compensation, consistent with California Code of Regulations, Title 2, section 571(b). A timeline for completion of this activity will be included in the Action Plan developed in response to this audit.

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.

   Management response:
   Management will review and update existing procedures associated with the award and approval of annual compensation adjustment increases and performance rewards. A timeline for completion of this activity will be included in the Action Plan developed in response to this audit.

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.

   Management response:
   Although management does not concur that anything inappropriate has occurred with regard to incentives, it will review its procedures and if needed, provide additional support and resources to supervisors and employees with respect to the completion of performance evaluations. A timeline for completion of this activity will be included in the Action Plan developed in response to this audit.

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 response:
   Although management does not concur that anything inappropriate has occurred with regard to incentives, it will review its procedures and if needed, provide additional procedures to staff. A timeline for completion of this activity will be included in the Action Plan developed in response to this audit.
Finding VII Recommendations: Refer to Draft p. 50

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.

   Management response:
   Management will develop additional polices and documentation of procedures related to maintaining position salary ranges. It also will continue to conduct salary surveys using advice from consultants with expertise on these matters. A timeline for completion of this activity will be included in the Action Plan developed in response to this audit.

2. Request management to conduct a job analysis by gathering, documenting, and analyzing information about the job duties to determine the activities and responsibilities.

   Management response:
   SANDAG conducted a full Classification Study in 2016 under the guidance of its compensation consultant. This project included a review of essential duties and typical responsibilities, as well as knowledge, skills, and qualifications required for all agency positions; job analysis was performed as needed. New and updated Classification Specifications were prepared and are currently in use. In management’s opinion, it would be duplicative to repeat this work at this time. Management is committed to evaluating individual or groups of positions on an as-needed basis to ensure they are accurately documented as part of the Classification program and will continue to monitor the effectiveness of the Classification program on at least an annual basis to determine when the next Classification Study shall be performed.

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 response:
   Management believes that the job classifications for each class of employees at the agency are up to date and will work toward creating job descriptions for each position. A timeline for completion of any this activity will be included in the Action Plan developed in response to this audit.
Finding VIII Recommendations: Refer to Draft p. 60

1. **SANDAG should update agency documents, including its organizational charts and job titles to reflect accurate employee names, job titles, and other relevant information.**

   Management response:
   Management will take steps to improve the consistency and accuracy of agency documents that include information about employee names, job titles, etc. A timeline for completion of this activity will be included in the Action Plan developed in response to this audit.

2. **Revert salaries for high level positions to salaries prior to the September 2019 salary schedule revisions.**

   Management response:
   Upon consultation with legal counsel, management has determined this proposed action would constitute a contract violation with those individuals who have signed Employment Agreements with SANDAG and for a variety of other reasons discussed in the Response and with outside employment law counsel, does not plan to implement this recommendation.

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

   Management response:
   The needs assessment and cost-benefit analysis recommended by OIPA was conducted prior to undertaking the agency reorganization in 2019. SANDAG conducted a strategic planning project in 2019 which included an organizational assessment and design component. This work was led by an expert organizational design consultancy. In management’s opinion, it would be duplicative to repeat this work and an unnecessary use of agency resources.

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 response:
   SANDAG conducted a market salary survey in late 2018 in which four representative executive-level positions and four representative manager/principal level positions were benchmarked. Further, prior to implementing the executive-level reorganization changes, the market data for the executive-level positions was verified. Therefore, in management’s opinion it would be duplicative to repeat this work and an unnecessary use of agency resources.
Finding IX Recommendations: Refer to Draft p. 64
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.

   Management response:
   See response to Recommendation 2 below.

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.

   Management response:
   Due to the legal risk and violation of employee rights associated with vacating currently filled positions, management will not consider this recommendation. A review of position necessity, including the level and scope of job duties, is currently conducted for each vacancy and for all new positions.

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 response:
   Management will further document, review, and modify if needed, SANDAG’s policies, procedures, and practices that support recruitment and selection of individuals for open positions and other types of employment opportunities. A timeline for completion of this activity will be included in the Action Plan developed in response to this audit.
**Finding X Recommendation**: Refer to Draft p.66

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 response:
The Administrative Rules and Regulations no longer exist as a separate document. Furthermore, it is management’s opinion that SANDAG already has established, documented, and communicated, via the Employee Handbook and procedural guides, legally sound policies and practices that appropriately ensure the rights of employees while also protecting the operational interests of the agency.
### Summary of Management’s Responses to Audit Findings

<table>
<thead>
<tr>
<th>Description of Finding</th>
<th>Improvement Effort by Management Underway</th>
<th>More Information to Be Brought to the Board to Determine If the Board Wants Changes</th>
<th>Do Not Concur Due to Finding Being Based on Incomplete or Incorrect Information, Lack of Expertise, and/or Faulty Assumption</th>
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</thead>
<tbody>
<tr>
<td>Management Assumed Control of Board of Director’s Administrative Rules and Regulations (Draft p. 21)</td>
<td></td>
<td>X</td>
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<tr>
<td>SANDAG’s Management Improperly Assumed Control Over SANDAG’s Administrative Rules and Regulations and Board Policies and Manuals (Draft p. 22)</td>
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<tr>
<td>Changes to Board Bylaws and Policies Created Confusion and Obscured the Board’s Authority to Govern SANDAG (Draft p. 23)</td>
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<tr>
<td>Improper High Dollar Payments to Employees Upon Their Resignation from SANDAG are Invalid Gifts of Public Funds (Draft p. 25)</td>
<td></td>
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<tr>
<td>SANDAG Paid [Unauthorized] High Dollar Bonuses and Salary Increases to Former Chief Deputy Executive Director (Draft p. 30)</td>
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<tr>
<td>Breach of Fiduciary Duty by SANDAG Management (Draft p. 34)</td>
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<td>SANDAG Overbilled Projects for Bonuses Paid to Former Director (Draft p. 38)</td>
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<tr>
<td>Unapproved Bonuses Report to CalPERS as Special Compensation (Draft p. 39)</td>
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<tr>
<td>Mismanagement and Lack of Transparency of SANDAG’s Annual Productivity Program Resulted in Disparity of Payments to Employees (Draft p. 42)</td>
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<td>Merit Increases, Equity Payouts, Bonuses Are Not Equitably Distributed to Employees (Draft p. 43)</td>
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<tr>
<td>Lack of Justification for Awarding Performance Incentive Pays (Draft p. 45)</td>
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<td>No Evidence of Approvals of Performance Incentive Recommended and Awarded to Employees (Draft p. 46)</td>
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<td>Paid Bonuses Does Not Reconcile to Approved Bonuses Amounts (Draft p. 47)</td>
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<tr>
<td>Insufficient Methodology in Utilizing Comparable Salary Surveys (Draft p. 48)</td>
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<td>SANDAG Lacks Complete Job Duty Statements (Draft p. 49)</td>
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<tr>
<td>Reorganization Resulted in [Improper] Increased Salary and Benefits Costs to SANDAG (Draft p. 51)</td>
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<tr>
<td>SANDAG Lacks Fair, Objective, and Competitive Hiring Practices (Draft p. 61)</td>
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<tr>
<td>SANDAG Management Forced Employees Into At-Will Employment Contracts Violating Employee Rights (Draft p. 65)</td>
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</tbody>
</table>
Chairman Morrison called the meeting of the SANDAG Board of Directors to order at 10:25 a.m. Attendance was as follows:

**Voting Members**
- City of Carlsbad ................................................................. Bud Lewis, Mayor
- City of Chula Vista ............................................................. Steve Padilla, Mayor
- City of Coronado ............................................................... Phil Monroe, Councilmember
- City of Del Mar ................................................................. Crystal Crawford, Councilmember
- City of El Cajon ................................................................. Mark Lewis, Councilmember
- City of Encinitas ............................................................... Christy Guerin, Councilmember
- City of Escondido ............................................................. Lori Holt Pfeiler, Mayor
- City of Imperial Beach ...................................................... Patricia McCoy, Councilmember
- City of La Mesa ............................................................... Art Madrid, Mayor
- City of Lemon Grove ....................................................... Mary Teresa Sessom, Mayor
- City of National City ....................................................... Ron Morrison, Councilmember
- City of Oceanside ............................................................. Jim Madaffer, Councilmember
- City of Poway ................................................................. Mickey Cafagna, Mayor
- City of San Diego ............................................................. Dick Murphy, Mayor
- City of San Diego ............................................................. Jim Madaffer, Councilmember
- City of San Marcos ........................................................... Hal Martin, Councilmember
- City of Santee ................................................................. Absent
- City of Solana Beach ......................................................... Joe Kellejian, Councilmember
- City of Vista ................................................................. Absent
- County of San Diego ......................................................... Greg Cox, Supervisor

**Advisory Liaison Members**
- County of Imperial Absent
- Department of Transportation Gene Pound, Deputy District Director
- U.S. Department of Defense Absent
- Mexico Absent
- San Diego Unified Port District Jess Van Deventer, Commissioner
- San Diego County Water Authority Absent
- Metropolitan Transit Development Board Leon Williams, Chair
- North San Diego County Transit Development Board Tom Golich, Board Member
Chairman Morrison welcomed all to the meeting and introduced new members, Mark Lewis, Jim Madaffer, and Greg Cox. He then announced that SANDAG's Board will be using a new electronic voting system starting with today’s meeting, as part of the agency consolidation.

1. ADDITIONS AND DELETIONS

None.

CONSENT ITEMS (2 through 3)

2. AUTHORIZING THE EXECUTIVE DIRECTOR TO ACCEPT UP TO AN ADDITIONAL $75,000 FROM THE SAN DIEGO COUNTY PROBATION DEPARTMENT, AMEND THE FY 2003 OVERALL WORK PROGRAM AND BUDGET, AND CONTRACT FOR SERVICES FOR THE WORKING TO ENSURE AND NURTURE GIRLS SUCCESS (WINGS) PROJECT (Resolution 2003-19) (APPROVE)

3. AUTHORIZING THE EXECUTIVE DIRECTOR TO ACCEPT $27,000 FROM THE LOCAL HIDTA (HIGH DENSITY DRUG TRAFFICKING AREAS) AND AMEND THE FY 2003 OVERALL WORK PROGRAM AND BUDGET FOR THE SUBSTANCE ABUSE MONITORING FOR YOUTH PROJECT (Resolution 2003-20) (APPROVE)

Action: (County – San Marcos) A motion was made, and second, to approve the Consent Agenda items 2 and 3. Yes - 17. No – 0. Absent – 2 (Santee and Vista). Abstain – 0. The motion passed.

4. PUBLIC COMMENTS / COMMUNICATIONS

Public Comment

Clive Richard, a resident of San Diego, welcomed the new members and stated that he lives in the seventh district of the City of San Diego, represented by Councilmember Madaffer.

Chairman Morrison announced that he would take item 6 next, out of order.

REPORTS

6. AUTHORIZING THE EXECUTIVE DIRECTOR TO TAKE ADVANTAGE OF THE FLUCTUATING MARKET FOR DEBT-REDUCTION BY REFINANCING BONDS (Resolution RC2003-1) (APPROVE)

Staff reported that they have been working with financial advisors to determine the best methods to reduce debt and increase income, and introduced financial consultant Keith Curry to present the recommendation.

Mr. Curry outlined the benefits of refinancing bonds during windows of opportunity within the fluctuating market, and indicated an expected savings of about $400,000.00.

Supervisor Cox (County) commended staff for being creative in these economically trying times.

Councilmember Guerin (Encinitas) asked how the $400,000.00 figure was determined.

Mr. Curry responded that it was the level that was available in the market on October 7, 2002.
Mayor Cafagna (Poway) asked what the consultant fee is.

Mr. Curry responded that it would be the cost of the Bond Counsel fee, (a low five-figure number - $10,000 - $20,000). His firm is on retainer and there would be no additional fees for their services.

Action: (County – San Marcos) A motion was made, and second, to approve Resolution RC2003-1 to authorize the Executive Director to take advantage of the fluctuating market for debt-reduction by refinancing bonds. Yes – 17 (weighted vote, 100%). No – 0 (weighted vote, 0%). Absent – 2 (Santee and Vista). Abstain – 0. The motion passed.

CHAIR’S REPORT

5. REPORT FROM THE AD HOC WORKING GROUP ON TRANSITION (INFORMATION)

Chairman Morrison provided an overview of the January 2, 2003 partnering session of the Working Group that was very successful. At the Working Group meeting, Mike Cowett presented a report from the legal counsels of the three agencies, stating that the agencies are in agreement on legal interpretations but are still working on policy decisions. A draft transition plan was presented to the Working Group for consideration. Key issues included continuing to delegate transportation operations, and consideration of the unique structure and roles of each agency for incorporation into the overall plan. The goal for action is the February meeting. In addition, an outside peer review panel comprised of persons with various levels of expertise has been established, and a member from each agency was selected to champion the transition effort: Judy Ritter from NCTD, Bob Emery from MTDB, and himself for SANDAG.

Councilmember Kellejian (Solana Beach) asked who will receive the Transition Plan report.

General Counsel responded that the draft Initial Transfer Plan will be presented to the Board at the January 24 meeting, and the transit boards will also have time to review it before the February deadline.

Mayor Madrid (La Mesa) asked whether the State has any approval authority.

General Counsel responded, “No, but a status report is to be provided to the legislature starting in December 2005, and an LAO report in December 2004.”

Gary Gallegos added that City Managers Dave Rowlands (Chula Vista) and Rita Geldert (Vista) will also be part of the peer review panel.
7. NEW TRANSIT RESPONSIBILITIES UNDER SB 1703 AND STATUS OF INITIAL TRANSITION PLAN (INFORMATION)

Mr. Gallegos gave an overview of the requirements of SB 1703 which call for consolidation of transit responsibilities beginning July 1, 2003 and reviewed the work to date on the initial transition plan due at the end of February. He reported that one provision adds a second member from the City of San Diego (Councilmember Madaffer) and a member from Imperial County (Supervisor Victor Carrillo). Voting procedures have changed to reflect the weighted vote. Legislation established four policy advisory committees and gives the Board authority to delegate responsibility to those committees when necessary.

Councilmember Guerin (Encinitas) asked whether Board Members will receive a hard copy of the report to share with their fellow Councilmembers, and whether land ownership is addressed within the legislation.

Gary Gallegos responded that a hard copy will be provided by early next week, and that land ownership stays with the operators.

Councilmember Monroe (Coronado) asked for clarification of guidelines regarding the alternate’s role in representing their sub-region.

General Counsel responded only Board Members may serve as the Member or Alternate to the Executive Committee; whereas, on the other three committees, either a Board Member or Alternate may serve.

8. INTERIM BYLAWS (ADOPT)

General Counsel reported that the interim bylaws were accepted for distribution with revisions at the December meeting, and highlighted those revisions to ensure the Board they have been included.

- Article 4, Section 5: Reference to voting structure is verbatim from the legislation.
- Article 7, Section 5: Inclusion of provisions requested by City of Poway, for authority for construction.
- Attached legislation for ease of reference.

She indicated that Board action would adopt them for use for at least the first six months of operation of the consolidated agency, at which time they will be reviewed to determine if any changes are needed.

Councilmember Madaffer (San Diego B) referenced page 6, article 5, section 3, “the Chair shall appoint a three-person nominating committee” and asked for clarification on whether the appointees may be alternates as well as members.

Councilmember Guerin (Encinitas) asked when the Board will have an opportunity to discuss naming the Agency.

Chairman Morrison (National City) responded that it is proposed to be a topic for the retreat.
Councilmember Crawford (Del Mar) referenced Page 9, Article 7, “Conflicts Resolution Process”, and asked whether all agencies must make the request for conflict resolution, or one agency may make the request; and clarification of the section regarding making recommendation on appeals.

*General Counsel responded that the Board has a Conflict Resolution Procedure that explains this in more detail. Any one city may make the request, but all must agree to be involved in the dispute resolution. Appeals on an inter-jurisdictional issue could come from any agency to this Board, but all members would need to be involved in order to resolve it.*

Mayor Murphy (San Diego A) suggested having five members on the nominating committee.

Mayor Madrid (La Mesa) suggested having some suggested agency names to choose from for discussion at the retreat in order to save time; and suggested having input from policy committees on selection of the Chair and Vice Chair.

Mayor Madrid made a motion to amend dollar amounts on page 8, section 5, – a, b, and c to read $100,000, $500,000, and $500,000, respectively. Supervisor Roberts seconded the motion.

Councilmember McCoy (Imperial Beach) asked whether it would be possible to have a series of events requiring authorization of these amounts

*General Counsel responded that in Section 5, first paragraph, there is a provision disallowing exceeding these amounts on a serial basis.*

**Action:** (La Mesa – County) A motion was made, and second, to amend dollar amounts on page 8, section 5, – a, b, and c to read $100,000, $500,000, and $500,000. Yes – 11 (weighted vote, 94%) (Chula Vista, Coronado, El Cajon, Escondido, La Mesa, National City, Oceanside, Poway, San Diego B, San Marcos, Solana Beach). No – 4 (weighted vote, 6%) (Del Mar, Encinitas, Imperial Beach and Lemon Grove). Absent – 5 (Carlsbad, County, San Diego A, Santee and Vista). Abstain – 0. The motion passed.

**Action:** (Del Mar - County) A motion was made, and a second, to adopt the interim bylaws as amended. Yes – 15 (weighted vote, 100%). No – 0 (weighted vote, 0%). Absent – 5 (Carlsbad, County, San Diego A, Santee and Vista). Abstain – 0. The motion passed.

9. OPERATIONS POLICY FOR THE NEW AGENCY: BOARD AND COMMITTEE RESPONSIBILITIES (APPROVE)

Chairman Morrison reported that the operations policy which has been modified to reflect the roles and responsibilities of the Board and Policy Advisory Committees under SB 1703 is recommended for approval. He indicated that this policy has been reviewed by the Executive Committee and the Ad Hoc Working Group on Transition.

**Action:** (San Diego B - County) A motion was made, and second, to approve the Operations Policy for the New Agency: Board and Committee Responsibilities. Yes – 15 (weighted vote, 100%). No – 0 (weighted vote, 0%). Absent – 5 (Carlsbad, County, San Diego A, Santee and Vista). Abstain – 0. The motion passed.

10. POLICIES AND PROCEDURES FOR POLICY ADVISORY COMMITTEES (APPROVE)

General Counsel reported that in December the Board approved policies and procedures for the Policy Advisory Committees, which have been incorporated into this policy document. The Executive Committee also has previously recommended them for approval.
Action: (Poway – San Diego B) A motion was made, and second, to approve the Policies and Procedures for Policy Advisory Committees with an amendment to include a City of San Diego and County exemption from the limitation on the number of committees on which a member of that council or board may serve; and to modify the limitation on committee memberships from the subregions to two policy committees as either a regular member or alternate. Yes – 13 (weighted vote, 100%). No – 0 (weighted vote, 0%). Absent – 7 (Carlsbad, County, La Mesa, San Diego A, San Marcos, Santee and Vista). Abstain – 0. The motion passed.

ADJOURNMENT: Chairman Morrison announced the next Board Meeting is January 24, 2003. He adjourned the meeting at 12:45 p.m.

GARY L. GALLEGOS
Secretary
MINUTES OF THE BOARD OF DIRECTORS MEETING
July 25, 2003

Vice Chairman Cafagna called the meeting of the SANDAG Board of Directors to order at 9:05 a.m. Attendance was as follows:

Voting Members
City of Carlsbad ................................................. Ramona Finnia, Mayor Pro Tem
City of Chula Vista ............................................... Patty Davis, Councilmember
City of Coronado .................................................. Phil Monroe, Mayor Pro Tem
City of Del Mar .................................................... Crystal Crawford, Councilmember
City of El Cajon .................................................. Mark Lewis, Mayor
City of Encinitas ................................................... Christy Guerin, Councilmember
City of Escondido ................................................... Lori Holt Pfeller, Mayor
City of Imperial Beach ........................................ Patricia McCoy, Councilmember
City of La Mesa ................................................ Art Madrid, Mayor
City of Lemon Grove ............................................. Mary Teresa Sessom, Mayor
City of National City ........................................... Ron Morrison, Councilmember
City of Oceanside .................................................. Jack Feller, Councilmember
City of Poway .................................................... Mickey Cafagna, Mayor
City of San Diego A .............................................. Dick Murphy, Mayor
City of San Diego B ............................................... Jim Madaffer, Councilmember
City of San Marcos ............................................. Corky Smith, Mayor
City of Santee ..................................................... Absent
City of Solana Beach ........................................... Joe Kelilejian, Deputy Mayor
City of Vista ........................................................ Morris Vance, Mayor
County of San Diego ........................................... Greg Cox, Supervisor

Advisory Liaison Members
County of Imperial .............................................. Hon. Victor Carrillo, Supervisor
Department of Transportation ................................ Gene Pound, District 11, Deputy Director
U.S. Department of Defense ..................................... CAPT. Russ Thackston, CEC, USN
Mexico .................................................................. Hon. Rodulfo Figueroa Aramoni, Cónsul General
San Diego Unified Port District ............................... Hon. Jess Van Deventer, Commissioner
San Diego County Water Authority .......................... Hon. Bud Lewis, Director
Metropolitan Transit Development Board ................ Hon. Jerry Rindone, Vice Chair
North San Diego County Transit Development Board .... Hon. Judy Ritter, Chair
1. MINUTES OF THE JUNE 27, 2003, BOARD MEETING (APPROVE)

Councilmember Patricia McCoy (Imperial Beach) moved approval of the June 27, 2003, Board meeting minutes, and Councilmember Jim Madaffer (City of San Diego - B) seconded the motion.

Action: Imperial Beach - City of San Diego - B. A motion and second was made to approve the minutes of the June 27, 2003, Board of Directors meeting. Yes - 13 (weighted vote, 100%). No - 0 (weighted vote, 0%). Absent - Chula Vista, Del Mar, La Mesa, National City, Oceanside, Santee.

1. ADDITIONS AND DELETIONS

None.

CONSENT ITEMS (3 Through 7)

3. DISCUSSIONS AND ACTIONS FROM POLICY ADVISORY COMMITTEES (APPROVE)

A. EXECUTIVE COMMITTEE MEETING (July 11, 2003)

B. SPECIAL TRANSPORTATION COMMITTEE MEETING (July 21, 2003)

C. REGIONAL PLANNING COMMITTEE MEETING (July 11, 2003)

D. BORDERS COMMITTEE MEETING (July 18, 2003)

4. LOCAL TECHNICAL ASSISTANCE (LTA) PROJECTS REQUIRING MORE THAN $1,000 OR THREE DAYS STAFF TIME (INFORMATION)

5. PROGRESS REPORT ON TRANSPORTATION PROJECTS (INFORMATION)

6. ADOPTION OF FINAL BYLAWS (APPROVE)

7. REQUEST THAT BOARD TAKE A POSITION ON SB 440 (BURTON) (OPPOSE)

Councilmember Patricia McCoy (Imperial Beach) moved approval of the Consent Items. Councilmember Jim Madaffer (San Diego - B) seconded the motion.

Action: Imperial Beach - City of San Diego - B. A motion and second was made to approve Consent Items 3 through 7. Yes - 17. No - 0. Abstain - 0. Absent - National City, Santee.

Mayor Madrid (La Mesa) requested to pull item #7 - Request that Board Take a Position on SB 440 (Burton) - for discussion.
NEW SANDAG
ADMINISTRATIVE POLICIES

Recommendation
It is the recommendation of the Executive Committee that the Board approve the attached new Board Policies.

Introduction
On September 12 and October 10, 2003 SANDAG’s legal staff presented three new draft policies to the Executive Committee for review and comment. These policies are entitled: Procurement of Services, Delegation of Authority, and Discrimination Complaint Procedures. The Executive Committee took action on October 10 to recommend approval by the Board of these policies with one minor modification, discussed below.

Discussion
A summary description of the proposed policies follows:

Procurement of Services

This policy provides direction from the Board to staff concerning procurement of service contracts. The policy is in compliance with the procurement and contracting mandates in SB 1703. The policy will be enhanced by a contracting procedures manual that is being prepared by staff using the best practices from SANDAG, NCTD, and MTDB, and will be approved by the Executive Director upon completion.

Delegation of Authority

This policy expands and clarifies the authority of the Executive Director and his/her authority to delegate functions to staff. Among other things, it provides the Executive Director with authority to take action in emergency situations, to approve design specifications and estimates, and to initiate litigation.

Discrimination Complaint Procedures

This policy establishes a procedure under which complaints alleging disability discrimination in SANDAG’s provision of services or SANDAG activities can be made by persons who are not employees of SANDAG and to set forth the Board’s policy concerning other forms of discrimination against protected classes of persons.

Requested Modifications

At its September 12, 2003 meeting the Executive Committee requested that staff collect some information from member agencies and agencies
similar to SANDAG relating to emergency procurement authority. Based on the information gathered during this benchmarking process, staff recommended that paragraph 3 of the Delegation of Authority policy be revised to remove any dollar limit on the Executive Director's procurement authority in an emergency. The Executive Committee accepted this change and requested that language be added in paragraph 3 requiring the Executive Director to promptly report to the members of the Board on any action taken using emergency powers so that they would be informed in the event they were contacted by third parties seeking information. These changes are reflected in the attached Delegation of Authority policy.

GARY L. GALLEGOS
Executive Director

Key Staff Contact: Julie D. Wiley, (619) 595-5647, jwi@sandag.org

No Budget Impact
PROPOSED AMENDMENTS TO BOARD POLICIES

Introduction

Staff annually reviews all of the Board Policies to determine if changes or updates are needed. The proposed amendments attached to this report were reviewed by the Executive Committee at its November and December meetings.

Recommendation

The Executive Committee recommends that the Board of Directors approve the proposed amendments to the Board Policies (Attachments 1 to 13).

Discussion

Highlights of the proposed amendments are discussed below. Changes proposed to the policies that are grammatical in nature are not discussed, but are tracked for reference in the attachments.

Board Policy No. 001 Operations Policy

Staff has requested that delegation of duties be modified for two of the Policy Advisory Committees (PACs) in this policy. Several duties are proposed for delegation to the Transportation Committee. With these changes the Transportation Committee would be given authority to approve State Transit Assistance claim amendments. Staff recommends that the Transportation Committee also be given authority to give approvals for fare changes and amendments to the comprehensive fare ordinance. Since the Transportation Committee already has authority to approve certain projects, staff additionally recommends that it be given authority to hold public hearings and approve environmental documents for these projects. The Transportation Committee currently has authority to approve Regional Transportation Improvement Program (RTIP) amendments. From time to time, a member agency proposes an RTIP amendment that calls for a loan of TransNet funds in exchange for funds from another source. In order to expedite the RTIP amendment approval process, staff recommends that the Transportation Committee be authorized to approve TransNet loans that are part of an RTIP amendment.

Finally, in order to formalize new responsibilities given by the Board to the Transportation and Borders Committees earlier this year, staff also proposes to add to the Transportation Committee’s authority the oversight functions for the Coordinated Transportation Services Agency (CTSA) and to the Borders Committee the authority to review and comment on regionally significant projects in adjoining counties.
Board Policy No. 002 Policies and Procedures for Policy Advisory Committees

Section 1.5 of this policy has been updated to show changes approved earlier this year to the membership of the Public Safety Committee. Staff proposes amendments to Sections 4 and 6 of the policy to clarify that even though there are deadlines for appointments of members and officers for the PACs, the appointments are effective as soon as they are made by the member agency or the Board Chair; there is no need to wait for the January 31 deadline to pass for the appointees to take their positions.

Board Policy No. 004 Rules of Procedure for the Board of Directors, PACs, and Other Legislative Bodies

Changes are proposed throughout Section 1 of this policy to effectuate anticipated changes to Board Policy No. 001 concerning the Transportation Committee’s authority to adopt amendments to the comprehensive fare ordinance. Staff also is recommending changes to Section 6.6 of this policy concerning creation of new committees by staff. Under the Brown Act, committees that are approved by formal action of the Board or a PAC are presumptively also covered by the Brown Act. Although many SANDAG committees are appropriately open to the public, there is sometimes a need to create a new committee that will not have a level of responsibility that merits the extra staff time needed to prepare and post agendas and comply with all of the provisions of the Brown Act. Staff does, however, recognize the need to have a check and balance process for creating new committees in order to ensure the committee structure at SANDAG does not become too cumbersome. Therefore, staff is proposing that formation of new committees be approved by the Board or a PAC, or if the application of the Brown Act would not otherwise be triggered, approved by the Executive Director with the concurrence of the Board Chair.

Board Policy No. 007 Equal Employment Opportunity Program

The only change requested to this policy 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 specifically to a document entitled “SANDAG’s Administrative Rules and Regulations,” the provision would instead generally reference “SANDAG administrative manuals, policies, and procedures.”

Board Policy No. 008 Legal Matters

Because of its increased responsibilities, particularly in the area of construction, SANDAG is more likely to be named as a party to litigation. The Office of General Counsel requests that Section 5 of the policy be added to clarify that the Office of General Counsel, the Executive Director, and staff designated by the Executive Director are authorized to sign pleadings, discovery, and other litigation-related documents on behalf of SANDAG.

Board Policy No. 011 Travel Expenses

Staff requests a change to Section 2.1 of this policy to clarify that Board member expense reports must be approved by the Chief Deputy Executive Director. Additionally, Section 2.5.11 needs to be updated to state that SANDAG will use the average exchange rates posted by the Federal Reserve rather than the Wall Street Journal for travel in a foreign country.
**Board Policy No. 015 Records Management**

SANDAG records are increasingly the subject of public records requests, which include requests for e-mails between staff, contractors, and Board members. Staff requests that language be added to Section 1.1 of this policy as a reminder to treat the use of, and messages included in, e-mails with due care by reviewing them for professionalism, accuracy, and objectivity before distribution. Staff also wishes to add language to Section 3.2 to clarify that the storage periods for public records do not begin until a document is finalized.

**Board Policy No. 016 Procurement of Services**

Public Utilities Code (PUC) Section 132352.4 (which is part of Senate Bill (SB) 1703) permits SANDAG to utilize a simplified competitive procurement process for procurements of services up to $100,000. Because SB 1703 only permits use of the simplified procurement method for construction, equipment and supplies up to $50,000; however, Board Policy No. 016 was originally drafted such that the simplified procurement limit for services also was set at $50,000 for consistency purposes. Currently, the Executive Director must give special permission under Section 6.1 of the policy to use the simplified method for service procurements in excess of $50,000. Staff requests that it be granted the maximum authority permitted by the PUC for services procurements in order to improve efficiency and flexibility in the procurement process. Therefore, changes are proposed to Sections 2, 3 and 6.1 of Board Policy No. 016 in order to increase the simplified procurement limit for services from $50,000 to $100,000.

Staff also requests changes to Sections 6.4 and 12.2 of this policy to clarify that the Executive Director’s authority to approve contract amendments that exceed the project budget is limited to $100,000. The Executive Committee requested that Section 12.2 be further modified to clarify that approval of unbudgeted amendments by the Chair or a Vice Chair should be avoided if it is feasible to hold a special meeting. Staff further requests changes to Sections 6.5 and 9.1 of this policy to allow use of purchase orders up to the amount of $50,000 and requiring use of a contract for amounts in excess of $50,000.

Section 7.7 of this policy currently requires that the Executive Committee review both actual and potential conflicts that arise due to concurrent legal representation of SANDAG and other parties. The Office of General Counsel anticipates that, in most cases, the conflict will be potential, not actual, and that staff can take measures to ensure potential conflicts do not become actual in nature. In order to reduce the number of instances that the Executive Committee is called upon to review these matters, staff requests that it only be required to bring the issues to the Executive Committee where an actual conflict has arisen that staff was unable to resolve.

As the SANDAG staff has grown larger and its use of contractors has broadened, it has become more difficult to ensure conflicts of interest are avoided. The Office of General Counsel therefore requests that the language proposed in new Section 7.1.5 be added to spell out exactly what types of conflicts must be avoided for current employees and persons employed by SANDAG within the previous 12 months.
**Board Policy No. 017 Delegation of Authority**

The first change requested in this policy would allow the Executive Director to accept reimbursements from member agencies for use of SANDAG on-call contracts. Staff anticipates that the transit operators and other member agencies will want to use the SANDAG on-call contracts from time to time. Currently, if the amount of on-call use exceeds $100,000, Board or Policy Advisory Committee approval would be needed to accept reimbursement from a member agency. This provision would allow the Executive Director to accept reimbursement from a member agency in any dollar amount. The other change requested is to Section 5. 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.”

**Board Policy No. 023 Procurement and Contracting - Equipment & Supplies**  
**Board Policy No. 024 Procurement and Contracting - Construction**

The changes requested for these two policies are consistent with the changes requested for Board Policy No. 016. The proposed amendments would allow use of purchase orders up to $50,000, and would add a new section that spells out exactly what types of conflicts must be avoided for current employees and persons employed by SANDAG within the previous 12 months.

**Board Policy No. 030 Contingency Reserve Policy**

Staff requests that the language in Section 2 under “Qualifying Uses of the Reserve Fund” be reorganized to clarify that the reserve fund should only be used for one-time, nonrecurring purposes unless approved by the Executive Committee.

**Board Policy No. 031 TransNet Ordinance and Expenditure Plan Rules**

Many of the tracked changes in this policy simply show a change of the word “Policy” to “Rule” in order to make reference to the provisions of this policy less confusing. The first substantive change is to Rule 7 concerning the “Program of Projects Approval Process and Amendments.” Due to issues that arose with timing and sufficiency of documentation during the last Regional Transportation Improvement (RTIP) update, staff requests that the changes in this section be implemented to prevent future problems. The new language clarifies that SANDAG will not approve a member agency’s project list until the member agency has held a clearly noticed public hearing and its governing body has passed a resolution approving the specific list of projects and provided the resolution to SANDAG. The proposed changes also would apply to RTIP amendments.

The other substantive changes to this policy are in new Rules 18 and 19. Rule 18 codifies the 70 percent/30 percent split applicable to member agency use of TransNet funds for local street and road maintenance projects. Rule 19 is proposed to clarify the Board’s interpretation of the conflict of interest requirement in the document entitled “Statement of Understanding Regarding the Implementation of the Independent Taxpayer Oversight Committee (ITOC) for the TransNet Program,” which is an attachment to the TransNet Extension Ordinance. That document states in part, “ITOC members shall not have direct commercial interest or employment with any public or private entity, which receives TransNet sales tax funds authorized by this Ordinance.” Staff would like the Board to clarify that it interprets this language to impose the same level of restrictions on
the ITOC representatives as those that apply to SANDAG Board members pursuant to California state law found at Government Code Sections 87100 et seq. and 1090, rather than some stricter standard than that required by state law. This change will assist the Office of General Counsel in applying a legal analysis of conflict of interest matters to ITOC members, reduce confusion for ITOC members regarding their responsibilities, and potentially prevent the unnecessary loss of ITOC members.

GARY L. GALLEGOS
Executive Director

Attachments: Proposed Amendments in Track Changes Mode
1. Board Policy No. 001 Operations Policy
3. Board Policy No. 004 Rules of Procedure for the Board of Directors, Policy Advisory Committees, and Other Legislative Bodies
4. Board Policy No. 007 Equal Employment Opportunity Program
5. Board Policy No. 008 Legal Matters
6. Board Policy No. 011 Travel Expenses
7. Board Policy No. 015 Records Management
8. Board Policy No. 016 Procurement of Services
9. Board Policy No. 017 Delegation of Authority
10. Board Policy No. 023 Procurement and Contracting - Equipment & Supplies
11. Board Policy No. 024 Procurement and Contracting - Construction
12. Board Policy No. 030 Contingency Reserve Policy
13. Board Policy No. 031 TransNet Ordinance and Expenditure Plan Rules

Key Staff Contact: Julie D. Wiley, (619) 699-6966, jwi@sandag.org

No Budget Impact
DELEGATION OF AUTHORITY

The purpose of this policy is to establish the authority granted by the Board of Directors to the Executive Director. It also provides the Executive Director with the authority to delegate functions he or she has been delegated by the Board to SANDAG staff.

Definitions

The following words shall have the meanings indicated when used in this policy:

“Agreement” shall be interpreted to include contracts, memorandums of understanding, agreement amendments, purchase orders, invoices, money transfers, or any other document that could be enforced against SANDAG in a court of law.

“Budget” shall be interpreted to include the SANDAG’s annual budget, revisions and amendments thereto, and the Overall Work Program.

“Emergency or Urgent Need” for purposes of this policy shall mean a situation in which, in the Executive Director’s or his/her designee’s opinion, injury to persons, or significant injury to property or interruption of a public service will occur if immediate action is not taken.

Procedures

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.

2. 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.

3. 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.

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.
4.1 Enter into agreements not currently incorporated in the budget and make other modifications to the budget in an amount up to $100,000 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 $100,000 limit.

4.2 Approve all design plans, specifications and estimates for capital improvement projects.

4.3 Execute all right-of-way property transfer documents, including but not limited to, rights of entry, licenses, leases, deeds, easements, escrow instructions, and certificates of acceptance.

4.4 Direct payment to persons for right-of-way property so long as the payment amount does not exceed 110 percent of the appraised value or $100,000 above the appraised value, whichever is greater.

4.5 Reject all bids and/or suspend the competitive procurement process.

4.6 Provide the final determination to persons or firms filing a protest regarding SANDAG's procurement or contracting processes or procedures.

4.7 File administrative claims and to initiate and maintain lawsuits on behalf of the Board to recover for damage to or destruction of SANDAG property, or interruption of a public service.

4.8 Settle all lawsuits initiated under paragraph 4.7.

4.9 Settle all lawsuits, alternative dispute matters, and claims that SANDAG must defend when the settlement amount does not exceed $100,000. In the event the Executive Director exercises this authority he/she shall send a memo to the members of the Board as soon as possible in order to notify them of any action taken.

4.10 Accept reimbursement from member agencies for use of SANDAG on-call contracts.

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 manuals, policies, and procedures, Rules and Regulations.

6. Pursuant to Article V, Section 4, paragraph c of the Bylaws, the Executive Director shall promulgate an administrative policy governing the procedures for delegating his/her authority to other SANDAG staff.

Adopted October 2003
Amended November 2004
Amended December 2006
to comply with and assist in carrying out the provisions of these Rules and such policies and procedures as the Executive Director may issue.

1.5 The Executive Director is vested with the power to vary or modify the strict application of the provisions of these Rules to avoid injustice or when it is in the best interest of SANDAG. Any such variance must be granted in writing and signed by the Executive Director.

1.6 If any portion of these Rules is held to be invalid, it shall not affect the validity of the remaining portions of these Rules.

1.7 These Rules apply to all SANDAG employees except where exceptions are noted in these Rules or in supplemental employee agreements signed by the Executive Director that specifically state that their provisions supersede portions of these Rules. These Rules do not apply to the Executive Director, who serves under contract at the will of SANDAG’s Board of Directors. These Rules also do not apply to the Board of Directors. Sections 6.2, 6.3, 8.2, 8.3, 9, and 10 (except where specifically noted as applicable to one or more other categories of employees) of these Rules apply only to regular full-time and regular part-time employees who have completed their probationary period.

1.8 a. Anniversary Date: The anniversary date for all SANDAG employees is the date of employment. For employees who transfer to SANDAG due to the Consolidation, the employee’s anniversary date is the employee’s date of employment with the San Diego Metropolitan Transit Development Board (MTDB) or the San Diego North County Transit Development Board (NCTD). The anniversary date is the date from which salary and leave benefits are calculated. For purposes of performance evaluations, this term is also used to describe the anniversary date of when an employee was transferred, promoted, or otherwise moved to a new position at SANDAG.

b. Appointing Authority: That authority to hire, promote, transfer, discipline, demote, suspend,
1.6 If any portion of this Handbook is held to be invalid, it shall not affect the validity of the remaining portions of the Handbook.

1.7 This Handbook applies to all SANDAG employees except where exceptions are noted in the Handbook or in employment agreements authorized by the Executive Director that specifically state that their provisions supersede portions of this Handbook. This Handbook does not apply to the Executive Director or the Independent Performance Auditor; both positions serve under contract at the will of the SANDAG Board of Directors. This Handbook also does not apply to the Board of Directors as they are not SANDAG employees.

1.8 The following terms, as defined below, are used throughout this Handbook.

a. **Anniversary Date**: The anniversary date for all SANDAG employees is the date of employment. For employees who transferred to SANDAG due to Consolidation, the employee’s anniversary date is the employee's date of employment with the San Diego Metropolitan Transit Development Board (MTDB or MTS) or the San Diego North County Transit District (NCTD). The anniversary date is the date from which salary and leave benefits are calculated. This term also is sometimes used to describe the anniversary date of when an employee was transferred, promoted, or otherwise moved to a new position at SANDAG.

b. **Appointing Authority**: That authority to hire, promote, transfer, discipline, demote, suspend, terminate, and take such other actions that generally occur within the employment context.

c. **At-Will Employees**: All employees, other than Regular employees hired prior to July 1, 2019 who have completed their introductory period, are “at-will” employees. This means that either SANDAG or the employee may terminate the employment relationship with or without cause, with or without notice, and at any time for any reason. Nothing in this Handbook, or in other documents provided or statements made to employees, is intended to conflict with, eliminate, or modify in any way, the at-will employment status of SANDAG employees.

d. **Board of Directors or Board**: The SANDAG Board of Directors.

e. **Class or Classification**: A group of positions sufficiently similar in duties, responsibilities, authority, and qualifications for employment to permit combining them under a single title and equitable application of common standards of selection and compensation.
SAN DIEGO ASSOCIATION OF GOVERNMENTS

GENERAL COUNSEL

DEFINITION

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.

SUPERVISION EXERCISED

Exercises direct supervision over professional and administrative support staff.

EXAMPLES OF IMPORTANT AND ESSENTIAL DUTIES

Important and essential duties may include, but are not limited to, the following:

Provide legal advice to the Board of Directors, Executive Committee, SANDAG committees, SourcePoint, ARJIS, Executive Director, and staff on 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.

Represent SANDAG, the Board of Directors, Executive Committee, Policy Advisory Committees, commissions, and agents in legal proceedings before courts, administrative agencies and boards, arbitrators, and other administrative agencies; prepare pleadings, conduct legal research, prepare briefs, motions, court orders, and other court documents, appear in court, and negotiate with other parties; negotiate, defend, or settle legal disputes.

Supervise, analyze, review, and draft ordinance, deeds, releases, contracts, and other legal documents that bind or obligate SANDAG; provide legal opinions and recommendations to ensure SANDAG is properly and effectively represented in such matters; review rules, regulations, and policies to ensure legal compliance.

Prepare legal documents; review and approve contracts and administrative actions; perform a wide variety of complex legal research; issue legal opinions on behalf of SANDAG.

Supervise and draft administrative policies and regulations; provide advice on administrative and human resources issues.

Oversee and respond to media requests concerning legal issues; present and explain legal issues and opinions in public meetings.

Develop and write state, federal, and local legislation; review proposed legislation.

Manage and supervise the activities of legal staff and outside legal consultants.
Respond to media requests concerning legal issues; present and explain legal issues and opinions in public meetings.

Oversee and respond to and defend SANDAG against consultant/contractor protests and claims under the Tort Claims Act.

Coordinate activities with those of other departments and outside agencies and organizations; provide staff assistance to the Board of Directors and the Executive Director; prepare and present staff reports and other necessary correspondence.

Participate on a variety of boards and commissions; attend and participate in professional group meetings; stay abreast of new trends in general municipal, contracts, transportation, environmental, land use, and planning and construction law.

Respond to and resolve difficult and sensitive citizen and employee inquiries and complaints.

Act as liaison with MTS.

OTHER JOB RELATED DUTIES

Perform related duties and responsibilities as assigned.

JOB RELATED AND ESSENTIAL QUALIFICATIONS

Knowledge of:

Operational characteristics, services, and activities of a comprehensive law department.

Principles and applications of civil and administrative law, including those relative to SANDAG operations, government finance, parliamentary procedures, and other legal proceedings.

Judicial procedures and rules of evidence.

Specific laws relevant to California local government agencies, federal and state contracts, transportation law, environmental law, and land use planning and construction law.

Organization and management practices as applied to the analysis and evaluation of legislative programs, policies, and operational needs.

Modern and complex principles and practices of program development and administration.

Federal, state, and local laws, codes, and regulations.

Skill to:

Operate modern office equipment, including computer equipment and software.
Ability to:

Plan, organize, direct, and coordinate the work of contract attorneys; delegate authority and responsibility.

Provide administrative and professional leadership and direction for the legislative program and legal services.

Identify and respond to member agencies, Board of Directors, and community issues, concerns, and needs.

Develop, implement, and administer goals, objectives, and procedures for providing effective legal representation and counsel.

Analyze problems, identify alternative solutions, project consequences of proposed actions, and implement recommendations in support of legal and legislative goals.

Research, analyze, and evaluate proposed legislation; develop and write legislation.

Gain cooperation through discussion and persuasion; negotiate resolutions.

Prepare clear and concise reports.

Interpret and apply federal, state, and local policies, procedures, laws, and regulations.

Communicate clearly and concisely, both orally and in writing, using appropriate English grammar and syntax.

Establish and maintain cooperative working relationships with those contacted in the course of business, including member agencies, city and other government officials, community groups, the general public, and media representatives.

Minimum Qualifications:

Experience:

Eight years of professional experience in municipal, transportation, environmental, or land use law, including four years of supervisory experience.

Training:

Juris Doctorate from an accredited law school.

License or Certificate:

Status as a member in good standing of the State Bar of California.
ADA Special Requirements:
In addition to the above essential knowledge, skills, abilities, and qualifications, essential
duties require the following physical skills and work environment:

The standard office position requires an employee to be able to access their work location,
attend meetings, utilize computerized workstations, lift paperwork and occasionally light-
weight equipment or resources (less than 20 pounds). Typically an employee will need to
walk, stand, sit, keyboard, see, hear, bend, lift, and twist. This position will obtain
information from oral instructions, conversations, written reports, e-mail, Internet, journals,
and other publications as well as process and analyze this information. May need to provide
information orally or in written format and work under deadlines. Typically an employee also
will need to mentally process and analyze complex information, compose complex responses,
interact with others, and present information and reports.

Effective Date: November 2004
SAN DIEGO ASSOCIATION OF GOVERNMENTS

DEPUTY GENERAL COUNSEL

DEFINITION

Under policy direction of the Board of Directors and general administrative direction of the Executive Director and General Counsel, to perform a variety of professional duties involved in providing a full range of legal services related to SANDAG operations, including litigation; to conduct legal research and prepare ordinances, resolutions, memoranda, administrative rules and regulations, and other legal documents; to advise the Board of Directors, the Executive Committee, SANDAG departments, staff, boards, commissions, and Policy Advisory Committees; and to provide professional legal assistance to the General Counsel.

SUPERVISION EXERCISED

May exercise technical and functional supervision over professional and administrative support staff.

EXAMPLES OF IMPORTANT AND ESSENTIAL DUTIES

Important and essential duties may include, but are not limited to, the following:

Provide legal advice and opinions to the Board of Directors, the Executive Committee, Executive Director, Chief Deputy Executive Director, Department Directors, employees, boards, commissions, and committees on a variety of legal issues; 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.

Represent SANDAG, the Board of Directors, Executive Committee, Policy Advisory Committees, commissions, and agents in legal proceedings before courts, administrative agencies and boards, arbitrators, and other administrative agencies; prepare pleadings, conduct legal research, prepare briefs, motions, court orders, and other court documents, appear in court, and negotiate with other parties; negotiate, defend, or settle legal disputes.

Analyze, review, and draft ordinances, deeds, releases, contracts, and other legal documents that bind or obligate SANDAG; provide legal opinions and recommendations to ensure SANDAG is properly and effectively represented in such matters; review rules, regulations, and policies to ensure legal compliance.

Prepare legal documents; review and approve contracts and administrative actions; perform a wide variety of complex legal research; issue legal opinions on behalf of SANDAG.

Develop and write state, federal, and local legislation; review proposed legislation.

Draft administrative policies and regulations; provide advice on administrative and human resources issues.
Respond to media requests concerning legal issues; present and explain legal issues and opinions in public meetings.

Coordinate activities with those of other divisions and outside agencies and organizations; provide staff assistance to the Board of Directors and the Executive Director; prepare and present staff reports and other necessary correspondence.

Participate on a variety of boards and commissions; attend and participate in professional group meetings; stay abreast of new trends and innovations in the field of law.

Respond to and resolve difficult and sensitive citizen inquiries and complaints.

Provide advice on procurement policies and procedures.

Serve as lead advisor on Public Records Act, Political Reform Act, and Brown Act matters.

Respond to and defend SANDAG against consultant/contractor protests and claims under the Tort Claims Act.

Interview, hire, and oversee the work of legal interns.

Collect past due amounts owed to SANDAG.

Write, update, and oversee implementation of SANDAG’s Conflicts Code and Conflict of Interest Policies.

Serve as alternate for the General Counsel.

Serve as SANDAG’s Risk Manager.

OTHER JOB RELATED DUTIES

Perform related duties and responsibilities as assigned.

JOB RELATED AND ESSENTIAL QUALIFICATIONS

Knowledge of:

Operational characteristics, services, and activities of a comprehensive law department.

Specific laws relevant to California local government agencies, federal and state transportation law, human resources and personnel law, environmental law, land use law, and planning law.

Principles and applications of civil and administrative law, including those relative to SANDAG operations, government finance, parliamentary procedures, and other legal proceedings.
Principles and concepts of human resources and risk management.

Judicial procedures and rules of evidence.

Methods of legal research.

Established precedents applicable to SANDAG activities.

Pertinent federal, state, and local laws, codes, and regulations.

**Skill to:**

Operate modern office equipment, including computer equipment and software.

**Ability to:**

Provide administrative and professional leadership and direction for legal services.

Identify and respond to member agencies, Board of Directors, and community issues, concerns, and needs.

Represent SANDAG in a wide variety of judicial and administrative proceedings.

Prepare and present difficult cases in court.

Present statements of law, fact, and argument clearly and logically.

Conduct research on complex legal problems and prepare sound legal opinions.

Analyze a wide variety of legal issues and prepare diverse legal documents.

Interpret and apply legal principles and procedures.

Interpret and apply federal, state, and local policies, procedures, laws, and regulations.

Exercise good judgment, flexibility, creativity, and sensitivity in response to changing situations and needs.

Communicate clearly and concisely, both orally and in writing, using appropriate English grammar and syntax.

Establish and maintain cooperative working relationships with those contacted in the course of business, including member agencies, city and other government officials, community groups, the general public, and media representatives.
Minimum Qualifications:

Experience:

Seven years of professional legal experience in municipal or other government law.

Training:

Juris Doctorate from an accredited law school.

License or Certificate:

Status as a member in good standing of the State Bar of California.

ADA Special Requirements:

In addition to the above essential knowledge, skills, abilities, and qualifications, essential duties require the following physical skills and work environment:

The standard office position requires an employee to be able to access their work location, attend meetings, utilize computerized workstations, lift paperwork and occasionally lightweight equipment or resources (less than 20 pounds). Typically an employee will need to walk, stand, sit, keyboard, see, hear, bend, lift, and twist. This position will obtain information from oral instructions, conversations, written reports, e-mail, Internet, journals, and other publications as well as process and analyze this information. May need to provide information orally or in written format and work under deadlines. Typically an employee also will need to mentally process and analyze complex information, compose complex responses, interact with others, and present information and reports.

Effective Date: November 2004
SAN DIEGO ASSOCIATION OF GOVERNMENTS

GENERAL COUNSEL

DEFINITION

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.

SUPERVISION EXERCISED

Exercises direct supervision over professional and administrative support staff.

EXAMPLES OF IMPORTANT AND ESSENTIAL DUTIES

*Important and essential duties may include, but are not limited to, the following:*

Provide legal advice to the Board of Directors, Executive Committee, SANDAG committees, SourcePoint, ARJIS, Executive Director, 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.

Represent SANDAG, the Board of Directors, Executive Committee, Policy Advisory Committees, commissions, and agents in legal proceedings before courts, administrative agencies and boards, arbitrators, and other administrative agencies; prepare pleadings, conduct legal research, prepare briefs, motions, court orders, and other court documents, appear in court, and negotiate with other parties; negotiate, defend, or settle legal disputes.

Supervise, analyze, review, and draft ordinance, real property documents, releases, contracts, and other legal documents that bind or obligate SANDAG; provide legal opinions and recommendations to ensure SANDAG is properly and effectively represented in such matters; review rules, regulations, and policies to ensure legal compliance.

Prepare legal documents; review and approve contracts, procurement documents, and administrative actions; perform a wide variety of complex legal research; issue legal opinions on behalf of SANDAG.

Supervise and draft administrative policies and regulations; provide advice on administrative and human resources issues.

Oversee and respond to media requests concerning legal issues; present and explain legal issues and opinions in public meetings.

Develop and write state, federal, and local legislation; review and analyze proposed legislation.

Manage and supervise the activities of legal staff and outside legal consultants.
Respond to media requests concerning legal issues; present and explain legal issues and opinions in public meetings.

Review and prepare agenda materials and reports.

Assist in overseeing litigation and outside legal Counsel.

Oversee and respond to and defend SANDAG against consultant/contractor protests and claims under the Tort Claims Act.

Coordinate activities with those of other departments and outside agencies and organizations; provide staff assistance to the Board of Directors and the Executive Director; prepare and present staff reports and other necessary correspondence.

Participate on a variety of boards and commissions; attend and participate in professional group meetings; stay abreast of new trends in general municipal, contracts, transportation, environmental, land use, and planning and construction law.

Respond to and resolve difficult and sensitive citizen and employee inquiries and complaints.

Act as liaison with MTS, NCTD, and other member agencies’ legal counsels.

**OTHER JOB RELATED DUTIES**

Perform related duties and responsibilities as assigned.

**JOB RELATED AND ESSENTIAL QUALIFICATIONS**

**Knowledge of:**

Operational characteristics, services, and activities of a comprehensive law department.

Principles and applications of civil and administrative law, including those relative to SANDAG operations, government finance, parliamentary procedures, and other legal proceedings.

Judicial procedures and rules of evidence.

Specific laws relevant to California local government agencies, federal and state contracts, transportation law, environmental law, and land use planning and construction law.

Organization and management practices as applied to the analysis and evaluation of legislative programs, policies, and operational needs.

Modern and complex principles and practices of program development and administration.

Federal, state, and local laws, codes, and regulations.
Skill to:
Operate modern office equipment, including computer equipment and software.

Ability to:
Plan, organize, direct, and coordinate the work of contract attorneys; delegate authority and responsibility.
Organize and oversee a large number of projects with shifting priorities.
Provide administrative and professional leadership and direction for the legislative program and legal services.
Identify and respond to member agencies, Board of Directors, and community issues, concerns, and needs.
Speak and present to large groups in an effective manner.
Provide sound legal advice under tight deadlines.
Develop, implement, and administer goals, objectives, and procedures for providing effective legal representation and counsel.
Analyze problems, identify alternative solutions, project consequences of proposed actions, and implement recommendations in support of legal and legislative goals.
Research, analyze, and evaluate proposed legislation; develop and write legislation.
Gain cooperation through discussion and persuasion; negotiate resolutions.
Prepare clear and concise reports.
Interpret and apply federal, state, and local policies, procedures, laws, and regulations.
Communicate clearly and concisely, both orally and in writing, using appropriate English grammar and syntax.
Establish and maintain cooperative working relationships with those contacted in the course of business, including member agencies, city and other government officials, community groups, the general public, and media representatives.
Minimum Qualifications:

Experience:

Eight years of professional experience in municipal, transportation, environmental, or land use law, including four years of supervisory experience.

Training:

Juris Doctorate from an accredited law school.

License or Certificate:

Status as a member in good standing of the State Bar of California.

ADA Special Requirements:

In addition to the above essential knowledge, skills, abilities, and qualifications, essential duties require the following physical skills and work environment:

The standard office position requires an employee to be able to access their work location, attend meetings, utilize computerized workstations, lift paperwork and occasionally lightweight equipment or resources (less than 20 pounds). Typically an employee will need to walk, stand, sit, keyboard, see, hear, bend, lift, and twist. This position will obtain information from oral instructions, conversations, written reports, e-mail, Internet, journals, and other publications as well as process and analyze this information. May need to provide information orally or in written format and work under deadlines. Typically an employee also will need to mentally process and analyze complex information, compose complex responses, interact with others, and present information and reports.

Effective Date: April 2011
SAN DIEGO ASSOCIATION OF GOVERNMENTS

DEPUTY GENERAL COUNSEL

DEFINITION

Under policy direction of the Board of Directors and general administrative direction of the Executive Director and General Counsel, to perform a variety of professional duties involved in providing a full range of legal services related to SANDAG operations, including litigation; to conduct legal research and prepare ordinances, resolutions, memoranda, administrative rules and regulations, and other legal documents; to advise the Board of Directors, the Executive Committee, SANDAG departments, staff, boards, commissions, and Policy Advisory Committees; and to provide professional legal assistance to the General Counsel.

SUPERVISION EXERCISED

May exercise technical and functional supervision over professional and administrative support staff.

EXAMPLES OF IMPORTANT AND ESSENTIAL DUTIES

Important and essential duties may include, but are not limited to, the following:

Provide legal advice and opinions to the Board of Directors, the Executive Committee, Executive Director, Chief Deputy Executive Director, Department Directors, employees, boards, commissions, and committees on a wide variety of legal issues; 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.

Represent SANDAG, the Board of Directors, Executive Committee, Policy Advisory Committees, commissions, and agents in legal proceedings before courts, administrative agencies and boards, arbitrators, and other administrative agencies; prepare pleadings, conduct legal research, prepare briefs, motions, court orders, and other court documents, appear in court, and negotiate with other parties; negotiate, defend, or settle legal disputes.

Analyze, review, and draft ordinances, real property documents, releases, contracts, and other legal documents that bind or obligate SANDAG; provide legal opinions and recommendations to ensure SANDAG is properly and effectively represented in such matters; review rules, regulations, and policies to ensure legal compliance.

Prepare legal documents; review and approve contracts, procurement documents, and administrative actions; perform a wide variety of complex legal research; issue legal opinions on behalf of SANDAG.

Develop and write state, federal, and local legislation; review and analyze proposed legislation.

Assist in overseeing litigation and outside legal Counsel.
Respond to media requests concerning legal issues. Present and explain legal issues and opinions in public meetings; review and prepare agenda materials and reports.

Coordinate activities with those of other divisions and outside agencies and organizations; provide staff assistance to the Board of Directors and the Executive Director; prepare and present staff reports, agendas, and other necessary correspondence.

Participate on a variety of boards and commissions; attend and participate in professional group meetings; stay abreast of new trends and innovations in the field of law.

Respond to and resolve difficult and sensitive citizen inquiries and complaints.

Provide advice on procurement policies and procedures.

Serve as advisor on and respond to Public Records Act, Political Reform Act, and Brown Act matters.

Respond to and defend SANDAG against consultant/contractor protests and claims under the Tort Claims Act.

Interviewing, hiring, and overseeing the work of legal interns.

Collect past due amounts owed to SANDAG.

Write, update, and oversee implementation of SANDAG’s Conflicts Code and Conflict of Interest Policies.

Serve as alternate for the General Counsel.

OTHER JOB RELATED DUTIES

Perform related duties and responsibilities as assigned.

JOB RELATED AND ESSENTIAL QUALIFICATIONS

Knowledge of:

Operational characteristics, services, and activities of a comprehensive law department.

Specific laws relevant to California local government agencies, federal and state transportation law, environmental law, and planning law.

Principles and applications of civil and administrative law, including those relative to SANDAG operations, government finance, parliamentary procedures, and other legal proceedings.

Principles and concepts of risk management.

Judicial procedures and rules of evidence.
Methods of legal research.

Established precedents applicable to SANDAG activities.

Pertinent federal, state, and local laws, codes, and regulations.

**Skill to:**

Operate modern office equipment, including computer equipment and software.

**Ability to:**

Organize and oversee a large number of projects with shifting priorities.

Provide administrative and professional leadership and direction for legal services.

Identify and respond to member agencies, Board of Directors, and community issues, concerns, and needs.

Speak and present to large groups in an effective manner.

Provide sound legal advice under tight deadlines.

Represent SANDAG in a wide variety of judicial and administrative proceedings.

Prepare and present difficult cases in court.

Present statements of law, fact, and argument clearly and logically.

Conduct research on complex legal problems and prepare sound legal opinions.

Analyze a wide variety of legal issues and prepare diverse legal documents.

Interpret and apply legal principles and procedures.

Interpret and apply federal, state, and local policies, procedures, laws, and regulations.

Exercise good judgment, flexibility, creativity, and sensitivity in response to changing situations and needs.

Communicate clearly and concisely, both orally and in writing, using appropriate English grammar and syntax.

Establish and maintain cooperative working relationships with those contacted in the course of business, including member agencies, city and other government officials, community groups, the general public, and media representatives.


Minimum Qualifications:

Experience:

Seven years of professional legal experience in municipal or other government law.

Training:

Juris Doctorate from an accredited law school.

License or Certificate:

Status as a member in good standing of the State Bar of California.

ADA Special Requirements:

In addition to the above essential knowledge, skills, abilities, and qualifications, essential duties require the following physical skills and work environment:

The standard office position requires an employee to be able to access their work location, attend meetings, utilize computerized workstations, lift paperwork and occasionally lightweight equipment or resources (less than 20 pounds). Typically an employee will need to walk, stand, sit, keyboard, see, hear, bend, lift, and twist. This position will obtain information from oral instructions, conversations, written reports, e-mail, Internet, journals, and other publications as well as process and analyze this information. May need to provide information orally or in written format and work under deadlines. Typically an employee also will need to mentally process and analyze complex information, compose complex responses, interact with others, and present information and reports.

Effective Date:  April 2011
SAN DIEGO ASSOCIATION OF GOVERNMENTS

SPECIAL COUNSEL

DEFINITION

Under policy direction of the Board of Directors and general administrative direction of the Executive Director and General Counsel, to perform a variety of professional duties involved in providing a full range of legal services related to SANDAG operations, including litigation; to conduct legal research and prepare ordinances, resolutions, memoranda, administrative rules and regulations, contracts, and other legal documents; to advise the Board of Directors, the Executive Committee, SANDAG departments, staff, boards, commissions, and Policy Advisory Committees; and to provide highly responsible and complex professional legal assistance to the General Counsel.

SUPERVISION EXERCISED

May exercise technical and functional supervision over professional and administrative support staff.

EXAMPLES OF IMPORTANT AND ESSENTIAL DUTIES

Important and essential duties may include, but are not limited to, the following:

Provide legal advice on employment matters to Human Resources and management including periodic review and update of Employee Handbook. Keep Human Resources apprised of employee related matters that are brought directly to the legal team.

Support the EEO Officer by meeting with persons involved in equal opportunity complaints in order to verify case information, and supporting arbitration and dispute settlement.

Provide technical guidance to HR and Contracts & Procurement related to monitoring and evaluating compliance with equal opportunity laws, guidelines, and policies to ensure that employment practices and contracting arrangements give equal opportunity without regard to race, religion, color, national origin, sex, age, or disability.

Advise staff on all aspects of environmental justice and Title VI analyses including at the planning and preliminary engineering stages of projects.

Review and update as needed Title VI and environmental justice handbook for use by staff.

In coordination with HR, develop and deliver training to employees in the areas of ethics, employment, environmental justice, and Title VI.

Provide information, technical assistance, and support to HR related to training for supervisors, managers, and employees on topics such as employee supervision, hiring, grievance procedures, and staff development.

Interpret civil rights laws and equal opportunity regulations.
Review and update contracting templates as needed for Title VI, DBE, EEO, and labor compliance.

Provide legal advice on Disadvantaged Business Program issues.

Act as the legal advisor for the ADA Program.

Provide assistance with legislative program and draft language for bills as needed. Assist with analysis and potential impacts of proposed and newly-enacted legislation.

Coordinate, monitor, and revise complaint procedures to ensure timely processing and review of complaints related to Title VI. Serve as a technical resource to HR with complaint procedures related to EEOC or Employee Grievances.

Organize and maintain files that will contain a written record of all of the actions and procedures as required by various EJ and Civil Rights laws. Such files will contain copies of records and reports required to be kept in the event of audits. Prepare and certify the reports and audits required by law and compile any and all other reports, statistics, charts, and graphs as may be required by law.

Keep abreast of current Federal/State developments, modifications, law, regulations and trends as they relate to EJ, Title VI, DBE, non-discrimination and anti-harassment programs, and suggest any necessary changes.

Be available for consulting with employees with regard to legal rights and responsibilities concerning environmental justice, Title VI, DBE, discrimination and harassment when so requested or when it appears that such consultation is warranted.

Serve as liaison officer with all federal, state, and local government compliance or investigation officers in all matters involving Title VI and EJ. Provide technical guidance to the DBELO for all DBE related matters and the EEO officer for all EEO, discrimination and harassment complaints or required reports or audits.

Serve as a technical resource to HR related to the review of job titles and job descriptions in order to determine whether they correlate with job requirements and to assure that requirements of training, experience, certification, licensing, and/or skills do not unnecessarily impede or bar the utilization of qualified applicants and employees and comply with FLSA and other laws.

Support HR with the periodic examination of recruiting methods and employment procedures to assure that they do not illegally discriminate against qualified applicants.

Review Code of Conduct, Conflicts Code, and other conflicts of interest policies and update as required by law or needed due to staff changes. Serve as a resource for legal questions relating to these issues.

Review and revise complex documents including contracts and MOU’s related to Special Counsel functions and other legal documents as needed from time to time. Assist with reviewing, negotiating and approving agreements between SANDAG and other government agencies.
Provide backup for other members of the Office of General Counsel in their absence including assumption of their routine duties during such absence.

Serve as a resource for questions regarding the acceptance of gifts and update the Guidance on Gifts as needed.

Provide training to employees on the topic of procurement law on an as-needed basis.

Develop draft language for changes to contracts and procurement templates used for professional services.

Serve as legal advisor to the SANDAG Public Safety Committee including drafting and review of related policies.

Assist with training new attorneys and legal interns in the Office of General Counsel.

Review and approve procurement documents and contracts for the Departments of Administration and Communications.

Provide advice on legal rights and responsibilities concerning labor compliance and prevailing wage issues.

Serve as lead in-house counsel and manage outside counsel on select litigation or pre-litigation matters as may be assigned. Provide legal advice on labor compliance matters.

In addition to the above-stated primary responsibilities, carry out special projects as assigned in the discretion of the General Counsel mindful of the time constraints and core practice areas of the Special Counsel position.

**OTHER JOB RELATED DUTIES**

Perform related duties and responsibilities as assigned.

**JOB RELATED AND ESSENTIAL QUALIFICATIONS**

**Knowledge of:**

Operational characteristics, services, and activities of a comprehensive law department.

Specific laws relevant to California local government agencies, federal and state transportation law, environmental law, and planning law.

Principles and applications of civil and administrative law, including those relative to SANDAG operations, government finance, parliamentary procedures, and other legal proceedings.

Principles and concepts of risk management.
Judicial procedures and rules of evidence.

Methods of legal research.

Established precedents applicable to SANDAG activities.

Pertinent federal, state, and local laws, codes, and regulations.

**Skill to:**

Operate modern office equipment, including computer equipment and software.

**Ability to:**

Organize and oversee a large number of projects with shifting priorities.

Provide administrative and professional leadership and direction for legal services.

Identify and respond to member agencies, Board of Directors, and community issues, concerns, and needs.

Speak and present to large groups in an effective manner.

Provide sound legal advice under tight deadlines.

Represent SANDAG in a wide variety of judicial and administrative proceedings.

Prepare and present difficult cases in court.

Present statements of law, fact, and argument clearly and logically.

Conduct research on complex legal problems and prepare sound legal opinions.

Analyze a wide variety of legal issues and prepare diverse legal documents.

Interpret and apply legal principles and procedures.

Interpret and apply federal, state, and local policies, procedures, laws, and regulations.

Exercise good judgment, flexibility, creativity, and sensitivity in response to changing situations and needs.

Communicate clearly and concisely, both orally and in writing, using appropriate English grammar and syntax.
Establish and maintain cooperative working relationships with those contacted in the course of business, including member agencies, city and other government officials, community groups, the general public, and media representatives.

**Minimum Qualifications:**

**Experience:**

Seven years of professional legal experience in municipal or other government law.

**Training:**

Juris Doctorate from an accredited law school.

**License or Certificate:**

Status as a member in good standing of the State Bar of California.

**ADA Special Requirements:**

In addition to the above essential knowledge, skills, abilities, and qualifications, essential duties require the following physical skills and work environment:

The standard office position requires an employee to be able to access their work location, attend meetings, utilize computerized workstations, lift paperwork and occasionally light-weight equipment or resources (less than 20 pounds). Typically an employee will need to walk, stand, sit, keyboard, see, hear, bend, lift, and twist. This position will obtain information from oral instructions, conversations, written reports, e-mail, Internet, journals, and other publications as well as process and analyze this information. May need to provide information orally or in written format and work under deadlines. Typically an employee also will need to mentally process and analyze complex information, compose complex responses, interact with others, and present information and reports.

**Effective Date:** April 2015
Annual Review and Proposed Amendments to Board Policies and Bylaws

Overview
The Office of General Counsel annually reviews Board Policies and Bylaws with staff and leadership to determine if updates should be recommended to the Board of Directors. In addition, Board Policy calls for the Board to annually renew its delegation of authority to the Executive Director for conducting investments on behalf of SANDAG (Attachment 4); and approval of Board Policy No. 032: San Diego County Regional Transportation Commission Interest Rate Swap Policy (Attachment 13). Proposed amendments to the SANDAG Bylaws and Board Policies were discussed by the Executive Committee at its December 7, 2018, meeting and at its January 11, 2019, meeting.

Key Considerations
The proposed amendments are summarized below and shown in tracked changes in Attachments 1 through 14.

SANDAG Bylaws (Attachment 1)

Article III, Section 5: Clarify stipend allowance for attendance at Board and Policy Advisory Committee meetings, Working Group meetings, and other events, and update compensation amounts for Board Chair and Vice Chair. Based on a request by the Executive Committee at its January 11, 2019, meeting, language has been added to better define compensable outside meetings and events, and stipends for outside meetings and events inside and outside of the SANDAG jurisdiction are separately addressed.

Article V, Section 1: Allow the Board Chair to appoint a voting member of the Board or a Policy Advisory Committee to chair a meeting of that body when all other leadership will be absent.

Board Policy No. 001: Allocation of Responsibilities (Attachment 2)

Section 6: Add reference to tribal nations and activities to the Borders Committee’s responsibilities.

Board Policy No. 002: Policies and Procedures for Policy Advisory Committees (Attachment 3)

Section 6: Delete duplicative language (from Bylaws) dealing with contingent leadership at the Board or Policy Advisory Committees when normal leadership is absent.

Board Policy No. 007: Equal Employment Opportunity Program (Attachment 5)

Section 1.2: Update protected classifications language to make consistent with state and federal law.

Action Requested: Approve
The Executive Committee recommends that the Board of Directors:
1. approve the proposed amendments to the SANDAG Bylaws and Board Policies (Attachments 1 through 14); and
2. renew its annual delegation of authority to the Executive Director pursuant to Board Policy No. 003: Investment Policy (Attachment 4), and approval of Board Policy No. 032: San Diego County Regional Transportation Commission Interest Rate Swap Policy (Attachment 13).

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1 These policies were reviewed by management and the SANDAG Financial Advisor, PFM. Based on this review, no changes are proposed.
Board Policy No. 015: Records Management (Attachment 6)

Section 2.3: Allow records to be maintained in an electronic rather than hard copy format so long as the electronic storage system meets specified standards consistent with state law, and hard copies are not otherwise required to be kept by law.

Board Policy No. 017: Delegation of Authority (Attachment 7)

Section 4.1: Increase the delegated authority of the Executive Director to enter into agreements not currently in the budget (and make other modifications to the budget) from $100,000 to $300,000 per transaction so long as the overall budget remains in balance.

Section 4.16: Authorize the Executive Director to write off or make settlement on uncollectable debts in an amount not exceeding $5,000 upon concurrence by the Director of Finance that after using all appropriate collection tools, it is likely that the full debt is uncollectible and that it would not be cost effective to pursue collection of the entire debt.

Section 4.17: Authorize the Executive Director to approve an addendum to a previously-approved Environmental Impact Report or Negative Declaration when such an addendum is otherwise allowed under California Environmental Quality Act Section 15164 where only minor technical changes or additions are being made. This authority previously was approved for the Mid-Coast Corridor program of projects; this amendment would extend that authority to other qualifying project addenda.

Section 6: Require the Executive Director to prepare an administrative policy for employee evaluations consistent with the requirements of Assembly Bill 805 (Gonzalez, 2018) (AB 805).

Board Policy No. 019: Project Plans, Specifications & Estimates (Attachment 8)

Procedure 3: Clarify that project designs must conform to SANDAG design criteria in addition to the other stated criteria.

Board Policy No. 024: Procurement and Contracting – Construction (Attachment 9)

Section 8: Update statutory reference to make consistent with state law.

Board Policy No. 028: Asset Ownership and Disposition (Attachment 10)

Section 2.4.2; Section 2.8: Allow competitive public auctions as an asset disposition method and update the proportional reimbursement requirement for Federal Transit Administration-funded assets to be consistent with federal regulations.

Board Policy No. 030: Contingency Reserve Policy (Attachment 11)

Section 2.8: Establish the source, use, timing, and funding level of the new TransNet Major Corridors Program Contingency Reserve.

Board Policy No. 031: TransNet Ordinance & Expenditure Plan Rules (Attachment 12)

Section 3 of Rule 23: Define a “Guest Dwelling” as not more than one attached or detached residential dwelling unit on the same parcel as an existing single-family dwelling which provides independent living facilities for one or more persons.

“Guest Dwellings” currently qualify as an exception to TransNet Extension Ordinance Regional Transportation Congestion Improvement Program (RTCIP) requirements but that term is not defined in the Ordinance or Board Policy No. 031. This has created uncertainty among local jurisdictions when considering application of the RTCIP fee to “granny flats,” “companion units,” or other reasonably synonymous types of development. The proposed amendment generally is based on the definition of an “accessory dwelling unit” in Government Code Section 65852.2 and has been developed with input from the Independent Taxpayer Oversight Committee, Regional Planning Technical Working Group, Cities/County Transportation Advisory Committee as well as member agency legal counsel. This amendment is intended to clarify rather than
modify the existing exception for "Guest Dwellings," and new residential units fitting the definition will continue to be exempt from payment of the RTCIP fee.

**Board Policy No. 039: Audit Policy Advisory Committee and Audit Procedures (Attachment 13)**

**Section 3.1.1:** Clarify that the Audit Committee oversees the annual SANDAG financial statement audit.

**Section 5.1:** Clarify that the Board of Directors has the responsibility for selection of the Independent Performance Auditor.

**Section 6.1:** Clarify that the Independent Performance Auditor reports to the Audit Committee; and makes the scope of the annual audit plans consistent with AB 805.

The Audit Committee discussed the proposed amendments to Board Policy No. 039 at its January 11, 2019, meeting (subsequent to the Executive Committee meeting) and recommended approval of the proposed amendments with the following additional modifications:

**Section 2.3:** State that in the selection by the SANDAG Chair of the Audit Committee Chair and Vice-Chair, ideally one of the two leadership positions would be held by a public member and the other held by a Board member. Current language contains no limitation on leadership selections.

**Section 6.1:** Add language clarifying that performance audits shall be conducted of as many of SANDAG departments, offices, boards, activities, agencies, and programs as resources permit. This was based on a stated concern that the current amended language mandates audits of all aspects of SANDAG without regard to available resources.

**Next Steps**

Pending approval by the Board of Directors, the amended Bylaws and Board Policies would become effective immediately and posted to the SANDAG website.

**Hasan Ikhrata, Executive Director**

**Key Staff Contact:** John Kirk, (619) 699-1997, john.kirk@sandag.org

**Attachments:**

1. SANDAG Bylaws
2. Board Policy No. 001
3. Board Policy No. 002
4. Board Policy No. 003
5. Board Policy No. 007
6. Board Policy No. 015
7. Board Policy No. 017
8. Board Policy No. 019
9. Board Policy No. 024
10. Board Policy No. 028
11. Board Policy No. 030
12. Board Policy No. 031
13. Board Policy No. 032
14. Board Policy No. 039
January 25, 2019, Board of Directors Meeting Minutes

Chair Steve Vaus (Poway) called the meeting of the SANDAG Board of Directors to order at 9 a.m.

1. Approval of Meeting Minutes (Approve)
   Action: Upon a motion by Councilmember Kristine Alessio (La Mesa), and a second by Mayor Rebecca Jones (San Marcos), the Board of Directors approved the minutes from its December 7, 2018, Board Policy meeting and December 21, 2018, Board Business meeting. Yes: Chair Vaus, Councilmember Cori Schumacher (Carlsbad), Mayor Mary Salas (Chula Vista), Deputy Mayor Ellie Haviland (Del Mar), Mayor Bill Wells (El Cajon), Mayor Paul McNamara (Escondido), Mayor Serge Dedina (Imperial Beach), Councilmember Alessio, Mayor Racquel Vasquez (Lemon Grove), Councilmember Jack Feller (Oceanside), Council President Georgette Gomez (City of San Diego), Mayor Jones, Mayor John Minto (Santee), Mayor David Zito (Solana Beach), Mayor Judy Ritter (Vista), and Supervisor Greg Cox (County of San Diego). No: None. Abstain: Councilmember Joe Mosca (Encinitas). Absent: Coronado and National City.

2. Public Comments/Communications/Member Comments
   Martha Welch, a member of the public, spoke regarding various transit and regional issues.

3. Executive Director’s Report (Information)
   The Executive Director provided an update on key programs, projects, and agency initiatives.
   Action: This item was presented for information.

   Consent

4. Policy Advisory Committee Actions (Approve)
   The Board of Directors was asked to ratify the delegated actions taken by the Policy Advisory Committees.

5. 2019 Performance Management Rule 1 Safety Target Setting (Approve)
   The Transportation Committee recommended that the Board of Directors approve supporting the 2019 statewide safety targets established by Caltrans, in accordance with the Fixing America’s Surface Transportation Act.

6. Regional Monitoring Report (Accept)
   The Board of Directors was asked to accept the Regional Monitoring Report.

7. Executive Director Delegated Actions (Information)
   In accordance with various SANDAG Board Policies, this report summarized delegated actions taken by the Executive Director since the last Board Business meeting.
8. Meetings and Events Attended on Behalf of SANDAG (Information)

Board members provided brief verbal reports on external meetings and events attended on behalf of SANDAG since the last Board Business meeting.

**Action:** Upon a motion by Mayor Salas, and a second by Councilmember Alessio, the Board of Directors approved Consent Item Nos. 4 through 8. Yes: Chair Vaus, Councilmember Schumacher, Mayor Salas, Deputy Mayor Haviland, Mayor Wells, Councilmember Mosca, Mayor McNamara, Mayor Dedina, Councilmember Alessio, Mayor Vasquez, Councilmember Feller, Council President Gomez, Mayor Jones, Mayor Minto, Mayor Zito, Mayor Ritter, and Supervisor Jim Desmond (County of San Diego). No: None. Abstain: None. Absent: Coronado and National City.

9. First Reading of Proposed Amendments to the Regional Comprehensive Fare Ordinance and TransNet Ordinance (Conduct First Reading)

The Board of Directors was asked to conduct the first reading of amendments to the Regional Comprehensive Fare Ordinance, by reading the title and waiving full recitation of the ordinance for this and all future readings; and acting as the San Diego County Regional Transportation Commission (RTC), conduct the first reading of RTC Ordinance No. CO-19-01, related to fare changes, by reading the title and waiving full recitation of the ordinance for this and all future readings.

**Action:** Upon a motion by Mayor Ritter, and a second by Mayor Wells, the Board waived full recitation of the ordinance for this and all future readings. Yes: Chair Vaus, Councilmember Schumacher, Mayor Salas, Mayor Richard Bailey (Coronado), Deputy Mayor Haviland, Mayor Wells, Councilmember Mosca, Mayor McNamara, Mayor Dedina, Councilmember Alessio, Mayor Vasquez, Mayor Alejandra Sotelo-Solis (National City), Councilmember Feller, Council President Gomez, Mayor Jones, Mayor Minto, Mayor Zito, Mayor Ritter, and Supervisor Desmond. No: None. Abstain: None. Absent: None.

Brian Lane, Senior Regional Planner; Paul Jablonski, Executive Director, Metropolitan Transit District; and Matt Tucker, Executive Director, North County Transit District, presented the item including reading the title of both proposed ordinances.

Rev. Joseph Marchese, a member of the public, spoke in opposition to this item.

Dan Totah, a member of the public, spoke in opposition to this item.

10. Annual Review and Proposed Amendments to Board Policies and Bylaws (Approve)

The Executive Committee recommended that the Board of Directors approve the proposed amendments to the SANDAG Bylaws and Board Policies; and renew its annual delegation of authority to the Executive Director pursuant to Board Policy No. 003: Investment Policy, and approval of Board Policy No. 032: San Diego County Regional Transportation Commission Interest Rate Swap Policy.

Mayor Dedina introduced the item.

John Kirk, General Counsel, presented the item.

Jared Basler, ADU Coalition, spoke in support of this item.

**Action:** Upon a motion by Council President Gomez, and a second by Supervisor Desmond, the Board of Directors approved the proposed amendments to the SANDAG Bylaws and Board Policies; and renewed its annual delegation of authority to the Executive Director pursuant to Board Policy No. 003, and approval of Board Policy No. 032. Yes: Chair Vaus, Mayor Salas, Mayor Bailey, Deputy Mayor Haviland, Mayor Wells, Councilmember Mosca, Mayor McNamara, Mayor Dedina, Councilmember Alessio, Mayor Vasquez, Mayor Sotelo-Solis, Councilmember Feller, Council President Gomez, Mayor Jones, Mayor Minto, Mayor Zito, Mayor Ritter, and Supervisor Desmond. No: None. Abstain: None. Absent: Councilmember Schumacher. Absent: None.
3.4 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:

3.4.1 If the Executive Director believes a position will be vacant for a period of less than 24 months, the Executive Director may hire a person known to be qualified for that short-term need as a limited-term employee, TIPS employee, or Contract employee, without utilizing SANDAG’s standard competitive recruitment requirements.

3.4.2 During any Consolidation, job openings at SANDAG may be filled in one of three ways: (1) by the traditional competitive method of filling vacancies described above, which is open to the public; (2) by transfer or promotion of a qualified SANDAG, MTDB, or NCTD employee; or (3) by opening the competition for a position solely to existing qualified SANDAG, MTDB, and/or NCTD employees.

3.4.3 When the Executive Director determines that it is in SANDAG’s best interest to promote an existing SANDAG employee.

3.4.4 When a vacancy occurs and a qualified candidate is on one of SANDAG’s recruitment lists, the candidate may be selected in accordance with Section 3.8.

3.4.5 When an entity provides funding to SANDAG and such funding is conditioned upon, or the continuity of the work is dependent upon, a particular individual continuing to perform the work supported by that funding.

3.5 During the Consolidation, employees of MTDB and/or NCTD may be transferred to SANDAG and become SANDAG employees. Unless they are promoted, transferees who are currently in probationary status at MTDB or NCTD shall continue in probationary status upon transfer to SANDAG; however, all transferred regular full-time employees that remain in the same or comparative class shall not be required to undergo a probationary period at SANDAG. Upon the effective date of the transfer, transferees who were regular full-time employees of MTDB or NCTD shall be entitled to the rights and benefits of regular full-time SANDAG employees. Promoted transferees shall be probationary employees until the probationary period is successfully completed.
To: Julie Wiley, Director and Legal Counsel, SANDAG

From: Terry Sinnott, Former Chair of the SANDAG Board of Directors

Date: 6 August 2020

You requested that I provide you with information and context surrounding the merit and bonuses given to the Chief Deputy Director during my tenure as Board Chair in 2018. To the best of my recollection, I can provide the following:

Background:

1. I began serving on the SANDAG Board of Directors in January, 2011, representing the City of Del Mar. I was elected to the position of Vice Chair of the Board in December 2014 and served until I was elected to the Chair position in December 2017. I retired from political office and my position on the SANDAG Board in November 2018.
2. During my tenure as Chair, Executive Director Gary Gallegos, retired from SANDAG on August 18, 2017. In September 2017, the Board of Directors determined that a nationwide recruitment was appropriate.
3. The Board Chair and Vice Chair were appointed by the Board to chair a Recruitment Subcommittee to organize and oversee the recruitment process.
4. In anticipation that the Chief Deputy might apply for the position, the decision was made that the Chief Deputy should not be given a job title of “Acting” or “Interim” Executive Director during the recruitment process to avoid any appearance of bias on the part of the Board.
5. Between August 2017 and December 2018, the Chief Deputy Executive Director, who is referred to in the draft OIPA audit as Employee No. 1287, automatically took on all of the delegated responsibilities normally afforded to the Executive Director by virtue of Board Policy No. 017, which states, “[a]ny 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.”
6. Between August 2017 and December 2018, the Chief Deputy Executive Director was required to maintain almost all of the responsibilities of both the Chief Deputy and Executive Director positions at SANDAG.

Chief Deputy Performance:

1. When the Executive Director left SANDAG in August 2017, his departure was sudden and I was told that at the time he left he had not completed a performance evaluation and compensation decision for the Chief Deputy, which would have normally been done in August or September to cover the time period between July 1, 2016 and June 20, 2017.
2. The Vice Chair and I worked with the Chief Deputy to complete the performance evaluation. Based on that performance from July 2016 to June 2017, we agreed to award the Chief Deputy a merit increase and performance bonus. The merit and bonus were determined using existing SANDAG policies and approved budgets.
Continuity of Leadership:

1. The search for a new Executive Director was thought to be a six-month process. It actually took 12 months. The first search developed three finalists, which included the existing Chief Deputy. The Board conducted interviews and did not select the existing Chief Deputy for the position. The finalist selected for the position did not accept the offer and withdrew their candidacy.

2. The Search Subcommittee had to restart a new search. At the same time, we wanted to recognize the work of the Chief Deputy in successfully performing the duties of Chief Deputy and Executive Director. That work provided vital continuity of leadership that enabled the organization to perform in a high level of professionalism.

3. I consulted with the Director of Administration to determine and award appropriate bonus payments in June and November of 2018 for the Chief Deputy. The Vice Chair was in full agreement with these awards. We met with the employee each time to communicate and document the reasons for the awards. A short, written description of why the award was being made was given to the employee and documented in the personnel file. The bonuses were consistent with the policies and budgets of SANDAG.

4. The bonuses were not originated by SANDAG staff. They were generated as a result of the Board Chair wanting to recognize exemplary work of an employee who was leading SANDAG employees during a difficult time.

5. The bonuses were given out after each six-month interval. As the search process became extended, and the Chief Deputy was continuing to perform two jobs, a second award was made in November 2018.

General Comment:

Typically, the Chief Deputy Executive Director’s performance and compensation would not be evaluated by the Board. But there was a need to make performance and compensation decisions, and those decisions could not be properly delegated to any of the agency’s executive level employees as they all reported to the Chief Deputy Executive Director. Under those circumstances, I believed it was appropriate for me, as the Chair of the Board of Directors, to make decisions regarding Chief Deputy Executive Director’s compensation.

In my opinion, it was critical to the health of the agency that there be stability of agency management while the Executive Director recruitment process was underway. It was unlikely that this would occur if the Chief Deputy was not compensated fairly for essentially carrying out two executive positions for the agency over a period of more than a year.

Hope the detail above is helpful.

[Terry Sinnott Signature]
Draft FY 2021 SANDAG Program Budget – Staffing

Staffing Resources, Compensation Program, and Employee Benefits

Staffing Resources

As part of the budget development process, agency managers and executives have considered the staffing resources required to successfully complete the projects identified in the Proposed FY 2021 SANDAG Program Budget. Existing vacant positions have been reclassified and repurposed throughout the year to support the new organization design and commitment to improved levels of agency performance. While several new staff positions have been added in the current year—primarily to ensure compliance with Assembly Bill 5 (Gonzalez, 2019), which has limited staff augmentation options— SANDAG has reduced the number of full-time positions by 10% for FY 2021 as a cost savings measure. This has been achieved through the elimination of 40 currently vacant positions, not through layoffs. The reduction in workforce is in anticipation of future workload demands, which are expected to decrease due to a combination of efficiency-gaining actions – 1. aligning resources and staff effort toward strategic initiatives and projects while evaluating the level of effort required for ancillary responsibilities; and 2. streamlining business processes, leveraging technology, and adopting new work practices that support professional development of employees, foster collaboration and improved communications, and eliminate redundancies. The actions outlined in the Organization Effectiveness Plan directly support these goals.

Compensation Program

SANDAG has established a robust performance management program. Employees and managers define goals and objectives that align to the agency’s work program and also identify professional development goals to expand technical knowledge and competencies necessary for ongoing success and to support future growth opportunities. Employees and managers complete formal performance evaluations at least annually.

SANDAG is not proposing a compensation adjustment pool for FY 2021, nor is SANDAG proposing changes to existing salary ranges for staff positions.

Employee Benefits

SANDAG established an Internal Revenue Code Section 115 tax-exempt, irrevocable trust (Trust) in FY 2017 as a means of saving for future pension costs. An initial contribution of $3.5 million was made to the Trust; this amount represented the cost savings SANDAG realized between FY 2013 and FY 2016 due to pension reform changes. Additional contributions of $3.6 million have been made to the Trust since its inception, and an additional $1 million contribution to the Trust is recommended as part of the FY 2021 Annual Program Budget. Staff will give an update on the actuarial analysis with the final FY 2021 SANDAG Program Budget.

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.
## FY 2021 Personnel Cost Summary

<table>
<thead>
<tr>
<th>FY 2019 Actual Expenses</th>
<th>FY 2020 Revised Estimate</th>
<th>FY 2021 Budget</th>
<th>Year-to-Year Change FY 2021 over FY 2020</th>
</tr>
</thead>
<tbody>
<tr>
<td>FY 2019 Revised Budget</td>
<td>Benefits % of Salaries</td>
<td>FY 2020 Draft Budget</td>
<td>Benefits % of Salaries</td>
</tr>
<tr>
<td>Authorized and Budgeted Full-Time Positions</td>
<td>365</td>
<td>394</td>
<td>354</td>
</tr>
<tr>
<td>Temporary, Interns, Part-Time, Seasonal (TIPS) Positions</td>
<td>29.6</td>
<td>33.1</td>
<td>33.1</td>
</tr>
<tr>
<td>Full-Time Employee Salary</td>
<td>$28,411,936</td>
<td>$34,682,735</td>
<td>$32,917,426</td>
</tr>
<tr>
<td>TIPS Employee Salary</td>
<td>$1,206,217</td>
<td>$1,305,011</td>
<td>$1,338,863</td>
</tr>
<tr>
<td>Total Full-Time Employee Salary</td>
<td>$29,618,154</td>
<td>$35,987,746</td>
<td>$34,256,289</td>
</tr>
</tbody>
</table>

### Employee Benefit Package:

<table>
<thead>
<tr>
<th>Benefits</th>
<th>FY 2019</th>
<th>FY 2020</th>
<th>FY 2021</th>
<th>Change in % of Salaries</th>
</tr>
</thead>
<tbody>
<tr>
<td>Retirement (PERS+PARS)</td>
<td>$6,057,024</td>
<td>20.5%</td>
<td>$8,779,077</td>
<td>24.4%</td>
</tr>
<tr>
<td>Section 115 Pension Savings Fund</td>
<td>1,635,000</td>
<td>5.5%</td>
<td>1,000,000</td>
<td>2.8%</td>
</tr>
<tr>
<td>Combined Health Insurance Plan</td>
<td>4,376,307</td>
<td>14.8%</td>
<td>4,815,000</td>
<td>13.4%</td>
</tr>
<tr>
<td>Dental/Vision Insurance Plan</td>
<td>451,392</td>
<td>1.5%</td>
<td>498,000</td>
<td>1.4%</td>
</tr>
<tr>
<td>Short-/Long-Term Disability</td>
<td>226,804</td>
<td>0.8%</td>
<td>262,000</td>
<td>0.7%</td>
</tr>
<tr>
<td>Workers Compensation</td>
<td>212,874</td>
<td>0.7%</td>
<td>239,090</td>
<td>0.7%</td>
</tr>
<tr>
<td>Social Security Hospital Tax - Medicare</td>
<td>396,581</td>
<td>1.3%</td>
<td>521,822</td>
<td>1.4%</td>
</tr>
<tr>
<td>Life/Accident Insurance</td>
<td>44,285</td>
<td>0.1%</td>
<td>48,000</td>
<td>0.1%</td>
</tr>
<tr>
<td>Employee Assistance Program</td>
<td>6,888</td>
<td>0.0%</td>
<td>8,359</td>
<td>0.0%</td>
</tr>
<tr>
<td>Section 125 Flexible Spending Account Administration</td>
<td>-</td>
<td>0.0%</td>
<td>9,583</td>
<td>0.0%</td>
</tr>
<tr>
<td>Transportation Demand Management Program</td>
<td>25,338</td>
<td>0.1%</td>
<td>28,000</td>
<td>0.1%</td>
</tr>
<tr>
<td>Post-Employment Health Care</td>
<td>512,640</td>
<td>1.7%</td>
<td>525,499</td>
<td>1.5%</td>
</tr>
<tr>
<td>Management Benefit</td>
<td>69,277</td>
<td>0.2%</td>
<td>258,235</td>
<td>0.7%</td>
</tr>
<tr>
<td>Automotive Allowance</td>
<td>6,692</td>
<td>0.0%</td>
<td>12,000</td>
<td>0.0%</td>
</tr>
<tr>
<td>Computer Purchase/Loan Program</td>
<td>4,377</td>
<td>0.0%</td>
<td>5,000</td>
<td>0.0%</td>
</tr>
<tr>
<td>Total Employee Benefits</td>
<td>$14,025,479</td>
<td>47.4%</td>
<td>$17,009,666</td>
<td>47.3%</td>
</tr>
</tbody>
</table>

### Year-to-Year Change FY 2021 over FY 2020:

- **Cost Recovery Carry Forward from Prior Years:** $554,307
- **Carryover Funding for Section 115 Contribution:** ($635,000)

### Total Employee Benefits to be Allocated:

- **Total Employee Benefits:** $13,944,786

### Employee Benefits By Position Type:

- **Benefits - Full-Time Employees:** $13,671,146
- **Benefits - TIPS Employees:** $273,640

### Total Personnel Cost (Salaries and Benefits):

- **Total Personnel Cost:** $43,562,940
- **Chapter 11 | Human Resources**
Chair Vaus and SANDAG Board members,

Earlier this year, CalPERS conducted a scheduled review of 58 member agencies, including SANDAG, to determine whether Retroactive Special Compensation Adjustments (RSCA) for classic members who are active or retired were reported to CalPERS in compliance with various state law requirements. The review period was January 1, 2017 through December 31, 2019. The attached report, issued by the CalPERS Office of Audit Services last month and provided to SANDAG on July 2, 2020, summarizes the review. Of the 58 agencies who were audited, 47 had findings. Information specific to SANDAG starts on page 165 and references SANDAG’s response to the CalPERS observations (attached).

The RSCA transactions reported by SANDAG and subject to review were performance bonuses. CalPERS determined that bonuses paid to employees by SANDAG and reported to CalPERS would not be considered pensionable compensation. This is because the agency’s practices are not currently in compliance with Government Code section 20636 and California Code of Regulations section 571. These laws require that the governing body approve a written policy or agreement describing the item/s of special compensation, including conditions for payment. SANDAG has a performance bonus policy within the SANDAG Employee Handbook however this document has not been approved by the Board of Directors.

In response to the CalPERS recommendations, staff will update the Employee Handbook and bring this document to the Board of Directors for review and approval in the next month or two. The SANDAG Bylaws, at article 5, section 4d, currently delegate responsibility to the Executive Director to promulgate an employee manual, as well as all other administrative policies governing the administrative procedures of SANDAG. Staff also will work with CalPERS to identify and correct any improperly reported special compensation amounts for the time period January 1, 2017 through April 30, 2020. The CalPERS observations do not impact the underlying validity of the performance bonuses awarded to employees, only whether CalPERS will consider the payments as special compensation. CalPERS has not identified any penalties arising from its observations.

Please contact me with any questions pertaining to the CalPERS audit and planned follow-up actions.

Hasan Ikhrata
Executive Director of SANDAG
# Performance Evaluations

Performance Goals Rating Scale and Definitions

<table>
<thead>
<tr>
<th>Goals</th>
<th>Description</th>
</tr>
</thead>
<tbody>
<tr>
<td>4 EXCEEDS EXPECTATIONS</td>
<td>Performance consistently exceeds expectations in all primary areas of responsibility.</td>
</tr>
<tr>
<td>3 MEETS EXPECTATIONS</td>
<td>Performance meets expectations in all primary areas of responsibility.</td>
</tr>
<tr>
<td>2 NEEDS IMPROVEMENT</td>
<td>Performance does not consistently meet expectations in all primary areas of responsibility.</td>
</tr>
<tr>
<td>1 UNACCEPTABLE</td>
<td>Performance fails to meet minimum position requirements.</td>
</tr>
</tbody>
</table>
4  EXCEEDS EXPECTATIONS

Performance consistently exceeds expectations in all primary areas of responsibility.

- Overall quality of work is consistently excellent and is completed on schedule with a high degree of accuracy and independence; the employee demonstrates the skills and ability to complete major agency goals and projects.
- Significant contributions to agency goals, processes, and procedures are made on a regular basis; the employee can apply a superb level of skill and knowledge.
- Performance goes above and beyond work expectations and is characterized by high levels of accomplishment; the employee consistently demonstrates a drive for achievement and rarely makes or repeats errors in judgment.
- Work is consistently completed in a manner that models excellent performance.

3  MEETS EXPECTATIONS

Performance meets expectations in primary areas of responsibility.

- Completed work meets expectations in all or almost all areas and requires minimal oversight or supervision for routine tasks and projects; the employee is capable and knowledgeable in most aspects of their work and can be relied on to achieve results in a timely and efficient manner.
- Contributions to the overall success of the department, section, or team are made through the consistent performance of core job duties; the employee demonstrates initiative and work products are generally good.
- Performance is at the level expected and is characterized by meeting goals and objectives; the employee demonstrates skills and behaviors that result in the effective performance of current position requirements.
- Work is usually completed in a manner that represents acceptable levels of performance.

2  NEEDS IMPROVEMENT

Performance does not consistently meet expectations in all primary areas of responsibility.

- Work results are not consistent and assigned duties are not satisfactorily completed; the employee possesses many of the fundamental skills required for the position and may demonstrate success at times; significant guidance, direction, and monitoring is required to achieve consistent results for core responsibilities.
- Contributions to the overall success of the department, section, or team are minimal and the lack of performance may in fact be detrimental; the employee may demonstrate initiative for some duties but not for all assignments.
- Performance is often below the level expected relative to the employee’s knowledge and experience; the employee has demonstrated limited ability to perform the requirements of the position but does not do so on a routine basis.
- Work habits could be improved to increase efficiency, technical competence, and professionalism.

1  UNACCEPTABLE

Performance consistently fails to meet minimum position requirements.

- Work results are consistently poor even with excessive direction, follow-up, or intervention by the supervisor; the employee does not demonstrate the knowledge or ability to perform the fundamental duties of the position and is unwilling or unable to make efforts to improve.
- Poor performance is having a negative impact on the team, department, and agency overall; the employee’s contributions are generally minimal if they occur at all.
- Performance is well below the level expected; the employee fails to use the skills necessary for success or demonstrate any effort toward improvement.
- Work habits must be substantially improved through a corrective performance plan in order to meet minimum job requirements.
## 2019 SANDAG Reorganization

### Reconciliation of Executive-Level Positions

<table>
<thead>
<tr>
<th>Former Position</th>
<th>Position After Reorganization</th>
<th>Position Unchanged</th>
<th>Position Changed; Reclass to higher-level salary range</th>
<th>Position Changed, same salary range</th>
<th>Position Changed; Reclass to Exec level salary range</th>
<th>New Limited-Term Position</th>
</tr>
</thead>
<tbody>
<tr>
<td>1 Executive Director</td>
<td>Executive Director</td>
<td></td>
<td>X</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>2 Chief Deputy Executive Director</td>
<td>Chief Operating Officer</td>
<td></td>
<td>X</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>3 General Counsel</td>
<td>General Counsel</td>
<td></td>
<td>X</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>4 Special Counsel</td>
<td>Director II, Contracts and Grants</td>
<td></td>
<td>Class 31 to 33</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>5 Deputy General Counsel</td>
<td>Deputy General Counsel</td>
<td></td>
<td>X</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>6 Department Director, Administration</td>
<td>Director II, Organization Effectiveness</td>
<td></td>
<td>X</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>7 Department Director, Communications</td>
<td>Director II, Strategic Communications</td>
<td></td>
<td>X</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>8 Department Director, Data, Analytics, and Modeling</td>
<td>Director II, Data and Modeling</td>
<td></td>
<td>X</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>9 Department Director, Finance</td>
<td>Chief Financial Officer</td>
<td></td>
<td>Class 33 to 34</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>10 Department Director, MMPI</td>
<td>Chief Capital Programs &amp; Regional Services Officer</td>
<td></td>
<td>Class 33 to 35</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>11 Department Director, Operations</td>
<td>Chief Planning and Innovation Officer</td>
<td></td>
<td>Class 33 to 35</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>12 Department Director, Planning</td>
<td>Director II, Regional Planning</td>
<td></td>
<td>X</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>13 Independent Performance Auditor</td>
<td>Independent Performance Auditor</td>
<td></td>
<td>X</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>14 TransNet Department Director</td>
<td>TransNet Program Director</td>
<td></td>
<td>X</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>15 Chief Economist</td>
<td>Chief Data Analytics Officer</td>
<td></td>
<td>Class 31 to 35</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>16 Division Director, Applied Research</td>
<td>Director II, Research &amp; Program Mgmt</td>
<td></td>
<td>Class 30 to 33</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>17 Division Director, ARIS</td>
<td>Director I, ARIS</td>
<td></td>
<td>X</td>
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<td>18 Division Director, Big Data/Data Science</td>
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<td>Director I, Integrated Transportation Planning</td>
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<td>Class 30 to 31</td>
<td>Class 28 to 31</td>
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<td>Entrepreneur in Residence (LT)</td>
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<td></td>
<td>Director I, Mid-Coast Transit Project (LT)</td>
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2019 SANDAG Reorganization
DESCRIPTION OF RECLASSIFIED POSITIONS

The following information expands upon the table on page 1 to describe the justification and basis for the reclassification of positions as part of the agency reorganization.

9 positions were unchanged or had relatively minor changes to the scope of responsibilities; some job titles were updated to more accurately reflect the roles.

- Executive Director
- Independent Performance Auditor
- General Counsel
- Deputy General Counsel
- Director II, Data and Modeling (formerly Department Director of Data, Analytics, and Modeling)
- Director II, Regional Planning (formerly Department Director of Land Use and Transportation Planning)
- TransNet Program Director (formerly TransNet Department Director)
- Director I, ARJIS (formerly Division Director of ARJIS)
- Director I, Strategic Projects (formerly Special Projects Director)

9 positions were significantly changed with respect to the scope and nature of assigned responsibilities, such that reclassification to a higher-level salary range was warranted. Highlights of the newly defined roles are provided below.

- Director II, Contracts and Grants (formerly Special Counsel & Manager of Contracts and Procurement)
  The Contracts and Procurement program is a core agency function and supports almost all SANDAG programs and projects with the selection of consultants and contractors, or the procurement of goods and services, consistent with funding agency requirements. The need for ongoing effective leadership and technical expertise was confirmed as part of the agency reorganization effort and is necessary to ensure the program can continue to be responsive to the evolving and increasingly complex procurement needs of the organization. As part of the review of agency functions during the reorganization process it was recognized the benefits that would be derived if oversight for the SANDAG Grant Program resided with the Contracts and Procurement function. This decision resulted in the reclassification of the existing Special Counsel/Manager of Contracts and Procurement role to add responsibility for the grants program.

- Chief Financial Officer (formerly Department Director of Finance)
  One of the goals of the agency reorganization, in response to a recommendation from the Audit Committee, was to expand the oversight of the agency’s financial operations by establishing a Chief Financial Officer role. This was achieved by reclassifying the existing Department Director of Finance position and adding responsibility for the agency’s Contracts and Procurement, Grants Management, and TransNet Program functions.
Chief Capital Programs & Regional Services Officer (formerly Department Director of Mobility Management & Project Implementation)
Acting as an essential member of the Senior Leadership Team, the Chief Capital Programs & Regional Services Officer will plan, direct, manage, and oversee the engineering and construction, toll road operations, ARJIS, and regional services functions; coordinate services and activities among SANDAG departments, the Board of Directors, Policy Advisory Committees, member agencies, and outside organizations; and provide highly responsible and complex executive support to the Executive Director.

Chief Planning and Innovation Officer (formerly Department Director of Operations)
Acting as an essential member of the Senior Leadership Team, the Chief Planning and Innovation Officer will plan, direct, manage, and oversee the regional planning, data science and technology innovation, research and modeling, and special project functions; coordinate services and activities among SANDAG departments, the Board of Directors, Policy Advisory Committees, member agencies, and outside organizations; and provide highly responsible and complex executive support to the Executive Director.

Chief Data Analytics Officer (formerly Chief Economist)
SANDAG has historically gathered and maintained an extensive set of economic, demographic, transportation, land use, housing, and other data that supports the agency’s regional policy and planning responsibilities. In recent years, the need for a robust Data Science program that can produce meaningful insights and explanations about activity in the region, as well as identify opportunities to create tools and resources from data, has emerged as elected officials, stakeholders, business partners, and the public demand to be more informed and expect solutions to regional issues. In response, two key strategic objectives have emerged: 1. To establish SANDAG as a national leader and role model for maximizing the use of data and the insights it contains to drive effective policy decisions and deliver innovative solutions; and 2. Drive the adoption of open data and big data initiatives across the organization and throughout the region. In support of these objectives, the scope of the existing Chief Economist position was expanded to include responsibilities for leading and advising on the development and use of advanced data analytics across the organization.

Director II, Research & Program Management (formerly Division Director of Applied Research/Criminal Justice Research)
Independent oversight and consolidation of the agency’s research and data management functions was identified as an emerging need for the agency. This function is essential for ensuring the overall accuracy and integrity of data used by SANDAG for complex modeling and analyses, preparation of policy recommendations, and the delivery of programs, projects, and services. This change was achieved by reclassifying the existing Division Director of Applied Research/Criminal Justice Research and adding responsibility and accountability for quality assurance, data management, and product management functions.
- Director II, Construction and Engineering (formerly Division Director or Rail)
  The Department Director of Mobility Management & Project Implementation (MMPI) is a long-standing, core agency position and the need for the role was confirmed as part of agency reorganization effort. This was accomplished through reclassification; the Director of Construction and Engineering has the same responsibilities as the former Department Director of MMPI; the title has changed. It was noted that effective leadership and technical expertise is necessary to oversee design, engineering, and construction functions related to delivering the SANDAG Capital Program.

- Director II, Business Information & Technology (formerly Division Director of Tolling & Information Systems)
  The need for more focused leadership and technical expertise regarding information technology programs was determined to be essential for achieving the internal goal of workplace/technology modernization and supporting numerous Organization Effectiveness Plan recommendations. This change was achieved by reclassifying the existing Division Director of Information and Tolling Systems position and assigning responsibility and accountability for ensuring adequate technology resources are available for conducting agency business, overseeing IT governance initiatives including planning and deploying state-of-the-art hardware resources, performing system upgrades, and/or leading system implementation efforts, and ensuring high-levels of service and support to both internal and external customers.

- Director I, Integrated Transportation Planning (Goods Movement Policy Manager)
  The need for coordinated leadership and technical expertise regarding the agency’s long-range regional transportation planning responsibilities was identified as necessary for achieving the strategic goal of providing the San Diego region with a world-class transportation system. This change was achieved by reclassifying the existing Goods Movement Policy Manager position and assigning responsibility and accountability for Transit, Goods Movement, Long Range Transportation, and Corridor Planning.

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. These are described below.

- Chief Operating Officer (formerly Chief Deputy Executive Director)
  Acting as an essential member of the Senior Leadership Team, the Chief Operating Officer will plan, direct, manage, and oversee the contracts and procurement, small business development, human resources, information technology, and business services functions; coordinate services and activities among SANDAG departments, the Board of Directors, Policy Advisory Committees, member agencies, and outside organizations; and provide highly responsible and complex executive support to the Executive Director.

- Director II, Organization Effectiveness (formerly Department Director of Administration)
  SANDAG initiated a strategic planning project in early 2019 to identify opportunities to improve the overall performance of the organization and increase the agency’s capacity to deliver on regional programs and projects. This body of work was one of the commitments made in the 2018 Plan of Excellence. As part of the agency reorganization, the need for leadership and
technical expertise to focus on implementing and sustaining the recommendations stemming from the strategic plan (referred to as the Organization Effectiveness Plan) was determined to be essential. This change was achieved by reclassifying the existing Department Director of Administration and assigning responsibility and accountability for programs and services that drive organization performance and enhance the employment experience. The role includes oversight for the Diversity and Equity, Human Resources, Internal Communications, Risk Management, and Business Services.

- **Director II, Strategic Communications (formerly Department Director of Communications)**
  The Department Director of Communications is a long-standing, core agency position and the need for the role was confirmed as part of agency reorganization effort. It was noted that effective leadership and technical expertise is necessary for developing and implementing strategies that proactively and positively communicate SANDAG policies, programs, services, and activities to a broad audience, and foster mutually beneficial and productive working relationships between SANDAG and its stakeholders, particularly during a time of significant agency progress and transformation. Strong leadership in the Strategic Communications area is essential and integral for the achievement of both external and internal agency goals and supporting numerous Organization Effectiveness Plan recommendations. The functions allocated to the department include Document Processing, Creative Services, Marketing, Public Information, and Public Outreach

- **Director I, Mobility and Innovation (formerly Division Director of Big Data/Data Science)**
  The agency identified the need for leadership and technical expertise to research, develop, and implement programs and systems designed to reduce travel demand and use the existing transportation infrastructure more efficiently; this is an essential component for achieving the strategic goal of providing the San Diego region with a world-class transportation system. This change was achieved by repurposing and reclassifying the existing Division Director of Big Data/Data Science position (a new role that had been added in FY 2020 but had not been filled) to Director I, Mobility and Innovation and assigning responsibility and accountability for conducting non-traditional planning activities that focus on developing transportation solutions through partnerships with public and private stakeholders as well as system management functions and clean transportation programs.

- **Director II, Tolling Operations (formerly Division Director of Tolling Operations)**
  The Director of Tolling Operations oversees the operations, performance, maintenance, and administration of regional tolling and managed lane facilities and roadway operations including customer service, account and revenue management, roadway and roadside facilities, toll collection equipment, security, and traffic management. The position was added as part of the FY 2020 Budget and was intended to report to the Department Director of Operations. As part of the agency reorganization, the role report to the Chief Capital Programs and Regional Services Officer and has been reclassified to the Director II level, commensurate with assigned responsibilities.
2 positions were reclassified to the Director I level from senior or manager level positions; these are described below.

- **Director I, Diversity and Equity (formerly Manager of Small Business Development)**
  As a recipient of federal and state funding for transportation and other projects, SANDAG is required to establish and manage compliance programs related to, but not limited to, Title VI and Environmental Justice, Disadvantaged Business Enterprise (DBE), Equal Employment Opportunity (EEO), and the Americans with Disabilities Act (ADA). Federal guidelines specify expectations for the level of position and internal reporting relationships in these program areas. After considering several options, the Senior Executive Team recommended the existing Manager of Small Business Development role be reclassified to Director I, Diversity and Equity. As part of the reclassification, the role was assigned responsibility for the agency’s Title VI and Environmental Justice program as well as the ADA Program for third party contractors and consultants.

- **Director I, Government Relations (formerly Senior Government Relations Analyst)**
  The Senior Leadership Team identified the need for executive-level capacity to oversee and coordinate high-level interdepartmental and/or interagency teams assembled to strategically address policy issues or special regional projects, create strategic alliances, and facilitate efforts between, and/or on behalf of, local, state, and national representatives, special interest groups, and others to proactively influence, or strategically respond to policy issues affecting the region. SANDAG historically had a Director of Government Relations role, however the position had been reclassified to address other agency priorities. Given the agency’s ambitious strategic objectives that will require significant national, state, and local collaboration, this need to re-establish the role was confirmed.

In FY 2020, two limited-term positions were added – the part-time Executive Strategic Advisor and Director I, Mid-Coast Transit Project. These are not envisioned as a long-term positions for the agency.
How Engaged are SANDAG Employees?

About four-fifths (79%) of SANDAG employees are at the Engaged or Almost Engaged level. Nine percent of employees are Disengaged, and the remainder fall into two categories based on their experiences at work - Honeymooners & Hamsters or Crash & Burners. Descriptions are provided in the chart below.

This engagement score is derived from responses to 33 survey questions that asked employees to answer based on their level of agreement with the statement provided. The questions, and the responses collected, are provided on the following page and in the Appendix.

For comparison purposes, a research report released by BlessingWhite in May 2017 indicates 63 percent of employees in average performing organizations are Engaged or Almost Engaged while 77 percent of employees in the best organizations are Engaged or Almost Engaged.

40% Engaged
Engaged employees find significant alignment between their personal and organizational interests; they are full contributors, find great satisfaction in their work, and are known for their discretionary effort and commitment.

2017 Survey: 34%

39% Almost Engaged
These high performers are reasonably satisfied with their job; they are highly employable and could be seeking opportunities with other employers; investing in these employees will help them reach full engagement.

2017 Survey: 38%

Honeymooners & Hamsters
Honeymooners are new to the organization and are still finding their stride; they need support to reach full productivity and alignment as quickly as possible. Hamsters may be working hard, but are working on non-essential tasks.

2017 Survey: 6%

Crash & Burners
These top producers aren’t achieving their personal definition of success and satisfaction within the organization; they may express dissatisfaction with management and coworkers, and are likely to become Disengaged if no action is taken.

2017 Survey: 8%

Disengaged
These employees are disconnected from organizational priorities; they often feel underutilized and are not getting what they need from work.

2017 Survey: 15%

Note: Percentages may not equal 100 due to rounding.
Management’s Revised Response to Revised Final Audit Dated August 26, 2020

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

September 2, 2020

The SANDAG Management Team believes it is important to respond to the Revised Final version of the OIPA’s Salaries and Compensation Performance and Compliance Audit (Revised Final Audit (RFA)) to ensure readers of the RFA have an accurate response from management to the narrowed scope of issues discussed in the RFA as compared to the Draft version of the audit. This document supersedes the original Management Response which was provided to OIPA and the Audit Committee on August 14, 2020, (Response) and shall be referred to as Management’s Revised Response (MRR). Management has reviewed and commented on the recommendations offered by OIPA.¹

Basis for Recommendation from Office of General Counsel that Portions of RFA and MRR Remain Confidential

Management is supportive of releasing most of the Draft, Response, RFA, and MRR to the public. There are portions of the documents that will help the public understand the role and results of SANDAG’s independent performance audit function and management’s recognition that it has room for improvement. Some portions of the documents, however, could be harmful to the agency and on balance, in management’s opinion, the public transparency gained does not appear likely to outweigh the increased risk to the agency or the privacy concerns of staff. Several closed sessions with the Audit Committee have previously been held concerning this audit because of the potential for litigation against the agency based on the contents of the Draft, RFA, and Response. As such, the Office of General Counsel recommends that no portion of these documents, later renditions of these documents, or any of the attachments, which contain information regarding confidential personnel matters, or that could lead to litigation or other legal action against the agency, be released to the public. Dialogue regarding these portions of the report can occur with the Audit Committee and/or the Board in closed session pursuant to the Brown Act to protect the interests of the agency while still giving the Board full transparency and opportunity for direction to staff.

For example, the RFA uses employee job titles in instances where only one person held/holds the position and recommends that the Board consider modifying the employees’ employment contracts, their pay, and their

¹ Attachment A, Summary of Management’s Revised Responses to Audit Recommendations.
roles. The decision of whether the Board should take such an action would require a risk analysis with an
attorney in closed session to provide advice.

If the Board decides, after a closed session during which it is afforded legal advice on the pros and cons of
various personnel actions described in the RFA, to take any actions concerning individual employees, the
amount of information that has been redacted can be revisited. Unless or until that decision occurs though,
SANDAG would be showing its hand to prospective litigants. Public agencies have the same rights as all
potential litigants. This includes the right to plan for potential legal action outside of the public domain and
with the benefit of confidential legal advice.

Another aspect of the RFA that should be held out of the public eye are the sections of the RFA that allege
harassment and/or improper treatment of staff. It should be noted there also is a cross-allegation of wrongful
harassment by management against OIPA staff members. Personnel matters are subject to heightened
confidentiality at SANDAG. Management has assigned staff that have not been involved in drafting the
Response or MRR to seek proposals from qualified law firms to conduct an investigation of claims. Eligible firms
will have no previous relationship with the agency and the Board Chair and Vice Chair will make the final
selection of the firm. These steps are being taken to ensure all claims of wrongdoing are promptly and
thoroughly investigated by an experienced, qualified firm without any actual or potential bias. The expectation
is that the firm will be hired in the next two weeks and that the investigation may take a month or more to
complete. Until the investigation is concluded, and the findings prepared for the Board to consider in closed
session (or in open session if requested by the affected employee(s)), it is inappropriate to bring the allegations
into a public forum.

In summary, the portions of the various documents that the Office of General Counsel recommends be
redacted for confidentiality reasons as they concern personnel matters and/or create litigation risk to the
agency as they disclose potential claims, are redacted in the attachments to the report prepared for the Audit
Committee’s open session meeting. The MRR itself, by responding to the RFA, contains statements that should
be withheld from the public until decisions are made by the Board. Sections III and X of the MRR, and portions
of section VI and VIII, are redacted in the public version of this MRR to the extent they contain confidential
information or information that could be used to support a claim against SANDAG. There also are portions of a
legal opinion referenced in this MRR that are marked confidential and should not be released without
permission from the Board of Directors. Finally, the memo provided on a confidential basis by former SANDAG
Board Chair, Terry Sinnott, as Attachment H contains confidential personnel matters that should not be
distributed.

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2 Page 2 of OIPA Cover Letter - “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 MRR from SANDAG’s Management;” and Page 130 - “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.”

3 For clarity, the Audit Committee, Board members, and OIPA have been provided with confidential versions of all
documents without any redactions. The document versions provided as part of the Audit Committee agenda and in
response to any California Public Records request will be in redacted form.
**Introductory Remarks**

The RFA contains findings and conclusions that sometimes lack sufficient information and context and therefore might lead a reader to believe the discretion exercised by management was not reasonable. The MRR is meant to fill in gaps in information and establish that management’s decisions were made within their authority, with the amount of disclosure as was thought appropriate, and with the advice of experts. At no time was there an intent to hide anything or act without authority or the best interests of the agency.

Using the information regarding OIPA’s concerns from this audit, staff has identified additional information and records to assist the Audit Committee and Board of Directors (Board) in evaluating the findings and recommendations from OIPA. The MRR shows that the Executive Director and SANDAG management have not acted arbitrarily or without legitimate governmental and business interests. Instead, management have acted reasonably and in reliance on external experts’ opinions, which have guided and informed actions:

- Annual financial audits, which determine the accuracy of records, determine compliance with accounting methods, and evaluate 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.
- Engagement of 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.
- Engagement of outside counsel with expertise in employment law to provide advice on personnel decisions.

The RFA raises concerns about data integrity for payroll and human resource records. Management agrees that records are not currently kept in easily-found locations and or in centrally located databases. This can make records difficult to identify for anyone without history with the agency. Additionally, the audit occurred during the COVID-19 health emergency during which time the majority of SANDAG employees are teleworking. This frustrated the search more than usual as some of the records involved are in historical hard copy files only available in the SANDAG offices or in storage.

The need for better organized systems, improved data integrity, modern and integrated software tools, and centralization of records was identified as a business imperative by management and discussed with the Board in March 2019 during the development of the FY 2020 Program Budget. Modernizing SANDAG’s technology infrastructure - including the systems and tools that are relied upon for payroll and human resource records - is one of the agency’s strategic initiatives for FY 2021. Funds are included in the FY 2021 Budget to address this need. Two weeks ago,4 SANDAG’s employees transitioned to a new and enhanced payroll software system for the first time in 15+ years. Management welcomes the opportunity to provide the Audit Committee, Board, and the public additional information regarding plans that are underway to enhance SANDAG’s technology modernization efforts.

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4 This transition was scheduled prior to management learning of the Draft or the RFA. In addition to the payroll system changes, management plans to implement a new financial tracking, invoicing, and enterprise system in FY 2021. A new contracts management system was implemented in FY 2020.
The RFA states that readers of the audit will find the results of the audit alarming, but not surprising (see p.2 of OIPA cover letter). Management does not agree that the RFA’s contents are alarming when read in the light of the additional information in the MRR. Management acknowledges that after more than four decades without an OIPA, SANDAG likely has areas that will benefit from assistance and recommendations to strengthen program management oversight, including policies, procedures, and controls.

This MRR does not contain a rebuttal for every statement in the RFA. Instead, this MRR is meant to establish that even if management does not agree with portions of the RFA or the way some of the situations are portrayed, it is generally supportive of the recommendations in the RFA to the extent they provide opportunities for enhancements. Some of the recommended actions already have been initiated, and management is committed to undertaking 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 at this time are proposed for further discussion, either because management is not in agreement, they are either unfounded or duplicative efforts, or require Board input and direction. Where noted, follow up efforts will be incorporated into an Action Plan, prepared in consultation with the OIPA, that can be brought to the Audit Committee and the Board following approval of the audit. The Action Plan will describe new procedures management will put in place to make documentation more robust, areas of policy or past practice that the Board may want to direct management to modify, and potential modifications to enhance internal controls.

**Background Concerning Applicability of Civil Service Act or Statutory Deadline for Acting Upon Employee Contracts, and Legality of Severance Payments to Prior Employees**

Due to statements in the Draft that caused confusion for Audit Committee members and management, legal questions thought to be relevant to this audit, and potential actions arising from the audit findings, have since been removed from consideration. The Audit Committee selected independent outside legal counsel, a firm with no prior association with SANDAG, to provide answers to critical questions. A confidential legal memorandum addressing the questions has been provided to the Audit Committee, OIPA, and management. Although it is not appropriate to disclose the contents of the confidential memoranda to the public as it subject to attorney-client privilege, the relevant conclusions of law are as follows:

- SANDAG employees are not subject to the State Civil Service Act statutes applicable to employees of the State of California.
- There is not a one-year time limit that applies to SANDAG or its employees for modifying an employment contract.
- Severance payments to employees using public funds are not a gift of public funds when certain conditions are met, and those conditions were likely met by SANDAG.

The following sections of the MRR address the information and findings presented in the RFA.
SECTION I – DELEGATED ADMINISTRATIVE AUTHORITY

I. Delegation at SANDAG Meets Legal Requirements

The California Legislature and Board of Directors Knowingly Delegated Authority Over the Administrative Policies of the Agency to the Executive Director

In Section 1 of the RFA, the OIPA states that a number of errors, abuse, and waste have occurred and are “attributable to management assuming ownership of the Board’s Administrative Rules and Regulations” (see RFA, p.26). This statement incorrectly implies the authority of the Board over agency administrative matters was somehow usurped by staff. Although management does not believe actions occurring prior to SB 1703 are relevant for reasons stated below, management wants to be sure readers do not get the impression that the Executive Director’s responsibilities with respect to administrative policies was ever a case of “management override” as stated in the RFA.

Senate Bill (SB) 1703, which became effective January 1, 2003, consolidated responsibilities previously held by the transit development boards into SANDAG. Public Utilities Code section 132335, which was included in SB 1703, shows the intent of 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.

This means that since 2003, the delegation for administrative authority of the agency was provided by the Legislature directly to the Executive Director, not by the Board to the Executive Director. Even so, the Board has confirmed that delegation and added others since 2003.

SB 1703 resulted in significant change for the organization, including oversight and administration of agency personnel policies and procedures which is highly relevant to this MRR. The consolidation more than doubled the number of SANDAG employees and required the agency to update its administrative policies in order to incorporate the rights and benefits of former transit agency employees into SANDAG policies. Since at least 1995, the agency’s administrative policies were contained in a document known as the Administrative Rules and Regulations. 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. It was decided that SANDAG mirror the Metropolitan Transit Development Board’s method of documenting such information in the form of policies approved by the Board.

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5 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.

6 Now known as Metropolitan Transit System (MTS).
The Board adopted Interim Bylaws to incorporate changes arising from SB 1703 on January 10, 2003. The final version of the 2003 Bylaws was adopted on July 25, 2003. 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.

Thus, the language in the Bylaws adopted by the Board in 2003 confirmed the delegation of authority by the Legislature in SB 1703.

In 2003, the Office of General Counsel began drafting documents known as Board Policies and bringing them to the Executive Committee and then Board for adoption. One of new policies brought to the Executive Committee, and recommended to the Board, was Board Policy No. 017, Delegation of Authority. The October 24, 2003 Board report 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 Board discussion and suggestions. 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.

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

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10 Attachment E, Board Report from December 2006 with Board Policy No. 017 tracked changes attached.
11 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.”
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.

Records from the Executive Committee and Board meetings establish that the Board members had full knowledge of the name change for the Administrative Rules and Regulations and that they concurred with the Executive Director maintaining authority over the administrative policies of the agency. The RFA states that the Administrative Rules and Regulations may still be operable because evidence was not found showing 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.

The language in SB 1703 delegating authority to the Executive Director is entirely consistent with the language currently in Board Policy No. 017 and the Bylaws. Additionally, 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 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.12

Perhaps most importantly, as stated in the RFA on page 9: “While the name has remained unchanged, the nature of SANDAG post-Consolidation Act is wholly changed.” Management agrees that SB 1703 created fundamental changes at SANDAG. This is why it is confusing to management that the RFA cites to section numbers and language in the 1995 version of the Administrative Rules and Regulations and insists that a document created long before the effective date of SB 1703 still governs SANDAG and its staff. The only version of the Administrative Rules and Regulations that could have any bearing on SANDAG’s current

12 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.
operations is the version that was approved by the Board in 2003 after the effective date of the Consolidation Act and which affirms the delegation from SB 1703. It is that version of the Administrative Rules and Regulations that eventually went through a name change, which the Board authorized.

Although it does not seem relevant as it pre-dates the “wholly changed” agency and the delegation by the Legislature to the Executive Director, management’s curiosity was raised by the RFA’s statements to the effect that prior to consolidation the Board oversaw the content of the Administrative Rules and Regulations. Management has attempted to research whether the Board has approved, at any time, any version of the Administrative Rules and Regulations. Management verified that the Board has not reviewed the Administrative Rules and Regulations at any time post-consolidation. And, despite a search of records dating back more than 25 years, and a telephone call with SANDAG’s former General Counsel who served from the 1980s to the early 2000s, management found no indication that the Board ever approved the content of the Administrative Rules and Regulations cited to in the RFA. Whether the Board, while acting as a Joint Powers Agency did so decades or go or not, however, administrative rules predating SB 1703 are certainly no longer in effect.

The Board Maintains Sufficient Controls Over the Executive Director and the Executive Director Has Been Delegated Authority Appropriately

The RFA 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 the RFA 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 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 of Directors.” Thus, the Executive Director has no conflict in setting or imposing the policies in the Employee Handbook.

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. With regard to employees, the Legislature has granted the following authority:

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14 Public Utilities Code sections 132000, et seq.
[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.15

As stated above, 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.16

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. (Cal. Pub. Util. Code § 132355 (emphasis added)).

The Legislature clearly intended the Executive Director to have broad authority that encompassed all of the administrative authority of the agency and that authority with regard to employees was broad enough to cover all of the functions of the consolidated agency. In the last 17 years, 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 manuals, policies, and procedures.17

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.18

15 Public Utilities Code section 132354.

16 Public Utilities Code section 132355.

17 Board Policy No. 017, Section 5. Source documents for all cites to Board Policies and Bylaws can be found at SANDAG.org/Legal.

18 Board Policy No. 017, Section 4.1.
Starting on page 130 of the RFA, in Comments 1, 4, 6, and 9, there are statements to the effect that the Board is charged with governing the agency and that the Board cannot delegate the responsibility to govern the agency to staff. It is true that improper delegation of power can occur when a legislative body confers unrestricted authority to make fundamental policy determinations to others. *Clean Air Constituency v. California State Air Res. Bd.* (1974) 11 Cal. 3d 801, 816. So long, however, as the legislative body provides a yardstick by which to measure the reasonableness of discretionary decisions, delegation is permissible. *Carson Mobilehome Park Owners' Assn. v. City of Carson* (1983) 35 Cal. 3d 184, 190. Furthermore, with regard to the administrative policies of the agency, the Board did not improperly delegate anything to the Executive Director because it is the California Legislature that delegated this authority to the Executive Director in the first instance, not the Board.

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. The direction and policies of the Board applicable to the agency’s personnel are provided in many places including the Bylaws, Board Policy No. 007 (EEO Policy), and the Conflict of Interest Code. Additionally, existing law applies by implication in the context of delegated authority and can provide the relevant yardstick. (See *Roussey v. Burlingame* (1950) 100 C.A.2d 321, 324.) Existing law concerning employee rights and prohibited acts by employers concerning their employees is already set forth in a large body of law in California. There are literally hundreds of statutes that the Executive Director and management must use as a measuring stick against which to evaluate their actions.

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, management believes 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, management strongly believes that the California Legislature has delegated broad, but permissible authority to the Executive Director. Further, it is management’s opinion that the Board and the Executive Director have acted within this legislatively authorized and legally delegated authority. Management believes that the Board has appropriately delegated governance of the agency to the Executive Director, control mechanisms are appropriate, and the amount of authority delegated is consistent with the amount authorized by other MPOs. Despite this, management is prepared to bring an outline of the Employee Handbook’s provisions to the Board to determine if the Board would like more involvement in the personnel matters of the agency.

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19 SANDAG Bylaws, Article V, Section 4.b.
Management Disagrees with the RFA’s Conclusion that the Current General Counsel Was Remiss for Not Having Complete Knowledge Regarding the Former Administrative Rules and Regulations

The RFA 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. The RFA 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. From management’s perspective, 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 RFA implies that once taking the General Counsel position in 2012, the General Counsel was responsible for having knowledge of the full history of the agency’s administrative policies. It seems unreasonable to management to hold an employee accountable for knowing decades worth of information, especially when the documents in question are no longer of legal effect.

II. Severance Payments Were Made in the Best Interest of the Agency

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

The RFA states that it was improper and wasteful for payments to be made to four employees who have resigned from SANDAG. Each of these employees was aware of potential claims against the agency and the costs of litigation were the deciding factor for concluding an agreement to release all potential claims against the agency in exchange for severance pay was in the agency’s best interest. Management does not agree with the RFA’s finding that severance pay is improper when an employee resigns in the absence of a formal claim or lawsuit. Management’s decision to pay severance to prior employees in exchange for agreements not to sue the agency despite their potential claims, is supported by the facts and relevant law. Two confidential legal memoranda prepared by outside counsel are relevant to this topic. One memo is from the Paul, Plevin, Sullivan, & Connaughton law firm and provides a summary of that firm’s reasoning for advising SANDAG management to proceed with the severance agreements. The other memo is from the Renne Public Law Group and provides advice on how to determine whether if, as a matter of law, a severance is a gift of public funds. Both outside law firms and the Office of General Counsel have concluded that management’s actions were legal and did not constitute a gift of public funds.

Management therefore disagrees with any implication in the RFA 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. In management’s opinion, the severance payments were proper based on the fact of each individual’s situation and they were not a gift of public funds.

As acknowledged in the RFA, both the Board Chair and Vice-Chair were notified by email from the Executive Director of his authorization of the severance compensation in exchange for the release of claims as described above, however management disagrees with the conclusion in the RFA that such payments were improper due to lack of appropriate authority. 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 management’s discretion and not improper.

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

As previously stated in the sections above, 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. This is practice used both in the public and private sector to avoid litigation and associated costs.
III. Compensation for Former Chief Deputy Executive Director

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 of the Board of Directors

Management strongly disagrees with the RFA’s findings of breach of fiduciary duty with respect to the compensation awards made to the former Chief Deputy Executive Director (Chief Deputy). Assuming a fiduciary relationship is established, a breach of the duty occurs when one of the parties is duty bound to act with the utmost good faith for the benefit of the other party and acts in their own self-interest or against the interests of the party to whom the duty is owed. (Wolf v. Superior Court (2003) 107 Cal.App.4th 25, 29.) The individuals involved in making the decisions at issue did so in the best interest of the agency, acted in good faith, received no benefits themselves from the decisions, and communicated openly with the Chair, who represented the Board at the time and made all final decisions.

From management’s perspective, the RFA’s finding 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 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 2018-04.20 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 updated salary range tables as well as a compensation adjustment pool of approximately $1.3M.21 The same or similar process was also followed in previous and subsequent budget cycles.

As already stated in this MRR 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. This administrative authority also 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 serves as the governing body of the consolidated agency per Public Utilities Code section

20 See Resolution beginning at page 6-4 of the FY 2019 Program Budget.

21 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.
Salaries and Compensation Audit, Revised Final Report No. 2021-1br, August 2020
Confidential: Management’s Revised Response

and the Board may delegate its authority to other officers. Further, the SANDAG Board Chair is vested with general supervision over the Board’s affairs per 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 a 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.22

The RFA report describes five payments made to the Chief Deputy during calendar year 2018; management disagrees with the finding that 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 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.23 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].)24

22 See Attachment G, Confidential Sinnott Memo.
23 See Attachment G, Confidential Sinnott Memo.
24 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.
IV. No Breach of Fiduciary Duty Occurred

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 longstanding 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.

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 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 2021.25

The total amount budgeted for management benefits in FY 2021 is shown as a separate line item in the FY 2021 Personnel Cost Summary.26

There Has Been No Wrongdoing, Abuse of Power, or Breach of Fiduciary Duty

The RFA contends there has been “management override, abuse, and waste of taxpayer dollars” as a result of the Board not having control over the hiring, promotion, pay, classification, and terms of resignation for employees. In management’s opinion, the documentation provided in the RFA is incomplete, which has led to several findings with which management disagrees. From management’s perspective, the Executive Director has been delegated authority to engage in the actions at issue in the RFA and there is no support for the contention that he has abused that authority. \textit{(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]; \textit{Lucas v. Santa Maria Public Airport Dist.} (1995) 39 Cal.App.4th 1017, 1026 [airport district acted within its discretion in setting salary]; \textit{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

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25 See Attachment H, Revised FY 2021 Program Budget report, Attachment 5.
26 See Attachment I, FY 2021 Personnel Cost Summary.
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.
- Employees were paid bonuses that were based on performance and merit as permitted by the Board.
- Performance incentive payments to employees have not created an inequity.
- Payment of management benefits has not created an inequity.
- Senior management position titles were not changed as a method to boost pay, but were based on the additional responsibilities they were given as a result of a promotion.
- SANDAG employees that have at-will status without resort to a formal administrative hearing process upon termination 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.27

- 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.

Management Previously Disclosed to the Board that 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, via email, on July 10, 2020. Management has begun the process of creating a new policy on this topic, which will be brought to the Board 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 longstanding 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. Under this process, the Board had the ability to review and inquire about salaries.

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

Management disagrees with the RFA’s finding 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.

Management disagrees with the RFA finding that SANDAG’s 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. 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.

28 Attachment K, July 10, 2020 Correspondence to the Board of Directors.
Components of FY 2020 Compensation Adjustment Pool
(based on a 4% base salary increase)

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

The RFA 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. Accordingly, management strongly disagrees with the RFA’s suggestion that staff may have intended malfeasance, when staff followed established practice and made information available to the Board and the public at the time the annual program budget was prepared.

V. No Significant Weaknesses in Financial Controls

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, in management’s opinion, the allocation 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

The RFA cited the outcome from a recent review completed by CalPERS in June 2020. Management can confirm that staff is actively engaged in addressing the deficiencies that have been noted by CalPERS, including taking any appropriate remedial action determined to be necessary. Correspondence regarding the outcome of the CalPERS review and staff’s intended actions was provided to the Board, via email, on July 10, 2020.
Adequate Supporting Documentation and Internal Controls Are in Place

The Payroll/Budgeting team and Human Resource team have longstanding 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 at the recommendation of Finance staff 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. Transparency and Fairness of Annual Productivity Program

Records that Were Not Reviewed by OIPA Establish that Merit Increases, Equity Pay, and Bonuses Were Equitably Distributed to Employees

Management disagrees with the RFA’s finding that compensation has not been equitably distributed to employees, particularly with respect to the performance bonuses and the RFA conclusion that there is a pattern of unfairness in their award to employees. Management has provided the following elaboration on SANDAG’s practices:

SANDAG established a pay-for-performance or merit-based program more than 20 years ago 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 RFA and is committed to implementing this improvement.

The RFA suggests 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; these criteria were established more than 10 years ago. 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. Therefore, in management’s opinion, the appropriate basis upon which to assess questions related to the equitable nature of the agency’s compensation program, would be to review the number of bonuses awarded together with the number of merit increases awarded.

The RFA (see RFA, p.56) 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 MRR, each annual program budget approved by the Board 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 pool. As part of the annual presentation of the proposed budget to the Board, management clearly advises the Board that the percentage increase is for the pool in total and does not represent an across-the-board increase of the same percentage for each employee.

The RFA (see RFA, p.57) 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, which is typically a step-system that is based on time in service versus merit. SANDAG uses different tools, such as merit increases and performance bonuses, to reward employees for performance. In management’s opinion, it is both appropriate and clearly permissible 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 discussed with the Board 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

Management agrees with observations in the RFA about 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 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.

Management disagrees with the RFA finding that there is inadequate justification regarding the award of bonuses. 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.

The RFA (see RFA, p.57) includes the statement “performance ratings did not corollate to the amount of the bonuses awarded to staff” and cites examples of apparent discrepancies. In management’s opinion, both merit increases and performance bonuses are awarded with appropriate and substantiated justification (as described above), and that when both are awarded, the combined value is commensurate with performance outcomes and consistent with rewards offered to similarly situated employees.

**Approvals of Performance Incentives Recommended and Awarded to Employees Is Sufficiently Documented**

Management agrees with the RFA on the desirability of 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. Management disagrees, however, with the RFA’s finding that the preparation and approval of merit increases and performance bonuses is not documented. Agency practices were described to OIPA orally and examples of written communications/instructions also were provided, including information about the oversight role of the Executive Director and Chief Deputy and the communication of approvals.

**Bonuses Reconcile with Approved Bonus Amounts**

Management agrees there is need to introduce additional controls and procedures with respect to recordkeeping and the communication of compensation information between Human Resources and Payroll staff. The RFA (see RFA, p.59, Table 8) describes discrepancies between the amount of approved employee bonuses and the amounts actually paid. In response to the analysis described in the RFA, Human Resources verified bonus approval records and believes all bonuses have been paid correctly, consistent with the information reported by Payroll. Corroborating information can be made available to the OIPA.
VII. Adequacy of Procedures and Methodology for Setting Salary Ranges

Management Believes SANDAG’s Methodology for Benchmarking Compensation Is Appropriate

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 routinely 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 RFA takes issue [see RFA, starting on p.60) with how SANDAG benchmarks compensation; the following information has been prepared to explain why management believes existing approaches are appropriate. SANDAG’s two most recent salary surveys were conducted by an outside compensation consultant in FY 2016 and again in FY 2019. In particular, for FY 2019, the basis for assessing overall market competitiveness of existing salary ranges was a review of comparable Southern California organizations, as measured by size and complexity. This universe of organizations was comprised of 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. Accordingly, management disagrees with the RFA’s finding that SANDAG “did not rely on comparable governmental agencies of the same size or function” when conducting salary surveys.

Management also disagrees with the RFA finding that SANDAG did not include “critical positions” in the analysis” (see RFA, p.60). 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. 29

The RFA (see RFA, p.61) criticizes the methodology and basis used for recommending FY 2021 salary ranges and states “it was not indicative of current market conditions.” Management disagrees and would like to point out that

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29 Management disagrees with the finding that the salary ranges are inappropriate. 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.
1. 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. 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. The FY 2021 salary ranges referenced in the RFA were 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 further 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 human resource products, services, and consultation to more than 1,200 public sector and non-profit clients. SANDAG began working with CPS HR in 2014.

**Although SANDAG Job Duty Statements Could Be Improved, They Are Not Materially Deficient**

Management agrees with the RFA findings about the need for improvement with respect to the agency’s current practices for developing and maintaining “duty statements” (SANDAG uses the terminology “job descriptions”). That said, management disagrees with the RFA’s statement (see RFA, p.61) 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.

It also should be noted that it is the agency’s existing practice with respect to the preparation of detailed position announcements is that they contain specific, custom descriptions of responsibilities, qualifications, and experiences that tie back to the Class Spec. They 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 - REORGANIZATION**

**The FY 2021 Budget Shows Lower Salaries and Benefits than the FY 2020 Budget**

The RFA 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.

Management offers the following clarifying points for context regarding the FY 2021 Budget. First, the FY 2021 Administrative Salaries and Benefits budget went down 2.6% in comparison to the FY 2020 Program Budget. 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 RFA notes that, in fact, the increase was due to salary increases in September 2019; while factually correct, the reference to base pay increases that were approved by the Executive Director in 2019 in conjunction with the agency reorganization, and were within the Board approved salary budget for the year, may create a confusing “apples-to-oranges” comparison. Third, based on actual staff salaries at the end of FY 2020, and compared to the beginning of FY 2021, there were no compensation increases, which is what staff reported in the FY 2021 Final Budget.

**VIII. Promotions Were Justified**

*All Executive-Level Positions Are Actively Engaged in Agency Leadership and All Job Title Changes Are Justified by the Increased Duties Assigned*

The RFA (see RFA, p.65) 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. This is not accurate; this perceived increase is primarily due to a change to the definition, therefore membership, of the Executive Team.

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 11 of the 23 executive-level positions were considered members of the Executive Team, even though the remaining 12 positions also were at the executive-level. 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 be more expansive and include all executive-level positions.

The RFA infers there is no justification for the restructuring of the Executive Team. 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), however, describes the systematic process used to analyze the effectiveness of the organization and the goals underpinning the resulting organizational design. The RFA suggests that based on the ratio of executives to total employees or number of executives to total budget that SANDAG is “top heavy.” The organizations used in the OIPA’s analysis lack the same broad
scope of work and complexity of responsibilities as SANDAG as expressed by its designated authorities and mandates. From management’s perspective, the uniqueness of SANDAG and its need to reorganize and engage all executive-level roles in the leadership of the agency, which was done with support from the Board, as described below, is essential for the agency’s future long-term success.

The Board’s 2018 Plan of Excellence 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 third party management consultant to guide the project. The work included input provided by the Board, 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. If requested, management can highlight several agency accomplishments in the past year that are testament to the effectiveness of the new organization design.

In the RFA’s characterization of SANDAG being “top heavy” comparison is made with the San Bernardino County Transportation Authority (SBCTA), a comparison which management does not believe to be appropriate, as explained below. According to the RFA, the SBCTA has 7 executives compared to SANDAG’s 27 executives. The RFA further states (see RFA, p.66) that the SBCTA and SANDAG have similarly sized FY 2021 budgets of $960 million and $1,179 million respectively. In management’s opinion, there are 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 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, 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), 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 SBCTA.

30 **https://www.sandag.org/index.asp?fuseaction=about.excellence**

31 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.

32 **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.

33 **https://www.sandag.org/uploads/publicationid/publicationid_4680_27586.pdf**

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.

Management Engaged in a Thorough Needs Assessment and Developed an Actionable Staffing Plan to Achieve the Reorganization Objectives

The RFA 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. 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 RFA questions decisions made by management with respect to the reorganization. From management’s perspective, all available tools, processes, and resources were employed to establish a new department structure and achieve what is highly regarded as a successful reorganization. The current Executive Team has been in place for approximately ten 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**

In an earlier section of this MRR, management articulated that performing salary surveys that include every position in an organization is not a standard or best practice for compensation program management. 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 compensation consultant re-benchmark the executive-level positions that were included in the FY 2019 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, and the work was completed in August 2019. 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.

**IX. Employee Appointments Were Permitted by SANDAG Policies**

**Management’s Promotion Decisions Should be Evaluated Against the Provisions of the Employee Handbook, Not a Superseded Version of the Administrative Rules and Regulations**

Management strongly disagrees with the RFA’s reliance on Administrative Rules and Regulations that predate SB 1703 to conclude the Executive Director acted outside of his authority by promoting some employees without undergoing a recruitment. The RFA starts this section by citing to the Administrative Rules and Regulations, “which are still in effect” (see RFA, p.75). As previously stated, the records show that the Administrative Rules and Regulations have been superseded, and that the version relied upon by the RFA, if

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35 Attachment L, Reconciliation of Executive-level Positions and Reclassification Justifications.
ever adopted by the Board at all, pre-date SB 1703. In management’s opinion, the SANDAG Employee Handbook is the most relevant and applicable policy document with respect to employment matters and it allows for appointments without recruitment.

**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. 

The RFA appears to take exception to any hiring or promotion decision taken in the absence of a full and open process, stating that, “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.” (see RFA, p.75). While the exception is “non-competitive” by its very nature as an exception to the rule requiring competition, management does not agree with the opinion that it is inherently unfair. It does not allow SANDAG to stray from its Equal Employment Opportunity mandates (nor 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).

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 longstanding 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. Information supporting the agency’s past hiring practices is provided below.

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36 SANDAG Employee Handbook, Section 3.3.1.
SANDAG Competitive Selections – FY 2017 to FY 2020

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Management disagrees with the RFA finding that SANDAG has a “lack of consistency of processes for selecting candidates” (see RFA, p.76). SANDAG has established and routinely and repeatedly uses processes to advertise job openings, consider applicants, and select candidates. In fact, the OIPA has successfully hired four employees in the past year by following the agency’s established recruitment and selection processes.

Management acknowledges the RFA’s observation that SANDAG does not employ a written numerical scoring element in all phases of its selection process, however, it is management’s understanding that this is a requirement of the state’s civil service rules, which are not applicable to SANDAG. Management disagrees with the finding that SANDAG “lacks formalized procedures” (see RFA, p.76) and notes that a number of activities make up the typical SANDAG selection process, all designed to identify well-qualified candidates in a fair, consistent, and equitable manner. In response to the RFA statement that the OIPA “could not determine which positions within SANDAG were filled by appointment rather than a competitive recruitment process,” information to perform such an analysis is available.

**X. Employees Freely Signed At-Will Employment Agreements**

*Employees Were Offered Promotions and/or Additional Benefits in Exchange for Employment Contracts with New Terms and Conditions as Permitted by Law*

Management disagrees with the RFA’s findings regarding the decision to transition SANDAG Regular employees to at-will status. Regarding the Executive Director’s authority to introduce such a change, management’s response to Finding I in the RFA describes the administrative authority delegated to the Executive Director.

With regard to the issue of whether the decision to introduce at-will status created a morale issue among employees, SANDAG has successfully operated with a mix of for-cause and at-will employees for almost 20 years.

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37 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.
years. SANDAG initially introduced the Limited-Term position category in 2002, the Temporary, Intern, Part-time, and Seasonal (TIPS) category in 2005, and the Tolling Operations Personnel (TOP) category in 2012. 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 RFA. 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 disproves the statements in the RFA about disparity in employment status leading to disruption and morale issues.

Regarding the question of whether there is a formalized procedure for determining when an employment contract versus an offer of employment letter is used as the instrument for extending a job offer, 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, management disagrees with the RFA finding that voluntary acceptance of at-will terms and conditions of employment violates an employee’s rights to appeal disciplinary actions. 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, it should be noted 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.

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38 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.

39 Effective July 1, 2019, the TOP category ceased to exist.

40 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.

41 Attachment M, Excerpt from 2018 Employee Engagement Survey.
SUMMARY OF MANAGEMENT RESPONSES TO AUDIT RECOMMENDATIONS

The Revised Final version of the Salaries and Compensation Performance and Compliance Audit (Revised Final Audit or RFA) contained 36 recommendations for consideration by management and/or the SANDAG Board of Directors (Board). As expressed below, management intends to undertake a majority of the proposed recommendations as part of the agency’s commitment to continual improvement and to support the highest levels of organization performance. In fact, action to start implementing several recommendations has already been initiated. Some of the recommendations require further consideration, while others were contemplated and have been determined to be unwarranted. Management intends to develop and communicate an Action Plan to support implementation of the recommended changes.

Finding I Recommendations: Refer to RFA, p.35-36
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.

   Management Response:
   SB 1703, effective January 1, 2003, expressly delegates authority for employment-related matters to the Executive Director; this is restated in Board Policy No. 017, Delegation of Authority. The MRR clarifies that the Administrative Rules and Regulations no longer exist as a separate document and describes its evolution into the SANDAG Employee Handbook more than 10 years ago. Regardless, at the Board’s direction, management will bring the Employee Handbook or other administrative policies to the Board to determine whether there are portions it wishes to review or amend. A timeline for completion of this activity will be included in the Action Plan developed in response to this audit.

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.

Management Response:
The Administrative Rules and Regulations are no longer in effect. The policies and procedures developed and maintained by management to effectively administer employment-related matters for the agency are contained within the SANDAG Employee Handbook. At the Board’s direction, management will bring the Employee Handbook or other administrative policies to the Board to determine whether there are portions it wishes to review or amend. Also, at the Board’s direction, management will draft edits to Board policy with respect to the Executive Director’s delegated authority. A timeline for completion of these activities will be included in the Action Plan developed in response to this audit.

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 appraised 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.

Management Response:
Management is confused by this recommendation. Not only does it seem to be outside of OIPA’s purview to determine the adequacy of current counsel, it also indicates a lack of understanding of the role of the Office of General Counsel (OGC) for the agency as it implies the OGC is unable to render independent or sufficient advice to the Board. As with all attorneys for public entities, the law is clear on the topic of who the client is for a public agency attorney. It is the governing body of the agency. The California Rules of Professional Conduct currently provide that where an organization is a client, “a member shall conform his or her representation to the concept that the client is the organization itself acting through its highest authorized officer, employee, body, or constituent overseeing the particular engagement.”¹ The highest body of the organization is the Board of Directors. The rules also caution lawyers to inform representatives of the organization that the lawyer represents the organization, not the individual, “whenever it is or becomes apparent that the organization’s interests are or may become adverse to those of the constituent(s) with whom the member is dealing.”² Thus, all attorneys hired to advise SANDAG owe their duty of loyalty to the Board of Directors and are required to provide advice to the Board as a whole rather than serving the interests of individual staff. Hiring other attorneys, unfamiliar with the unique aspects of the SANDAG, to provide overlapping services with those already provided by the OGC, is not a recommendation that the General Counsel of the agency supports.

¹ Rule 3-600, Cal. Rules of Prof. Conduct.
² Rule 3-600, Cal. Rules of Prof. Conduct.
Furthermore, it must be noted that the OIPA also serves the Board of Directors. While the OIPA is independent, this independence is from management, not from the Board of Directors or its advisory body, the Audit Committee. This is reflected in Board Policy No. 039, which states that the IPA reports to the Audit Committee and serves the Board of Directors, as well as the IPA’s employment agreement with SANDAG, in which the IPA has agreed to “abide by all policies and decisions made by SANDAG.” As stated by the California Court of Appeal, a conflict of interest in a public agency necessitating independent legal counsel arises only when one body is independent of the agency’s governing body as has final decision-making authority that is not appealable to that governing body.³

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 Response:
Current employment practices include orienting new employees to the Employee Handbook and various administrative policies. Management is generally agreeable to requiring employees to acknowledge receipt of and a commitment to complying with the Employee Handbook with each new version published, and with the Bylaws, Board Policies, and other administrative policies each year, as applicable to employee roles and responsibilities within the organization. A timeline for completion of this activity will be included in the Action Plan developed in response to this audit.

**Finding II Recommendations:** Refer to RFA, p.41-42

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.**

Management Response:
It is the opinion of General Counsel that the severance compensation payments and granting of additional sick leave made in exchange for the separated employees’ release of all claims against SANDAG, constituted the settlement of potential claims by the employees against SANDAG and as such was an appropriate use of public funds, and that the amount of the settlement was reasonable in light of the risk avoided by it. It is further the opinion of General Counsel that mandating the initiation of formal litigation or claims procedures as advocated by OIPA would result in additional risk to the agency in the form of increased outside counsel costs and increased settlement amounts driven by claimant’s need to

compensate their own attorneys to initiate such proceedings. The opinions expressed by the General Counsel were affirmed by independent outside counsel hired by the Audit Committee specifically to evaluate the validity of assumptions underlying the findings presented by OIPA.

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.

   Management Response:
   Management welcomes the Board’s input on any need to modify or establish more explicit delegated authority for negotiating severance agreements with employees, including any conditions on the exercise of that authority.

3. Require staff responsible for implementing procedures related to termination pay training on updated procedures.

   Management Response:
   Management agrees that all staff must remain trained both on existing and updated procedures in their areas of responsibility. A timeline for completion of this activity will be included in the Action Plan developed in response to this audit.

Finding III Recommendations: Refer to RFA, p.45-46
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 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.

   Management Response:
   Upon direction, management will cooperate in any Board investigation. Management recommends that if there is still concern that an employee acted with any malfeasance after any additional investigation occurs, that a closed session be held involving legal counsel so the Board can be advised of whether the legal requirements for a valid cause of action of breach of fiduciary duty have been met and whether a claim against any person(s) is warranted.
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.

Management Response:
Management does not concur with this recommendation but will be responsive to any future direction from the Board regarding delegated authority with respect to salary increases and bonuses under the agency’s pay for performance program.

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 Response:
Management does not concur that anything improper was done by the former Chair and Vice Chair, however, upon direction, management will support the Board if it decides to formulate and adopt policies designed to provide clarification regarding roles and responsibilities of Board officers and achieving increased levels of transparency.

Finding IV Recommendations: Refer to RFA, p.49-50
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.

Management response:
Management acknowledges the requirement for the Board to adopt a policy defining items of special compensation, consistent with California Code of Regulations, Title 2, section 571(b). A timeline for completion of this activity will be included in the Action Plan developed in response to this audit.

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 agenized resolution at least annually, properly date approved schedules, and post the approved schedules on SANDAG’s website.

Management response:
If requested by the Board, management will examine existing practices relative to applicable laws and regulations and implement changes as necessary with respect to the approval of salary schedules and special compensation. A timeline for completion of this activity will be included in the Action Plan developed in response to this audit. It is management’s opinion that the existing SANDAG Salary Range Table is appropriately dated; it also is readily available upon request and has been posted to the Careers section of the SANDAG 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.

Management response:
If requested by the Board, management will review practices and procedures, and prepare additional documentation, regarding budgeting and reporting of salaries and benefits information to the Board. In management’s opinion, there is no law or regulation that requires reporting of individual employee salaries and benefits to the Board.

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.

Management response:
Management will review practices and procedures, and prepare additional documentation, regarding development of the annual compensation adjustment pool. A timeline for completion of this activity will be included in the Action Plan developed in response to this audit.

5. Requirement (sic) 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.

Management response:
Management will evaluate whether further procedures for managing and reconciling awards made to employees from the annual compensation adjustment pool is appropriate. A timeline for completion of this activity will be included in the Action Plan developed in response to this audit. The level of reporting detail recommended by OIPA must be reported to CalPERs, and is done in a confidential manner, but management knows of no law that requires individual employee information to be provided to the Board in a publicly available report.

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 response:
Management commits to ensuring that employees understand their roles and responsibilities with respect to approval of salary schedules and special compensation. A timeline for completion of this activity will be included in the Action Plan developed in response to this audit.
Finding V Recommendations: Refer to RFA, p.54
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.

   **Management response:**
   Management will review procedures for allocating costs associated with bonus awards with SANDAG’s financial auditor and make any corrections or procedural updates needed. A timeline for completion of this activity will be included in the Action Plan developed in response to this audit.

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.**

   **Management response:**
   Management will review and update procedures for reporting special compensation to CalPERS. A timeline for completion of this activity will be included in the Action Plan developed in response to this audit.

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.**

   **Management response:**
   Management will review and update procedures for reviewing and allocating bonuses to projects. A timeline for completion of this activity will be included in the Action Plan developed in response to this audit.

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.**

   **Management response:**
   Management will undertake a comprehensive review of payroll-related procedures and
make updates as necessary. A timeline for completion of this activity will be included in the Action Plan developed in response to this audit.

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.**

Management response:
Management will commit to ensuring that employees understand their roles and responsibilities with respect to financial practices. A timeline for completion of this activity will be included in the Action Plan developed in response to this audit.

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 response:
Management will implement an employee acknowledgment process with respect to Board Policy Nos. 041 (Internal Control Standards) and 042 (Policy of Reporting Procedures and Form for Fraud, Waste, and Abuse). A timeline for completion of this activity will be included in the Action Plan developed in response to this audit.

**Finding VI Recommendations:** Refer to RFA, p.60

*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.**

Management response:
Management acknowledges the requirement for the Board to adopt a policy defining items of special compensation, consistent with California Code of Regulations, Title 2, section 571(b). A timeline for completion of this activity will be included in the Action Plan developed in response to this audit.

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.**

Management response:
Management will review and update existing procedures associated with the award and approval of annual compensation adjustments and performance rewards. A timeline for completion of this activity will be included in the Action Plan developed in response to this audit.
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.

Management response:
Although management does not concur that anything inappropriate has occurred regarding performance incentives awarded to employees, it will review its procedures and if needed, provide additional support and resources to supervisors and employees with respect to the completion of performance evaluations. A timeline for completion of this activity will be included in the Action Plan developed in response to this audit.

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 response:
Although management does not concur that anything inappropriate has occurred regarding performance incentives processed for employees, it will review its procedures and if needed, provide additional guidance to staff. A timeline for completion of this activity will be included in the Action Plan developed in response to this audit.

Finding VII Recommendations: Refer to RFA, p.62-63
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.

Management response:
Management will develop additional polices and documentation of procedures related to maintaining position salary ranges. It also will continue to conduct salary surveys using advice from consultants with expertise on these matters. A timeline for completion of this activity will be included in the Action Plan developed in response to this audit.
2. **Request management to conduct a job analysis by gathering, documenting, and analyzing information about the job duties to determine the activities and responsibilities.**

Management response:
SANDAG conducted a full Classification Study in 2016 under the guidance of its compensation consultant. This project included a review of essential duties and typical responsibilities, as well as knowledge, skills, and qualifications required for all agency positions; job analysis was performed as needed. New and updated Classification Specifications were prepared and are currently in use. In management’s opinion, it would be duplicative to repeat this work at this time. Management is committed to evaluating individual or groups of positions on an as-needed basis to ensure they are accurately documented as part of the Classification program and will continue to monitor the effectiveness of the Classification program on at least an annual basis to determine when the next Classification Study shall be performed.

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 response:
Management believes that the classification specifications for each position at the agency are current based on the Classification Study conducted in 2016. Management will use these, and other relevant documentation, as a basis for creating job descriptions for each employee. A timeline for completion of any this activity will be included in the Action Plan developed in response to this audit.

**Finding VIII Recommendations:** Refer to RFA, p.73-74

1. **SANDAG should update agency documents, including its organizational charts and job titles to reflect accurate employee names, job titles, and other relevant information.**

   Management response:
   Management will take steps to improve the consistency and accuracy of agency documents that include information about employee names, job titles, etc. A timeline for completion of this activity will be included in the Action Plan developed in response to this audit.

2. **Revert salaries for high level positions to salaries prior to the September 2019 salary schedule revisions.**

   Management response:
   Upon consultation with legal counsel, management has determined this proposed action would constitute a contract violation with those individuals who have signed Employment Agreements with SANDAG and for a variety of other reasons discussed in the MRR and with outside employment law counsel, does not plan to implement this recommendation.
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 management with the necessary skills and experience to management the workload.**

   Management response:
   The needs assessment and cost-benefit analysis recommended by OIPA was conducted prior to undertaking the agency reorganization in 2019. SANDAG conducted a strategic planning project in 2019 which included an organizational assessment and design component. This work was led by an expert organizational design consultancy. In management's opinion, it would be duplicative to repeat this work and an unnecessary use of agency resources.

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 response:
   SANDAG conducted a market salary survey in FY 2019 (data was collected and compiled by the agency's compensation consultants in late 2018) in which four representative executive-level positions and four representative manager/principal level positions were benchmarked. Further, prior to implementing the executive-level position changes as part of the 2019 agency reorganization, the compensation consultant verified the previously collected market data for the executive-level positions was still current. Therefore, in management’s opinion it would be duplicative to repeat this work and an unnecessary use of agency resources.

**Finding IX Recommendations:** Refer to RFA, p.76-77

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. 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.

   Management response:
   The MRR discusses that the Executive Director acted within his delegated authority and currently established employment policies in appointing appropriately qualified individuals to executive-level positions during the 2019 agency reorganization. This assessment was confirmed by independent outside counsel hired by the Audit Committee specifically to review and interpret the actions of management with respect to applicable laws and
Based on a legal risk assessment conducted by OGC regarding potential violation of employee contract rights associated with vacating currently filled positions, management will not consider this recommendation. A review of position necessity, including the level and scope of job duties, is currently conducted for each vacancy and for all new positions, and was conducted in conjunction with the reorganization last year.

2. 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 response:
Management will further document, review, and modify if needed, SANDAG’s policies, procedures, and practices that support recruitment and selection of individuals for open positions and other types of employment opportunities. Many of the recommended actions are already longstanding agency practices and have supported an effective and successful recruitment and selection program. A timeline for completion of this activity will be included in the Action Plan developed in response to this audit.

Finding X Recommendation: Refer to RFA, p.79
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 response:
The Administrative Rules and Regulations are no longer in effect. The policies and procedures developed and maintained by management to effectively administer employment-related matters for the agency are contained within the SANDAG Employee Handbook. The Employee Handbook, including the policies in the appendices of that document, and Board Policy No. 007 (EEO Policy), already contain citations to relevant laws. Therefore, in management’s opinion, SANDAG already has established, documented, and communicated, via the Employee Handbook and procedural guides, legally sound policies and practices that appropriately ensure the rights of employees while also protecting the operational interests of the agency.
Chairman Morrison called the meeting of the SANDAG Board of Directors to order at 10:25 a.m. Attendance was as follows:

Voting Members
City of Carlsbad ................................................................. Bud Lewis, Mayor
City of Chula Vista ............................................................... Steve Padilla, Mayor
City of Coronado ............................................................... Phil Monroe, Councilmember
City of Del Mar ............................................................... Crystal Crawford, Councilmember
City of El Cajon ............................................................... Mark Lewis, Councilmember
City of Encinitas ............................................................... Christy Guerin, Councilmember
City of Escondido ............................................................. Lori Holt Pfeiler, Mayor
City of Imperial Beach ........................................................ Patricia McCoy, Councilmember
City of La Mesa ............................................................... Art Madrid, Mayor
City of Lemon Grove ........................................................ Mary Teresa Sessom, Mayor
City of National City ........................................................ Ron Morrison, Councilmember
City of Oceanside ............................................................ Jack Feller, Councilmember
City of Poway ................................................................. Mickey Cafagna, Mayor
City of San Diego ............................................................. Dick Murphy, Mayor
City of San Diego ............................................................. Jim Madaffer, Councilmember
City of San Marcos ........................................................... Hal Martin, Councilmember
City of Santee ................................................................. Absent
City of Solana Beach ........................................................ Joe Kellejian, Councilmember
City of Vista ................................................................. Absent
County of San Diego ........................................................ Greg Cox, Supervisor

Advisory Liaison Members
County of Imperial Absent
Department of Transportation Gene Pound, Deputy District Director
U.S. Department of Defense Absent
Mexico Absent
San Diego Unified Port District Jess Van Deventer, Commissioner
San Diego County Water Authority Absent
Metropolitan Transit Development Board Leon Williams, Chair
North San Diego County Transit Development Board Tom Golich, Board Member
Chairman Morrison welcomed all to the meeting and introduced new members, Mark Lewis, Jim Madaffer, and Greg Cox. He then announced that SANDAG’s Board will be using a new electronic voting system starting with today’s meeting, as part of the agency consolidation.

1. ADDITIONS AND DELETIONS
   None.

CONSENT ITEMS (2 through 3)

2. AUTHORIZING THE EXECUTIVE DIRECTOR TO ACCEPT UP TO AN ADDITIONAL $75,000 FROM THE SAN DIEGO COUNTY PROBATION DEPARTMENT, AMEND THE FY 2003 OVERALL WORK PROGRAM AND BUDGET, AND CONTRACT FOR SERVICES FOR THE WORKING TO ENSURE AND NURTURE GIRLS SUCCESS (WINGS) PROJECT (Resolution 2003-19) (APPROVE)

3. AUTHORIZING THE EXECUTIVE DIRECTOR TO ACCEPT $27,000 FROM THE LOCAL HIDTA (HIGH DENSITY DRUG TRAFFICKING AREAS) AND AMEND THE FY 2003 OVERALL WORK PROGRAM AND BUDGET FOR THE SUBSTANCE ABUSE MONITORING FOR YOUTH PROJECT (Resolution 2003-20) (APPROVE)

   Action: (County – San Marcos) A motion was made, and second, to approve the Consent Agenda items 2 and 3. Yes - 17. No – 0. Absent – 2 (Santee and Vista). Abstain – 0. The motion passed.

4. PUBLIC COMMENTS / COMMUNICATIONS

   Public Comment

   Clive Richard, a resident of San Diego, welcomed the new members and stated that he lives in the seventh district of the City of San Diego, represented by Councilmember Madaffer.

   Chairman Morrison announced that he would take item 6 next, out of order.

REPORTS

6. AUTHORIZING THE EXECUTIVE DIRECTOR TO TAKE ADVANTAGE OF THE FLUCTUATING MARKET FOR DEBT-REDUCTION BY REFINANCING BONDS (Resolution RC2003-1) (APPROVE)

   Staff reported that they have been working with financial advisors to determine the best methods to reduce debt and increase income, and introduced financial consultant Keith Curry to present the recommendation.

   Mr. Curry outlined the benefits of refinancing bonds during windows of opportunity within the fluctuating market, and indicated an expected savings of about $400,000.00.

   Supervisor Cox (County) commended staff for being creative in these economically trying times.

   Councilmember Guerin (Encinitas) asked how the $400,000.00 figure was determined.

   Mr. Curry responded that it was the level that was available in the market on October 7, 2002.
Mayor Cafagna (Poway) asked what the consultant fee is.

Mr. Curry responded that it would be the cost of the Bond Counsel fee, (a low five-figure number - $10,000 - $20,000). His firm is on retainer and there would be no additional fees for their services.

Action: (County – San Marcos) A motion was made, and second, to approve Resolution RC2003-1 to authorize the Executive Director to take advantage of the fluctuating market for debt-reduction by refinancing bonds. Yes – 17 (weighted vote, 100%). No – 0 (weighted vote, 0%). Absent – 2 (Santee and Vista). Abstain – 0. The motion passed.

CHAIR’S REPORT

5. REPORT FROM THE AD HOC WORKING GROUP ON TRANSITION (INFORMATION)

Chairman Morrison provided an overview of the January 2, 2003 partnering session of the Working Group that was very successful. At the Working Group meeting, Mike Cowett presented a report from the legal counsels of the three agencies, stating that the agencies are in agreement on legal interpretations but are still working on policy decisions. A draft transition plan was presented to the Working Group for consideration. Key issues included continuing to delegate transportation operations, and consideration of the unique structure and roles of each agency for incorporation into the overall plan. The goal for action is the February meeting. In addition, an outside peer review panel comprised of persons with various levels of expertise has been established, and a member from each agency was selected to champion the transition effort: Judy Ritter from NCTD, Bob Emery from MTDB, and himself for SANDAG.

Councilmember Kellejian (Solana Beach) asked who will receive the Transition Plan report.

General Counsel responded that the draft Initial Transfer Plan will be presented to the Board at the January 24 meeting, and the transit boards will also have time to review it before the February deadline.

Mayor Madrid (La Mesa) asked whether the State has any approval authority.

General Counsel responded, “No, but a status report is to be provided to the legislature starting in December 2005, and an LAO report in December 2004.”

Gary Gallegos added that City Managers Dave Rowlands (Chula Vista) and Rita Geldert (Vista) will also be part of the peer review panel.
7. NEW TRANSIT RESPONSIBILITIES UNDER SB 1703 AND STATUS OF INITIAL TRANSITION PLAN (INFORMATION)

Mr. Gallegos gave an overview of the requirements of SB 1703 which call for consolidation of transit responsibilities beginning July 1, 2003 and reviewed the work to date on the initial transition plan due at the end of February. He reported that one provision adds a second member from the City of San Diego (Councilmember Madaffer) and a member from Imperial County (Supervisor Victor Carrillo). Voting procedures have changed to reflect the weighted vote. Legislation established four policy advisory committees and gives the Board authority to delegate responsibility to those committees when necessary.

Councilmember Guerin (Encinitas) asked whether Board Members will receive a hard copy of the report to share with their fellow Councilmembers, and whether land ownership is addressed within the legislation.

Gary Gallegos responded that a hard copy will be provided by early next week, and that land ownership stays with the operators.

Councilmember Monroe (Coronado) asked for clarification of guidelines regarding the alternate’s role in representing their sub-region.

General Counsel responded only Board Members may serve as the Member or Alternate to the Executive Committee; whereas, on the other three committees, either a Board Member or Alternate may serve.

8. INTERIM BYLAWS (ADOPT)

General Counsel reported that the interim bylaws were accepted for distribution with revisions at the December meeting, and highlighted those revisions to ensure the Board they have been included.

- Article 4, Section 5: Reference to voting structure is verbatim from the legislation.
- Article 7, Section 5: Inclusion of provisions requested by City of Poway, for authority for construction.
- Attached legislation for ease of reference.

She indicated that Board action would adopt them for use for at least the first six months of operation of the consolidated agency, at which time they will be reviewed to determine if any changes are needed.

Councilmember Madaffer (San Diego B) referenced page 6, article 5, section 3, “the Chair shall appoint a three-person nominating committee” and asked for clarification on whether the appointees may be alternates as well as members.

Councilmember Guerin (Encinitas) asked when the Board will have an opportunity to discuss naming the Agency.

Chairman Morrison (National City) responded that it is proposed to be a topic for the retreat.
Councilmember Crawford (Del Mar) referenced Page 9, Article 7, “Conflicts Resolution Process”, and asked whether all agencies must make the request for conflict resolution, or one agency may make the request; and clarification of the section regarding making recommendation on appeals.

*General Counsel responded that the Board has a Conflict Resolution Procedure that explains this in more detail. Any one city may make the request, but all must agree to be involved in the dispute resolution. Appeals on an inter-jurisdictional issue could come from any agency to this Board, but all members would need to be involved in order to resolve it.*

Mayor Murphy (San Diego A) suggested having five members on the nominating committee.

Mayor Madrid (La Mesa) suggested having some suggested agency names to choose from for discussion at the retreat in order to save time; and suggested having input from policy committees on selection of the Chair and Vice Chair.

Mayor Madrid made a motion to amend dollar amounts on page 8, section 5, –a, b, and c to read $100,000, $500,000, and $500,000, respectively. Supervisor Roberts seconded the motion.

Councilmember McCoy (Imperial Beach) asked whether it would be possible to have a series of events requiring authorization of these amounts

*General Counsel responded that in Section 5, first paragraph, there is a provision disallowing exceeding these amounts on a serial basis.*

**Action:** (La Mesa – County) A motion was made, and second, to amend dollar amounts on page 8, section 5, –a, b, and c to read $100,000, $500,000, and $500,000. Yes – 11 (weighted vote, 94%) (Chula Vista, Coronado, El Cajon, Escondido, La Mesa, National City, Oceanside, Poway, San Diego B, San Marcos, Solana Beach). No – 4 (weighted vote, 6%) (Del Mar, Encinitas, Imperial Beach and Lemon Grove). Absent – 5 (Carlsbad, County, San Diego A, Santee and Vista). Abstain – 0. The motion passed.

**Action:** (Del Mar - County) A motion was made, and a second, to adopt the interim bylaws as amended. Yes – 15 (weighted vote, 100%). No – 0 (weighted vote, 0%). Absent – 5 (Carlsbad, County, San Diego A, Santee and Vista). Abstain – 0. The motion passed.

9. **OPERATIONS POLICY FOR THE NEW AGENCY: BOARD AND COMMITTEE RESPONSIBILITIES (APPROVE)**

Chairman Morrison reported that the operations policy which has been modified to reflect the roles and responsibilities of the Board and Policy Advisory Committees under SB 1703 is recommended for approval. He indicated that this policy has been reviewed by the Executive Committee and the Ad Hoc Working Group on Transition.

**Action:** (San Diego B - County) A motion was made, and second, to approve the Operations Policy for the New Agency: Board and Committee Responsibilities. Yes – 15 (weighted vote, 100%). No – 0 (weighted vote, 0%). Absent – 5 (Carlsbad, County, San Diego A, Santee and Vista). Abstain – 0. The motion passed.

10. **POLICIES AND PROCEDURES FOR POLICY ADVISORY COMMITTEES (APPROVE)**

General Counsel reported that in December the Board approved policies and procedures for the Policy Advisory Committees, which have been incorporated into this policy document. The Executive Committee also has previously recommended them for approval.
Action: (Poway – San Diego B) A motion was made, and second, to approve the Policies and Procedures for Policy Advisory Committees with an amendment to include a City of San Diego and County exemption from the limitation on the number of committees on which a member of that council or board may serve; and to modify the limitation on committee memberships from the subregions to two policy committees as either a regular member or alternate. Yes – 13 (weighted vote, 100%). No – 0 (weighted vote, 0%). Absent – 7 (Carlsbad, County, La Mesa, San Diego A, San Marcos, Santee and Vista). Abstain – 0. The motion passed.

ADJOURNMENT: Chairman Morrison announced the next Board Meeting is January 24, 2003. He adjourned the meeting at 12:45 p.m.

GARY L. GALLEGOS
Secretary
MINUTES OF THE BOARD OF DIRECTORS MEETING
July 25, 2003

Vice Chairman Cafagna called the meeting of the SANDAG Board of Directors to order at 9:05 a.m. Attendance was as follows:

Voting Members
City of Carlsbad .......................................................... Ramona Finnila, Mayor Pro Tem
City of Chula Vista .......................................................... Patty Davis, Councilmember
City of Coronado .......................................................... Phil Monroe, Mayor Pro Tem
City of Del Mar .............................................................. Crystal Crawford, Councilmember
City of El Cajon ............................................................. Mark Lewis, Mayor
City of Encinitas ............................................................. Christy Guerin, Councilmember
City of Escondido ............................................................. Lori Holt Pfeller, Mayor
City of Imperial Beach ...................................................... Patricia McCoy, Councilmember
City of La Mesa ............................................................... Art Madrid, Mayor
City of Lemon Grove ....................................................... Mary Teresa Sessom, Mayor
City of National City ......................................................... Ron Morrison, Councilmember
City of Oceanside ............................................................. Jack Feller, Councilmember
City of Poway ................................................................. Mickey Cafagna, Mayor
City of San Diego A .......................................................... Dick Murphy, Mayor
City of San Diego B .......................................................... Jim Madaffer, Councilmember
City of San Marcos .......................................................... Corky Smith, Mayor
City of Santee ................................................................. Absent
City of Solana Beach ......................................................... Joe Kellejian, Deputy Mayor
City of Vista ................................................................. Morris Vance, Mayor
County of San Diego ....................................................... Greg Cox, Supervisor

Advisory Liaison Members
County of Imperial ........................................................ Hon. Victor Carrillo, Supervisor
Department of Transportation ......................................... Gene Pound, District 11, Deputy Director
U.S. Department of Defense ................................................. CAPT. Russ Thackston, CEC, USN
Mexico .............................................................................. Hon. Rodulfo Figueroa Aramoni, Cónsul General
San Diego Unified Port District ............................................ Hon. Jess Van Deventer, Commissioner
San Diego County Water Authority ..................................... Hon. Bud Lewis, Director
Metropolitan Transit Development Board ................................ Hon. Jerry Rindle, Vice Chair
North San Diego County Transit Development Board ................. Hon. Judy Ritter, Chair
1. MINUTES OF THE JUNE 27, 2003, BOARD MEETING (APPROVE)

Councilmember Patricia McCoy (Imperial Beach) moved approval of the June 27, 2003, Board meeting minutes, and Councilmember Jim Madaffer (City of San Diego - B) seconded the motion.

Action: Imperial Beach - City of San Diego - B. A motion and second was made to approve the minutes of the June 27, 2003, Board of Directors meeting. Yes - 13 (weighted vote, 100%). No - 0 (weighted vote, 0%). Absent- Chula Vista, Del Mar, La Mesa, National City, Oceanside, Santee.

1. ADDITIONS AND DELETIONS

None.

CONSENT ITEMS (3 Through 7)

3. DISCUSSIONS AND ACTIONS FROM POLICY ADVISORY COMMITTEES (APPROVE)

A. EXECUTIVE COMMITTEE MEETING (July 11, 2003)
B. SPECIAL TRANSPORTATION COMMITTEE MEETING (July 21, 2003)
C. REGIONAL PLANNING COMMITTEE MEETING (July 11, 2003)
D. BORDERS COMMITTEE MEETING (July 18, 2003)

4. LOCAL TECHNICAL ASSISTANCE (LTA) PROJECTS REQUIRING MORE THAN $1,000 OR THREE DAYS STAFF TIME (INFORMATION)

5. PROGRESS REPORT ON TRANSPORTATION PROJECTS (INFORMATION)

6. ADOPTION OF FINAL BYLAWS (APPROVE)

7. REQUEST THAT BOARD TAKE A POSITION ON SB 440 (BURTON) (OPPOSE)

Councilmember Patricia McCoy (Imperial Beach) moved approval of the Consent Items. Councilmember Jim Madaffer (San Diego - B) seconded the motion.

Action: Imperial Beach - City of San Diego - B. A motion and second was made to approve Consent Items 3 through 7. Yes - 17. No - 0. Abstain - 0. Absent- National City, Santee.

Mayor Madrid (La Mesa) requested to pull item #7 - Request that Board Take a Position on SB 440 (Burton) - for discussion.
NEW SANDAG
ADMINISTRATIVE POLICIES

Recommendation
It is the recommendation of the Executive Committee that the Board approve the attached new Board Policies.

Introduction
On September 12 and October 10, 2003 SANDAG’s legal staff presented three new draft policies to the Executive Committee for review and comment. These policies are entitled: Procurement of Services, Delegation of Authority, and Discrimination Complaint Procedures. The Executive Committee took action on October 10 to recommend approval by the Board of these policies with one minor modification, discussed below.

Discussion
A summary description of the proposed policies follows:

Procurement of Services
This policy provides direction from the Board to staff concerning procurement of service contracts. The policy is in compliance with the procurement and contracting mandates in SB 1703. The policy will be enhanced by a contracting procedures manual that is being prepared by staff using the best practices from SANDAG, NCTD, and MTDB, and will be approved by the Executive Director upon completion.

Delegation of Authority
This policy expands and clarifies the authority of the Executive Director and his/her authority to delegate functions to staff. Among other things, it provides the Executive Director with authority to take action in emergency situations, to approve design specifications and estimates, and to initiate litigation.

Discrimination Complaint Procedures
This policy establishes a procedure under which complaints alleging disability discrimination in SANDAG’s provision of services or SANDAG activities can be made by persons who are not employees of SANDAG and to set forth the Board’s policy concerning other forms of discrimination against protected classes of persons.

Requested Modifications
At its September 12, 2003 meeting the Executive Committee requested that staff collect some information from member agencies and agencies
similar to SANDAG relating to emergency procurement authority. Based on the information gathered during this benchmarking process, staff recommended that paragraph 3 of the Delegation of Authority policy be revised to remove any dollar limit on the Executive Director’s procurement authority in an emergency. The Executive Committee accepted this change and requested that language be added in paragraph 3 requiring the Executive Director to promptly report to the members of the Board on any action taken using emergency powers so that they would be informed in the event they were contacted by third parties seeking information. These changes are reflected in the attached Delegation of Authority policy.

GARY L. GALLEGOS
Executive Director

Key Staff Contact: Julie D. Wiley,
(619) 595-5647, jwi@sandag.org

No Budget Impact
PROPOSED AMENDMENTS TO BOARD POLICIES

Introduction

Staff annually reviews all of the Board Policies to determine if changes or updates are needed. The proposed amendments attached to this report were reviewed by the Executive Committee at its November and December meetings.

Recommendation

The Executive Committee recommends that the Board of Directors approve the proposed amendments to the Board Policies (Attachments 1 to 13).

Discussion

Highlights of the proposed amendments are discussed below. Changes proposed to the policies that are grammatical in nature are not discussed, but are tracked for reference in the attachments.

Board Policy No. 001 Operations Policy

Staff has requested that delegation of duties be modified for two of the Policy Advisory Committees (PACs) in this policy. Several duties are proposed for delegation to the Transportation Committee. With these changes the Transportation Committee would be given authority to approve State Transit Assistance claim amendments. Staff recommends that the Transportation Committee also be given authority to give approvals for fare changes and amendments to the comprehensive fare ordinance. Since the Transportation Committee already has authority to approve certain projects, staff additionally recommends that it be given authority to hold public hearings and approve environmental documents for these projects. The Transportation Committee currently has authority to approve Regional Transportation Improvement Program (RTIP) amendments. From time to time, a member agency proposes an RTIP amendment that calls for a loan of TransNet funds in exchange for funds from another source. In order to expedite the RTIP amendment approval process, staff recommends that the Transportation Committee be authorized to approve TransNet loans that are part of an RTIP amendment.

Finally, in order to formalize new responsibilities given by the Board to the Transportation and Borders Committees earlier this year, staff also proposes to add to the Transportation Committee's authority the oversight functions for the Coordinated Transportation Services Agency (CTSA) and to the Borders Committee the authority to review and comment on regionally significant projects in adjoining counties.
Board Policy No. 002 Policies and Procedures for Policy Advisory Committees

Section 1.5 of this policy has been updated to show changes approved earlier this year to the membership of the Public Safety Committee. Staff proposes amendments to Sections 4 and 6 of the policy to clarify that even though there are deadlines for appointments of members and officers for the PACs, the appointments are effective as soon as they are made by the member agency or the Board Chair; there is no need to wait for the January 31 deadline to pass for the appointees to take their positions.

Board Policy No. 004 Rules of Procedure for the Board of Directors, PACs, and Other Legislative Bodies

Changes are proposed throughout Section 1 of this policy to effectuate anticipated changes to Board Policy No. 001 concerning the Transportation Committee’s authority to adopt amendments to the comprehensive fare ordinance. Staff also is recommending changes to Section 6.6 of this policy concerning creation of new committees by staff. Under the Brown Act, committees that are approved by formal action of the Board or a PAC are presumptively also covered by the Brown Act. Although many SANDAG committees are appropriately open to the public, there is sometimes a need to create a new committee that will not have a level of responsibility that merits the extra staff time needed to prepare and post agendas and comply with all of the provisions of the Brown Act. Staff does, however, recognize the need to have a check and balance process for creating new committees in order to ensure the committee structure at SANDAG does not become too cumbersome. Therefore, staff is proposing that formation of new committees be approved by the Board or a PAC, or if the application of the Brown Act would not otherwise be triggered, approved by the Executive Director with the concurrence of the Board Chair.

Board Policy No. 007 Equal Employment Opportunity Program

The only change requested to this policy 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 specifically to a document entitled “SANDAG’s Administrative Rules and Regulations,” the provision would instead generally reference “SANDAG administrative manuals, policies, and procedures.”

Board Policy No. 008 Legal Matters

Because of its increased responsibilities, particularly in the area of construction, SANDAG is more likely to be named as a party to litigation. The Office of General Counsel requests that Section 5 of the policy be added to clarify that the Office of General Counsel, the Executive Director, and staff designated by the Executive Director are authorized to sign pleadings, discovery, and other litigation-related documents on behalf of SANDAG.

Board Policy No. 011 Travel Expenses

Staff requests a change to Section 2.1 of this policy to clarify that Board member expense reports must be approved by the Chief Deputy Executive Director. Additionally, Section 2.5.11 needs to be updated to state that SANDAG will use the average exchange rates posted by the Federal Reserve rather than the Wall Street Journal for travel in a foreign country.
Board Policy No. 015 Records Management

SANDAG records are increasingly the subject of public records requests, which include requests for e-mails between staff, contractors, and Board members. Staff requests that language be added to Section 1.1 of this policy as a reminder to treat the use of, and messages included in, e-mails with due care by reviewing them for professionalism, accuracy, and objectivity before distribution. Staff also wishes to add language to Section 3.2 to clarify that the storage periods for public records do not begin until a document is finalized.

Board Policy No. 016 Procurement of Services

Public Utilities Code (PUC) Section 132352.4 (which is part of Senate Bill (SB) 1703) permits SANDAG to utilize a simplified competitive procurement process for procurements of services up to $100,000. Because SB 1703 only permits use of the simplified procurement method for construction, equipment and supplies up to $50,000; however, Board Policy No. 016 was originally drafted such that the simplified procurement limit for services also was set at $50,000 for consistency purposes. Currently, the Executive Director must give special permission under Section 6.1 of the policy to use the simplified method for service procurements in excess of $50,000. Staff requests that it be granted the maximum authority permitted by the PUC for services procurements in order to improve efficiency and flexibility in the procurement process. Therefore, changes are proposed to Sections 2, 3 and 6.1 of Board Policy No. 016 in order to increase the simplified procurement limit for services from $50,000 to $100,000.

Staff also requests changes to Sections 6.4 and 12.2 of this policy to clarify that the Executive Director’s authority to approve contract amendments that exceed the project budget is limited to $100,000. The Executive Committee requested that Section 12.2 be further modified to clarify that approval of unbudgeted amendments by the Chair or a Vice Chair should be avoided if it is feasible to hold a special meeting. Staff further requests changes to Sections 6.5 and 9.1 of this policy to allow use of purchase orders up to the amount of $50,000 and requiring use of a contract for amounts in excess of $50,000.

Section 7.7 of this policy currently requires that the Executive Committee review both actual and potential conflicts that arise due to concurrent legal representation of SANDAG and other parties. The Office of General Counsel anticipates that, in most cases, the conflict will be potential, not actual, and that staff can take measures to ensure potential conflicts do not become actual in nature. In order to reduce the number of instances that the Executive Committee is called upon to review these matters, staff requests that it only be required to bring the issues to the Executive Committee where an actual conflict has arisen that staff was unable to resolve.

As the SANDAG staff has grown larger and its use of contractors has broadened, it has become more difficult to ensure conflicts of interest are avoided. The Office of General Counsel therefore requests that the language proposed in new Section 7.1.5 be added to spell out exactly what types of conflicts must be avoided for current employees and persons employed by SANDAG within the previous 12 months.
Board Policy No. 017 Delegation of Authority

The first change requested in this policy would allow the Executive Director to accept reimbursements from member agencies for use of SANDAG on-call contracts. Staff anticipates that the transit operators and other member agencies will want to use the SANDAG on-call contracts from time to time. Currently, if the amount of on-call use exceeds $100,000, Board or Policy Advisory Committee approval would be needed to accept reimbursement from a member agency. This provision would allow the Executive Director to accept reimbursement from a member agency in any dollar amount. The other change requested is to Section 5. 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.”

Board Policy No. 023 Procurement and Contracting - Equipment & Supplies
Board Policy No. 024 Procurement and Contracting - Construction

The changes requested for these two policies are consistent with the changes requested for Board Policy No. 016. The proposed amendments would allow use of purchase orders up to $50,000, and would add a new section that spells out exactly what types of conflicts must be avoided for current employees and persons employed by SANDAG within the previous 12 months.

Board Policy No. 030 Contingency Reserve Policy

Staff requests that the language in Section 2 under “Qualifying Uses of the Reserve Fund” be reorganized to clarify that the reserve fund should only be used for one-time, nonrecurring purposes unless approved by the Executive Committee.

Board Policy No. 031 TransNet Ordinance and Expenditure Plan Rules

Many of the tracked changes in this policy simply show a change of the word “Policy” to “Rule” in order to make reference to the provisions of this policy less confusing. The first substantive change is to Rule 7 concerning the “Program of Projects Approval Process and Amendments.” Due to issues that arose with timing and sufficiency of documentation during the last Regional Transportation Improvement (RTIP) update, staff requests that the changes in this section be implemented to prevent future problems. The new language clarifies that SANDAG will not approve a member agency’s project list until the member agency has held a clearly noticed public hearing and its governing body has passed a resolution approving the specific list of projects and provided the resolution to SANDAG. The proposed changes also would apply to RTIP amendments.

The other substantive changes to this policy are in new Rules 18 and 19. Rule 18 codifies the 70 percent/30 percent split applicable to member agency use of TransNet funds for local street and road maintenance projects. Rule 19 is proposed to clarify the Board’s interpretation of the conflict of interest requirement in the document entitled “Statement of Understanding Regarding the Implementation of the Independent Taxpayer Oversight Committee (ITOC) for the TransNet Program,” which is an attachment to the TransNet Extension Ordinance. That document states in part, “ITOC members shall not have direct commercial interest or employment with any public or private entity, which receives TransNet sales tax funds authorized by this Ordinance.” Staff would like the Board to clarify that it interprets this language to impose the same level of restrictions on
the ITOC representatives as those that apply to SANDAG Board members pursuant to California state law found at Government Code Sections 87100 et seq. and 1090, rather than some stricter standard than that required by state law. This change will assist the Office of General Counsel in applying a legal analysis of conflict of interest matters to ITOC members, reduce confusion for ITOC members regarding their responsibilities, and potentially prevent the unnecessary loss of ITOC members.

GARY L. GALLEGOS
Executive Director

Attachments: Proposed Amendments in Track Changes Mode
1. Board Policy No. 001 Operations Policy
3. Board Policy No. 004 Rules of Procedure for the Board of Directors, Policy Advisory Committees, and Other Legislative Bodies
4. Board Policy No. 007 Equal Employment Opportunity Program
5. Board Policy No. 008 Legal Matters
6. Board Policy No. 011 Travel Expenses
7. Board Policy No. 015 Records Management
8. Board Policy No. 016 Procurement of Services
9. Board Policy No. 017 Delegation of Authority
10. Board Policy No. 023 Procurement and Contracting - Equipment & Supplies
11. Board Policy No. 024 Procurement and Contracting - Construction
12. Board Policy No. 030 Contingency Reserve Policy
13. Board Policy No. 031 TransNet Ordinance and Expenditure Plan Rules

Key Staff Contact: Julie D. Wiley, (619) 699-6966, jwi@sandag.org

No Budget Impact
DELEGATION OF AUTHORITY

The purpose of this policy is to establish the authority granted by the Board of Directors to the Executive Director. It also provides the Executive Director with the authority to delegate functions he or she has been delegated by the Board to SANDAG staff.

Definitions

The following words shall have the meanings indicated when used in this policy:

“Agreement” shall be interpreted to include contracts, memorandums of understanding, agreement amendments, purchase orders, invoices, money transfers, or any other document that could be enforced against SANDAG in a court of law.

“Budget” shall be interpreted to include the SANDAG’s annual budget, revisions and amendments thereto, and the Overall Work Program.

“Emergency or Urgent Need” for purposes of this policy shall mean a situation in which, in the Executive Director’s or his/her designee’s opinion, injury to persons, or significant injury to property or interruption of a public service will occur if immediate action is not taken.

Procedures

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.

2. 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.

3. 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.

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.
4.1 Enter into agreements not currently incorporated in the budget and make other modifications to the budget in an amount up to $100,000 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 $100,000 limit.

4.2 Approve all design plans, specifications and estimates for capital improvement projects.

4.3 Execute all right-of-way property transfer documents, including but not limited to, rights of entry, licenses, leases, deeds, easements, escrow instructions, and certificates of acceptance.

4.4 Direct payment to persons for right-of-way property so long as the payment amount does not exceed 110 percent of the appraised value or $100,000 above the appraised value, whichever is greater.

4.5 Reject all bids and/or suspend the competitive procurement process.

4.6 Provide the final determination to persons or firms filing a protest regarding SANDAG’s procurement or contracting processes or procedures.

4.7 File administrative claims and to initiate and maintain lawsuits on behalf of the Board to recover for damage to or destruction of SANDAG property, or interruption of a public service.

4.8 Settle all lawsuits initiated under paragraph 4.7.

4.9 Settle all lawsuits, alternative dispute matters, and claims that SANDAG must defend when the settlement amount does not exceed $100,000. In the event the Executive Director exercises this authority he/she shall send a memo to the members of the Board as soon as possible in order to notify them of any action taken.

4.10 Accept reimbursement from member agencies for use of SANDAG on-call contracts.

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 manuals, policies, and procedures or Rules and Regulations.

6. Pursuant to Article V, Section 4, paragraph c of the Bylaws, the Executive Director shall promulgate an administrative policy governing the procedures for delegating his/her authority to other SANDAG staff.

Adopted October 2003
Amended November 2004
Amended December 2006
to comply with and assist in carrying out the provisions of these Rules and such policies and procedures as the Executive Director may issue.

1.5 The Executive Director is vested with the power to vary or modify the strict application of the provisions of these Rules to avoid injustice or when it is in the best interest of SANDAG. Any such variance must be granted in writing and signed by the Executive Director.

1.6 If any portion of these Rules is held to be invalid, it shall not affect the validity of the remaining portions of these Rules.

1.7 These Rules apply to all SANDAG employees except where exceptions are noted in these Rules or in supplemental employee agreements signed by the Executive Director that specifically state that their provisions supercede portions of these Rules. These Rules do not apply to the Executive Director, who serves under contract at the will of SANDAG’s Board of Directors. These Rules also do not apply to the Board of Directors. Sections 6.2, 6.3, 8.2, 8.3, 9, and 10 (except where specifically noted as applicable to one or more other categories of employees) of these Rules apply only to regular full-time and regular part-time employees who have completed their probationary period.

1.8 a. Anniversary Date: The anniversary date for all SANDAG employees is the date of employment. For employees who transfer to SANDAG due to the Consolidation, the employee’s anniversary date is the employee’s date of employment with the San Diego Metropolitan Transit Development Board (MTDB) or the San Diego North County Transit Development Board (NCTD). The anniversary date is the date from which salary and leave benefits are calculated. For purposes of performance evaluations, this term is also used to describe the anniversary date of when an employee was transferred, promoted, or otherwise moved to a new position at SANDAG.

b. Appointing Authority: That authority to hire, promote, transfer, discipline, demote, suspend,
To: Julie Wiley, Director and Legal Counsel, SANDAG

From: Terry Sinnott, Former Chair of the SANDAG Board of Directors

Date: 6 August 2020

You requested that I provide you with information and context surrounding the merit and bonuses given to the Chief Deputy Director during my tenure as Board Chair in 2018. To the best of my recollection, I can provide the following:

Background:

1. I began serving on the SANDAG Board of Directors in January, 2011, representing the City of Del Mar. I was elected to the position of Vice Chair of the Board in December 2014 and served until I was elected to the Chair position in December 2017. I retired from political office and my position on the SANDAG Board in November 2018.

2. During my tenure as Chair, Executive Director Gary Gallegos, retired from SANDAG on August 18, 2017. In September 2017, the Board of Directors determined that a nationwide recruitment was appropriate.

3. The Board Chair and Vice Chair were appointed by the Board to chair a Recruitment Subcommittee to organize and oversee the recruitment process.

4. In anticipation that the Chief Deputy might apply for the position, the decision was made that the Chief Deputy should not be given a job title of “Acting” or “Interim” Executive Director during the recruitment process to avoid any appearance of bias on the part of the Board.

5. Between August 2017 and December 2018, the Chief Deputy Executive Director, who is referred to in the draft OIPA audit as Employee No. 1287, automatically took on all of the delegated responsibilities normally afforded to the Executive Director by virtue of Board Policy No. 017, which states, “[a]ny 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.”

6. Between August 2017 and December 2018, the Chief Deputy Executive Director was required to maintain almost all of the responsibilities of both the Chief Deputy and Executive Director positions at SANDAG.

Chief Deputy Performance:

1. When the Executive Director left SANDAG in August 2017, his departure was sudden and I was told that at the time he left he had not completed a performance evaluation and compensation decision for the Chief Deputy, which would have normally been done in August or September to cover the time period between July 1, 2016 and June 20, 2017.

2. The Vice Chair and I worked with the Chief Deputy to complete the performance evaluation. Based on that performance from July 2016 to June 2017, we agreed to award the Chief Deputy a merit increase and performance bonus. The merit and bonus were determined using existing SANDAG policies and approved budgets.
Continuity of Leadership:

1. The search for a new Executive Director was thought to be a six-month process. It actually took 12 months. The first search developed three finalists, which included the existing Chief Deputy. The Board conducted interviews and did not select the existing Chief Deputy for the position. The finalist selected for the position did not accept the offer and withdrew their candidacy.

2. The Search Subcommittee had to restart a new search. At the same time, we wanted to recognize the work of the Chief Deputy in successfully performing the duties of Chief Deputy and Executive Director. That work provided vital continuity of leadership that enabled the organization to perform in a high level of professionalism.

3. I consulted with the Director of Administration to determine and award appropriate bonus payments in June and November of 2018 for the Chief Deputy. The Vice Chair was in full agreement with these awards. We met with the employee each time to communicate and document the reasons for the awards. A short, written description of why the award was being made was given to the employee and documented in the personnel file. The bonuses were consistent with the policies and budgets of SANDAG.

4. The bonuses were not originated by SANDAG staff. They were generated as a result of the Board Chair wanting to recognize exemplary work of an employee who was leading SANDAG employees during a difficult time.

5. The bonuses were given out after each six-month interval. As the search process became extended, and the Chief Deputy was continuing to perform two jobs, a second award was made in November 2018.

General Comment:

Typically, the Chief Deputy Executive Director’s performance and compensation would not be evaluated by the Board. But there was a need to make performance and compensation decisions, and those decisions could not be properly delegated to any of the agency’s executive level employees as they all reported to the Chief Deputy Executive Director. Under those circumstances, I believed it was appropriate for me, as the Chair of the Board of Directors, to make decisions regarding Chief Deputy Executive Director’s compensation.

In my opinion, it was critical to the health of the agency that there be stability of agency management while the Executive Director recruitment process was underway. It was unlikely that this would occur if the Chief Deputy was not compensated fairly for essentially carrying out two executive positions for the agency over a period of more than a year.

Hope the detail above is helpful.

Terry Sinnott
Draft FY 2021 SANDAG Program Budget – Staffing

Staffing Resources, Compensation Program, and Employee Benefits

**Staffing Resources**

As part of the budget development process, agency managers and executives have considered the staffing resources required to successfully complete the projects identified in the Proposed FY 2021 SANDAG Program Budget. Existing vacant positions have been reclassified and repurposed throughout the year to support the new organization design and commitment to improved levels of agency performance. While several new staff positions have been added in the current year—primarily to ensure compliance with Assembly Bill 5 (Gonzalez, 2019), which has limited staff augmentation options—SANDAG has reduced the number of full-time positions by 10% for FY 2021 as a cost savings measure. This has been achieved through the elimination of 40 currently vacant positions, not through layoffs. The reduction in workforce is in anticipation of future workload demands, which are expected to decrease due to a combination of efficiency-gaining actions—1. aligning resources and staff effort toward strategic initiatives and projects while evaluating the level of effort required for ancillary responsibilities; and 2. streamlining business processes, leveraging technology, and adopting new work practices that support professional development of employees, foster collaboration and improved communications, and eliminate redundancies. The actions outlined in the Organization Effectiveness Plan directly support these goals.

**Compensation Program**

SANDAG has established a robust performance management program. Employees and managers define goals and objectives that align to the agency’s work program and also identify professional development goals to expand technical knowledge and competencies necessary for ongoing success and to support future growth opportunities. Employees and managers complete formal performance evaluations at least annually.

SANDAG is not proposing a compensation adjustment pool for FY 2021, nor is SANDAG proposing changes to existing salary ranges for staff positions.

**Employee Benefits**

SANDAG established an Internal Revenue Code Section 115 tax-exempt, irrevocable trust (Trust) in FY 2017 as a means of saving for future pension costs. An initial contribution of $3.5 million was made to the Trust; this amount represented the cost savings SANDAG realized between FY 2013 and FY 2016 due to pension reform changes. Additional contributions of $3.6 million have been made to the Trust since its inception, and an additional $1 million contribution to the Trust is recommended as part of the FY 2021 Annual Program Budget. Staff will give an update on the actuarial analysis with the final FY 2021 SANDAG Program Budget.

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.
FY 2021 Personnel Cost Summary

<table>
<thead>
<tr>
<th>FY 2019 Actual Expenses</th>
<th>FY 2020 Revised Estimate</th>
<th>FY 2021 Budget</th>
<th>Year-to-Year Change FY 2021 over FY 2020</th>
</tr>
</thead>
<tbody>
<tr>
<td>FY 2019 Revised Budget</td>
<td>Benefits % of Salaries</td>
<td>Benefits % of Salaries</td>
<td>Benefits % of Salaries</td>
</tr>
<tr>
<td>Authorized and Budgeted Full-Time Positions</td>
<td>365</td>
<td>394</td>
<td>354</td>
</tr>
<tr>
<td>Temporary, Interns, Part-Time, Seasonal (TIPS) Positions</td>
<td>29.6</td>
<td>33.1</td>
<td>33.1</td>
</tr>
<tr>
<td>Full-Time Employee Salary</td>
<td>$28,411,936</td>
<td>$34,682,735</td>
<td>$32,917,426</td>
</tr>
<tr>
<td>TIPS Employee Salary</td>
<td>1,206,217</td>
<td>1,305,011</td>
<td>1,338,863</td>
</tr>
<tr>
<td><strong>Total</strong></td>
<td>$29,618,154</td>
<td>$35,987,746</td>
<td>$34,256,289</td>
</tr>
</tbody>
</table>

Employee Benefit Package:

- **Retirement (PERS+PARS)**: $6,057,024 (20.5%) $8,779,077 (24.4%) $8,661,880 (25.3%) ($117,197) 0.9%
- **Section 115 Pension Savings Fund**: 1,635,000 (5.5%) 1,000,000 (2.8%) 1,000,000 (2.9%) - 0.1%
- **Combined Health Insurance Plan**: 4,376,307 (14.8%) 4,815,000 (13.4%) 4,969,860 (14.5%) 154,860 1.1%
- **Dental/Vision Insurance Plan**: 451,392 (1.5%) 498,000 (1.4%) 442,819 (1.3%) (55,181) -0.1%
- **Workers Compensation**: 226,804 (0.8%) 262,000 (0.7%) 355,303 (1.0%) 93,303 0.3%
- **Social Security Hospital Tax - Medicare**: 396,581 (1.3%) 521,822 (1.5%) 496,298 (1.4%) (25,524) 0.0%
- **Life/Accident Insurance**: 44,285 (0.1%) 48,000 (0.1%) 59,628 (0.2%) 11,628 0.0%
- **Employee Assistance Program**: 6,888 (0.0%) 8,359 (0.0%) 8,207 (0.0%) (153) 0.0%
- **Section 125 Flexible Spending Account Administration**: - (0.0%) 9,583 (0.0%) 9,000 (0.0%) (583) 0.0%
- **Transportation Demand Management Program**: 25,338 (0.1%) 28,000 (0.1%) 28,000 (0.1%) - 0.0%
- **Post-Employment Health Care**: 512,640 (1.7%) 525,499 (1.5%) 599,402 (1.7%) 73,903 0.3%
- **Management Benefit**: 69,277 (0.2%) 258,235 (0.7%) 385,647 (1.1%) 127,412 0.4%
- **Automotive Allowance**: 6,692 (0.0%) 12,000 (0.0%) 12,000 (0.0%) - 0.0%
- **Computer Purchase/Loan Program**: 4,377 (0.0%) 5,000 (0.0%) 10,000 (0.0%) 5,000 0.0%

**Total Employee Benefits**: $13,944,786 47.1% $17,009,666 47.3% $17,402,215 50.8% $392,550 3.5%

**Cost Recovery Carry Forward from Prior Years**: $554,307 1.9% - 0.0% - 0.0% - 0.0%

**Total Employee Benefits to be Allocated Employee Benefits By Position Type:**

- **Benefits - Full-Time Employees**: $13,761,116 48.1% $16,671,268 48.1% $17,017,230 51.7% $345,962 3.6%
- **Benefits - TIPS Employees**: 273,640 22.7% 338,398 25.9% 384,896 28.8% 46,506 2.8%

**Total Employee Benefits**: $13,944,786 47.1% $17,009,666 47.3% $17,402,215 50.8% $392,550 3.5%

**Total Personnel Cost (Salaries and Benefits)**: $43,562,940 $52,997,412 $51,658,505 ($1,338,907)
3.4 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:

3.4.1 If the Executive Director believes a position will be vacant for a period of less than 24 months, the Executive Director may hire a person known to be qualified for that short-term need as a limited-term employee, TIPS employee, or Contract employee, without utilizing SANDAG’s standard competitive recruitment requirements.

3.4.2 During any Consolidation, job openings at SANDAG may be filled in one of three ways: (1) by the traditional competitive method of filling vacancies described above, which is open to the public; (2) by transfer or promotion of a qualified SANDAG, MTDB, or NCTD employee; or (3) by opening the competition for a position solely to existing qualified SANDAG, MTDB, and/or NCTD employees.

3.4.3 When the Executive Director determines that it is in SANDAG’s best interest to promote an existing SANDAG employee.

3.4.4 When a vacancy occurs and a qualified candidate is on one of SANDAG’s recruitment lists, the candidate may be selected in accordance with Section 3.8.

3.4.5 When an entity provides funding to SANDAG and such funding is conditioned upon, or the continuity of the work is dependent upon, a particular individual continuing to perform the work supported by that funding.

3.5 During the Consolidation, employees of MTDB and/or NCTD may be transferred to SANDAG and become SANDAG employees. Unless they are promoted, transferees who are currently in probationary status at MTDB or NCTD shall continue in probationary status upon transfer to SANDAG; however, all transferred regular full-time employees that remain in the same or comparative class shall not be required to undergo a probationary period at SANDAG. Upon the effective date of the transfer, transferees who were regular full-time employees of MTDB or NCTD shall be entitled to the rights and benefits of regular full-time SANDAG employees. Promoted transferees shall be probationary employees until the probationary period is successfully completed.
Chair Vaus and SANDAG Board members,

Earlier this year, CalPERS conducted a scheduled review of 58 member agencies, including SANDAG, to determine whether Retroactive Special Compensation Adjustments (RSCA) for classic members who are active or retired were reported to CalPERS in compliance with various state law requirements. The review period was January 1, 2017 through December 31, 2019. The attached report, issued by the CalPERS Office of Audit Services last month and provided to SANDAG on July 2, 2020, summarizes the review. Of the 58 agencies who were audited, 47 had findings. Information specific to SANDAG starts on page 165 and references SANDAG’s response to the CalPERS observations (attached).

The RSCA transactions reported by SANDAG and subject to review were performance bonuses. CalPERS determined that bonuses paid to employees by SANDAG and reported to CalPERS would not be considered pensionable compensation. This is because the agency’s practices are not currently in compliance with Government Code section 20636 and California Code of Regulations section 571. These laws require that the governing body approve a written policy or agreement describing the item/s of special compensation, including conditions for payment. SANDAG has a performance bonus policy within the SANDAG Employee Handbook however this document has not been approved by the Board of Directors.

In response to the CalPERS recommendations, staff will update the Employee Handbook and bring this document to the Board of Directors for review and approval in the next month or two. The SANDAG Bylaws, at article 5, section 4d, currently delegate responsibility to the Executive Director to promulgate an employee manual, as well as all other administrative policies governing the administrative procedures of SANDAG. Staff also will work with CalPERS to identify and correct any improperly reported special compensation amounts for the time period January 1, 2017 through April 30, 2020. The CalPERS observations do not impact the underlying validity of the performance bonuses awarded to employees, only whether CalPERS will consider the payments as special compensation. CalPERS has not identified any penalties arising from its observations.

Please contact me with any questions pertaining to the CalPERS audit and planned follow-up actions.

Hasan Ikhara
Executive Director of SANDAG
# 2019 SANDAG Reorganization

## RECONCILIATION OF EXECUTIVE-LEVEL POSITIONS

<table>
<thead>
<tr>
<th>Former Position</th>
<th>Position After Reorganization</th>
<th>Position Unchanged</th>
<th>Position Changed; Reclass to higher-level salary range</th>
<th>Position Changed, same salary range</th>
<th>Position Changed; Reclass to Exec level salary range</th>
<th>New Limited-Term Position</th>
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</thead>
<tbody>
<tr>
<td>1 Executive Director</td>
<td>Executive Director</td>
<td>X</td>
<td></td>
<td></td>
<td></td>
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</tr>
<tr>
<td>2 Chief Deputy Executive Director</td>
<td>Chief Operating Officer</td>
<td></td>
<td></td>
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<td></td>
<td></td>
</tr>
<tr>
<td>3 General Counsel</td>
<td>General Counsel</td>
<td>X</td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>4 Special Counsel</td>
<td>Director II, Contracts and Grants</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td>Class 31 to 33</td>
</tr>
<tr>
<td>5 Deputy General Counsel</td>
<td>Deputy General Counsel</td>
<td>X</td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>6 Department Director, Administration</td>
<td>Director II, Organization Effectiveness</td>
<td></td>
<td></td>
<td>X</td>
<td></td>
<td></td>
</tr>
<tr>
<td>7 Department Director, Communications</td>
<td>Director II, Strategic Communications</td>
<td></td>
<td></td>
<td>X</td>
<td></td>
<td></td>
</tr>
<tr>
<td>8 Department Director, Data, Analytics, and Modeling</td>
<td>Director II, Data and Modeling</td>
<td></td>
<td></td>
<td>X</td>
<td></td>
<td></td>
</tr>
<tr>
<td>9 Department Director, Finance</td>
<td>Chief Financial Officer</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td>Class 33 to 34</td>
</tr>
<tr>
<td>10 Department Director, MMPI</td>
<td>Chief Capital Programs &amp; Regional Services Officer</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td>Class 33 to 35</td>
</tr>
<tr>
<td>11 Department Director, Operations</td>
<td>Chief Planning and Innovation Officer</td>
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<td></td>
<td></td>
<td></td>
<td>Class 33 to 35</td>
</tr>
<tr>
<td>12 Department Director, Planning</td>
<td>Director II, Regional Planning</td>
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<td></td>
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<td></td>
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<tr>
<td>13 Independent Performance Auditor</td>
<td>Independent Performance Auditor</td>
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<td>X</td>
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<td></td>
</tr>
<tr>
<td>14 TransNet Department Director</td>
<td>TransNet Program Director</td>
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<td></td>
<td></td>
</tr>
<tr>
<td>15 Chief Economist</td>
<td>Chief Data Analytics Officer</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td>Class 31 to 35</td>
</tr>
<tr>
<td>16 Division Director, Applied Research</td>
<td>Director II, Research &amp; Program Mgmt</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td>Class 30 to 33</td>
</tr>
<tr>
<td>17 Division Director, ARUIS</td>
<td>Director I, ARUIS</td>
<td></td>
<td></td>
<td></td>
<td>X</td>
<td></td>
</tr>
<tr>
<td>18 Division Director, Big Data/Data Science</td>
<td>Director I, Mobility and Innovation</td>
<td>X</td>
<td></td>
<td></td>
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<td></td>
</tr>
<tr>
<td>19 Division Director, Rail</td>
<td>Director II, Construction and Engineering</td>
<td></td>
<td></td>
<td>Class 30 to 33</td>
<td></td>
<td></td>
</tr>
<tr>
<td>20 Division Director, Special Projects</td>
<td>Director I, Strategic Projects</td>
<td></td>
<td></td>
<td>X</td>
<td></td>
<td></td>
</tr>
<tr>
<td>21 Division Director, Tolling &amp; Info Systems</td>
<td>Director II, Business Information &amp; Technology</td>
<td></td>
<td></td>
<td>Class 30 to 33</td>
<td></td>
<td></td>
</tr>
<tr>
<td>22 Division Director, Tolling Operations</td>
<td>Director II, Tolling Operations</td>
<td></td>
<td></td>
<td>X</td>
<td></td>
<td></td>
</tr>
<tr>
<td>23 Goods Movement Policy Manager</td>
<td>Director I, Integrated Transportation Planning</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td>Class 30 to 31</td>
</tr>
<tr>
<td>Manager of Small Business Development</td>
<td>Director I, Diversity and Equity</td>
<td></td>
<td></td>
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<td>Class 28 to 31</td>
</tr>
<tr>
<td>Senior Government Relations Analyst</td>
<td>Director I, Government Relations</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td>Class 22 to 31</td>
</tr>
<tr>
<td>Entrepreneur in Residence (LT)</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td>X</td>
<td></td>
</tr>
<tr>
<td>Director I, Mid-Coast Transit Project (LT)</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td>X</td>
<td></td>
</tr>
<tr>
<td><strong>Total</strong></td>
<td><strong>9</strong></td>
<td><strong>9</strong></td>
<td><strong>5</strong></td>
<td><strong>2</strong></td>
<td><strong>2</strong></td>
<td></td>
</tr>
</tbody>
</table>
2019 SANDAG Reorganization
DESCRIPTION OF RECLASSIFIED POSITIONS

The following information expands upon the table on page 1 to describe the justification and basis for the reclassification of positions as part of the agency reorganization.

9 positions were unchanged or had relatively minor changes to the scope of responsibilities; some job titles were updated to more accurately reflect the roles.

- Executive Director
- Independent Performance Auditor
- General Counsel
- Deputy General Counsel
- Director II, Data and Modeling (formerly Department Director of Data, Analytics, and Modeling)
- Director II, Regional Planning (formerly Department Director of Land Use and Transportation Planning)
- TransNet Program Director (formerly TransNet Department Director)
- Director I, ARJIS (formerly Division Director of ARJIS)
- Director I, Strategic Projects (formerly Special Projects Director)

9 positions were significantly changed with respect to the scope and nature of assigned responsibilities, such that reclassification to a higher-level salary range was warranted. Highlights of the newly defined roles are provided below.

- Director II, Contracts and Grants (formerly Special Counsel & Manager of Contracts and Procurement)
  The Contracts and Procurement program is a core agency function and supports almost all SANDAG programs and projects with the selection of consultants and contractors, or the procurement of goods and services, consistent with funding agency requirements. The need for ongoing effective leadership and technical expertise was confirmed as part of the agency reorganization effort and is necessary to ensure the program can continue to be responsive to the evolving and increasingly complex procurement needs of the organization. As part of the review of agency functions during the reorganization process it was recognized the benefits that would be derived if oversight for the SANDAG Grant Program resided with the Contracts and Procurement function. This decision resulted in the reclassification of the existing Special Counsel/Manager of Contracts and Procurement role to add responsibility for the grants program.

- Chief Financial Officer (formerly Department Director of Finance)
  One of the goals of the agency reorganization, in response to a recommendation from the Audit Committee, was to expand the oversight of the agency’s financial operations by establishing a Chief Financial Officer role. This was achieved by reclassifying the existing Department Director of Finance position and adding responsibility for the agency’s Contracts and Procurement, Grants Management, and TransNet Program functions.
- **Chief Capital Programs & Regional Services Officer (formerly Department Director of Mobility Management & Project Implementation)**
  Acting as an essential member of the Senior Leadership Team, the Chief Capital Programs & Regional Services Officer will plan, direct, manage, and oversee the engineering and construction, toll road operations, ARJIS, and regional services functions; coordinate services and activities among SANDAG departments, the Board of Directors, Policy Advisory Committees, member agencies, and outside organizations; and provide highly responsible and complex executive support to the Executive Director.

- **Chief Planning and Innovation Officer (formerly Department Director of Operations)**
  Acting as an essential member of the Senior Leadership Team, the Chief Planning and Innovation Officer will plan, direct, manage, and oversee the regional planning, data science and technology innovation, research and modeling, and special project functions; coordinate services and activities among SANDAG departments, the Board of Directors, Policy Advisory Committees, member agencies, and outside organizations; and provide highly responsible and complex executive support to the Executive Director.

- **Chief Data Analytics Officer (formerly Chief Economist)**
  SANDAG has historically gathered and maintained an extensive set of economic, demographic, transportation, land use, housing, and other data that supports the agency’s regional policy and planning responsibilities. In recent years, the need for a robust Data Science program that can produce meaningful insights and explanations about activity in the region, as well as identify opportunities to create tools and resources from data, has emerged as elected officials, stakeholders, business partners, and the public demand to be more informed and expect solutions to regional issues. In response, two key strategic objectives have emerged: 1. To establish SANDAG as a national leader and role model for maximizing the use of data and the insights it contains to drive effective policy decisions and deliver innovative solutions; and 2. Drive the adoption of open data and big data initiatives across the organization and throughout the region. In support of these objectives, the scope of the existing Chief Economist position was expanded to include responsibilities for leading and advising on the development and use of advanced data analytics across the organization.

- **Director II, Research & Program Management (formerly Division Director of Applied Research/Criminal Justice Research)**
  Independent oversight and consolidation of the agency’s research and data management functions was identified as an emerging need for the agency. This function is essential for ensuring the overall accuracy and integrity of data used by SANDAG for complex modeling and analyses, preparation of policy recommendations, and the delivery of programs, projects, and services. This change was achieved by reclassifying the existing Division Director of Applied Research/Criminal Justice Research and adding responsibility and accountability for quality assurance, data management, and product management functions.
- **Director II, Construction and Engineering (formerly Division Director or Rail)**
  The Department Director of Mobility Management & Project Implementation (MMPI) is a long-standing, core agency position and the need for the role was confirmed as part of agency reorganization effort. This was accomplished through reclassification; the Director of Construction and Engineering has the same responsibilities as the former Department Director of MMPI; the title has changed. It was noted that effective leadership and technical expertise is necessary to oversee design, engineering, and construction functions related to delivering the SANDAG Capital Program.

- **Director II, Business Information & Technology (formerly Division Director of Tolling & Information Systems)**
  The need for more focused leadership and technical expertise regarding information technology programs was determined to be essential for achieving the internal goal of workplace/technology modernization and supporting numerous Organization Effectiveness Plan recommendations. This change was achieved by reclassifying the existing Division Director of Information and Tolling Systems position and assigning responsibility and accountability for ensuring adequate technology resources are available for conducting agency business, overseeing IT governance initiatives including planning and deploying state-of-the-art hardware resources, performing system upgrades, and/or leading system implementation efforts, and ensuring high-levels of service and support to both internal and external customers.

- **Director I, Integrated Transportation Planning (Goods Movement Policy Manager)**
  The need for coordinated leadership and technical expertise regarding the agency’s long-range regional transportation planning responsibilities was identified as necessary for achieving the strategic goal of providing the San Diego region with a world-class transportation system. This change was achieved by reclassifying the existing Goods Movement Policy Manager position and assigning responsibility and accountability for Transit, Goods Movement, Long Range Transportation, and Corridor Planning.

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. These are described below.

- **Chief Operating Officer (formerly Chief Deputy Executive Director)**
  Acting as an essential member of the Senior Leadership Team, the Chief Operating Officer will plan, direct, manage, and oversee the contracts and procurement, small business development, human resources, information technology, and business services functions; coordinate services and activities among SANDAG departments, the Board of Directors, Policy Advisory Committees, member agencies, and outside organizations; and provide highly responsible and complex executive support to the Executive Director.

- **Director II, Organization Effectiveness (formerly Department Director of Administration)**
  SANDAG initiated a strategic planning project in early 2019 to identify opportunities to improve the overall performance of the organization and increase the agency’s capacity to deliver on regional programs and projects. This body of work was one of the commitments made in the 2018 Plan of Excellence. As part of the agency reorganization, the need for leadership and
technical expertise to focus on implementing and sustaining the recommendations stemming from the strategic plan (referred to as the Organization Effectiveness Plan) was determined to be essential. This change was achieved by reclassifying the existing Department Director of Administration and assigning responsibility and accountability for programs and services that drive organization performance and enhance the employment experience. The role includes oversight for the Diversity and Equity, Human Resources, Internal Communications, Risk Management, and Business Services.

- **Director II, Strategic Communications (formerly Department Director of Communications)**
  The Department Director of Communications is a long-standing, core agency position and the need for the role was confirmed as part of agency reorganization effort. It was noted that effective leadership and technical expertise is necessary for developing and implementing strategies that proactively and positively communicate SANDAG policies, programs, services, and activities to a broad audience, and foster mutually beneficial and productive working relationships between SANDAG and its stakeholders, particularly during a time of significant agency progress and transformation. Strong leadership in the Strategic Communications area is essential and integral for the achievement of both external and internal agency goals and supporting numerous Organization Effectiveness Plan recommendations. The functions allocated to the department include Document Processing, Creative Services, Marketing, Public Information, and Public Outreach.

- **Director I, Mobility and Innovation (formerly Division Director of Big Data/Data Science)**
  The agency identified the need for leadership and technical expertise to research, develop, and implement programs and systems designed to reduce travel demand and use the existing transportation infrastructure more efficiently; this is an essential component for achieving the strategic goal of providing the San Diego region with a world-class transportation system. This change was achieved by repurposing and reclassifying the existing Division Director of Big Data/Data Science position (a new role that had been added in FY 2020 but had not been filled) to Director I, Mobility and Innovation and assigning responsibility and accountability for conducting non-traditional planning activities that focus on developing transportation solutions through partnerships with public and private stakeholders as well as system management functions and clean transportation programs.

- **Director II, Tolling Operations (formerly Division Director of Tolling Operations)**
  The Director of Tolling Operations oversees the operations, performance, maintenance, and administration of regional tolling and managed lane facilities and roadway operations including customer service, account and revenue management, roadway and roadside facilities, toll collection equipment, security, and traffic management. The position was added as part of the FY 2020 Budget and was intended to report to the Department Director of Operations. As part of the agency reorganization, the role report to the Chief Capital Programs and Regional Services Officer and has been reclassified to the Director II level, commensurate with assigned responsibilities.
2 positions were reclassified to the Director I level from senior or manager level positions; these are described below.

- **Director I, Diversity and Equity (formerly Manager of Small Business Development)**

  As a recipient of federal and state funding for transportation and other projects, SANDAG is required to establish and manage compliance programs related to, but not limited to, Title VI and Environmental Justice, Disadvantaged Business Enterprise (DBE), Equal Employment Opportunity (EEO), and the Americans with Disabilities Act (ADA). Federal guidelines specify expectations for the level of position and internal reporting relationships in these program areas. After considering several options, the Senior Executive Team recommended the existing Manager of Small Business Development role be reclassified to Director I, Diversity and Equity. As part of the reclassification, the role was assigned responsibility for the agency’s Title VI and Environmental Justice program as well as the ADA Program for third party contractors and consultants.

- **Director I, Government Relations (formerly Senior Government Relations Analyst)**

  The Senior Leadership Team identified the need for executive-level capacity to oversee and coordinate high-level interdepartmental and/or interagency teams assembled to strategically address policy issues or special regional projects, create strategic alliances, and facilitate efforts between, and/or on behalf of, local, state, and national representatives, special interest groups, and others to proactively influence, or strategically respond to policy issues affecting the region. SANDAG historically had a Director of Government Relations role, however the position had been reclassified to address other agency priorities. Given the agency’s ambitious strategic objectives that will require significant national, state, and local collaboration, this need to re-establish the role was confirmed.

In FY 2020, two limited-term positions were added – the part-time Executive Strategic Advisor and Director I, Mid-Coast Transit Project. These are not envisioned as a long-term positions for the agency.
How Engaged are SANDAG Employees?

About four-fifths (79%) of SANDAG employees are at the Engaged or Almost Engaged level. Nine percent of employees are Disengaged, and the remainder fall into two categories based on their experiences at work - Honeymooners & Hamsters or Crash & Burners. Descriptions are provided in the chart below.

This engagement score is derived from responses to 33 survey questions that asked employees to answer based on their level of agreement with the statement provided. The questions, and the responses collected, are provided on the following page and in the Appendix.

For comparison purposes, a research report released by BlessingWhite in May 2017 indicates 63 percent of employees in average performing organizations are Engaged or Almost Engaged while 77 percent of employees in the best organizations are Engaged or Almost Engaged.

**Engaged**
Engaged employees find significant alignment between their personal and organizational interests; they are full contributors, find great satisfaction in their work, and are known for their discretionary effort and commitment.

*2017 Survey: 34%*

**Almost Engaged**
These high performers are reasonably satisfied with their job; they are highly employable and could be seeking opportunities with other employers; investing in these employees will help them reach full engagement.

*2017 Survey: 38%*

**Honeymooners & Hamsters**
Honeymooners are new to the organization and are still finding their stride; they need support to reach full productivity and alignment as quickly as possible. Hamsters may be working hard, but are working on non-essential tasks.

*2017 Survey: 6%*

**Crash & Burners**
These top producers aren’t achieving their personal definition of success and satisfaction within the organization; they may express dissatisfaction with management and coworkers, and are likely to become Disengaged if no action is taken.

*2017 Survey: 8%*

**Disengaged**
These employees are disconnected from organizational priorities; they often feel underutilized and are not getting what they need from work.

*2017 Survey: 15%*

Note: Percentages may not equal 100 due to rounding.
September 2, 2020

TO: Mary Khoshmashrab, Independent Performance Auditor

FROM: Hasan Ikhrata, Executive Director

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

On behalf of the SANDAG Management Team, thank you for the opportunity to review the Office of the Independent Performance Auditor’s (OIPA’s) revised final 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 (Revised Final Audit or RFA).

Please find enclosed the SANDAG Management Revised Response (MRR) to the observations and recommendations outlined in the RFA. While it appears OIPA may have considered portions of the information contained in the initial management response dated August 14, 2020 in preparation of the RFA, this revised MRR is intended to address several factual inaccuracies and incorrect conclusions that continue to be represented as findings in the RFA. Management has relied on several sources of expertise in preparing this MRR, including the opinion of independent outside counsel hired by the Audit Committee to specifically evaluate the validity of assumptions underlying the findings contained in the RFA. We would like to highlight the following perspectives:

- All compensation, bonus, and severance decisions discussed in the RFA were made within the authority assigned to the Executive Director by the California Legislature, and confirmed by the Board of Directors (Board) through Bylaws and Board policies. 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 espouses the values of fair and equitable employment and, like many similar organizations, has developed a robust system of policies and procedures that reflect adherence to required laws and regulations while reflecting practices designed to support the operational needs of the agency. With respect to its compensation program, SANDAG has developed and maintained, in consultation with several outside experts, a competitive salary schedule and adopted 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). This document has been in place for more than 10 years, in substantially the same form, and superseded the Administrative Rules and Regulations that initially applied to SANDAG employees. Authority for agency personnel, which includes management and implementation of employment-related policies and procedures (incorporated into the Handbook), was statutorily assigned to the Executive Director as part of SB 1703, which became effective January 1, 2003. This delegated responsibility is reaffirmed via Board Policy No. 017, Delegation of Authority. SANDAG management consults with legal counsel in maintaining the Handbook, and is therefore confident the Handbook complies with all applicable rules and regulations. However, based on feedback from 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.

Upon the advice of legal counsel, management has recommended to the Audit Committee and Board that certain sections of the MRR and other materials prepared regarding the audit that made available to the public, be redacted to protect individual privacy and to avoid potential litigation. The Audit Committee and/or the Board of Directors would have the opportunity to discuss these matters in closed session pursuant to the Brown Act to protect the interests of the agency.

As leaders, the SANDAG Management Team firmly believes that continuous improvement is important for the agency. So while there are flawed assumptions and incomplete information in the RFA, which have in turn led to flawed conclusions, management has noted many of the suggested process improvements and a commitment to undertake many of the recommendations is reflected in the MRR. 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 document will demonstrate it complied with the rules and regulations applicable to SANDAG, as a local agency, and that it did not engage in abuse or waste, nor did it lack the system controls necessary to comply with applicable laws.

Please contact me with any questions regarding the information provided.

Sincerely,

HASAN IKHRATA
Executive Director

Enclosure
The Office of Independent Performance Auditor’s Salaries and Compensation Performance and Compliance Audit

Overview

SANDAG Board Policy No. 039 establishes the role of the SANDAG Audit Committee in assisting the Board of Directors in fulfilling its oversight responsibilities. Through this Policy, the Board has delegated to the Audit Committee the task of overseeing the work of the Office of the Independent Performance Auditor (OIPA) in preparing and issuing audit and investigative reports (Section 3.1.6) and approving the annual audit plan after discussion with the OIPA (Section 3.1.7). The Audit Committee responsibilities also include oversight of the implementation of corrective action to address noted audit deficiencies. (Section 3.1.3.)

Key Considerations

On February 28, 2020, the Audit Committee approved the Revised Audit Plan of the OIPA, which identified an employee compensation review as a third-level priority in the revised plan.

On July 30, 2020, the OIPA submitted to Management the Draft Audit Report 2021-1br regarding the Salaries and Compensation Performance Audit. The Audit Committee held a special closed session meeting on August 12, 2020, to discuss potential litigation risks associated with this report. On that date, the Audit Committee agreed to retain independent outside legal counsel to provide advice regarding legal issues raised by the draft report, and to reconvene in closed session on August 28, 2020, with the independent outside counsel regarding the legal issues raised in the report.

On August 26, 2020, the OIPA released its final audit report to the Board. The Audit Committee met in closed session on August 28, 2020, to discuss the identified litigation risks with the independent counsel retained by the Audit Committee, Renne Public Law Group (RPLG) and discuss the report provided by RPLG (Attachment 1). At the direction of the Audit Committee, and following the release of the final audit report by the OIPA to the Board on August 26, 2020, and the subsequent re-release to the Audit Committee on August 31, 2020, RPLG issued an additional legal memorandum at the Audit Committee’s request regarding further issues raised in the draft and final audit report (Attachment 2).

On September 11, 2020, the Audit Committee convened a special meeting to discuss the results of the draft and final audit and Management’s response. The Audit Committee did not reach consensus on all findings and recommendations outlined in the audit report, but it did issue the following findings and recommendations:

FINDING I:

- The Audit Committee finds that the Board appropriately delegated authority to the Executive Director through the Executive Director’s contract, SANDAG’s Employee Handbook, and in accord with the governing sections of the Public Utilities Code.
- The Audit Committee finds that the Board implemented Bylaws, and replaced the Administrative Rules and Regulations, which are no longer in effect.
- The Audit Committee finds that the Board (implicitly) ratified SANDAG’s Employee Handbook and the Board is estopped from retroactively changing prior employee contracts.

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1 A complete timeline of Audit Committee events related to this audit is included as Attachment 3 to this report.
The Audit Committee recommends Management present the current Employee Handbook to the Board for retroactive review and approval or ratification, as applicable.

The Audit Committee recommends that every SANDAG employee acknowledge receipt of the Handbook and Bylaws upon hire, and acknowledge their continuing applicability on an annual basis thereafter.

**FINDING III:**

- The Audit Committee finds that payments made to the former Chief Deputy Executive Director were a proper use of public funds and there was no intention to conceal those payments from the Board.
- The Audit Committee does not recommend adopting the OIPA’s recommendation to rescind approval authority.
- The Audit Committee recommends that SANDAG Management develop a policy for Board approval to address these situations in the future.

**FINDING IV:**

- The Audit Committee finds that Management did not breach its fiduciary duty with regard to special compensation payments identified in the Audit Report.
- The Audit Committee recommends that Management propose a policy for special compensation, and present such policy to the Board for approval.
- The Audit Committee recommends that SANDAG Management propose an annual process for Board approval of special compensation.

**FINDING VI:**

- The Audit Committee recommends that SANDAG Management present procedures for Board approval consistent with OIPA’s recommendations.
- The Audit Committee recommends that Management annually seek the Board’s approval of said compensation, maintaining adequate records to support such compensation.

**FINDING VII:**

- The Audit Committee recommends that SANDAG Management present procedures for Board approval consistent with OIPA’s recommendations.

**FINDING VIII:**

- The Audit Committee recommends against reverting salaries, conducting a further needs assessment, or making any changes to those positions at this time.

Additionally, after considering RPLG’s advice:

- The Audit Committee recommends that the Board determine whether the Executive Director timely reported severance payments to the Board.
- The Audit Committee recommends that the Board specify the procedure for setting and reporting severance payments in the future.
- The Audit Committee recommends that the Board discuss whether §1.5 of the Employee Handbook should be modified to require notification to Board leadership in defined circumstances.

For ease of reference, OIPA’s recommendations, Management’s Response, and the Audit Committee’s findings and recommendations are incorporated into a chart (Attachment 4).
Next Steps
Consistent with Board Policy No 039 section 3.1.9, pending Board action, the Audit Committee will monitor the implementation of any corrective action directed by the Board.

Bill Baber, SANDAG Audit Committee Chair

Attachments:
1. Renne Public Law Group Memorandum, dated August 31, 2020
2. Renne Public Law Group Memorandum, dated September 10, 2020
3. Timeline Related to Issuance of SANDAG’s Office of Independent Performance Auditor Draft and Final Audit Report 2021-1br
4. Chart of Findings and Recommendations
I. INTRODUCTION

The SANDAG Audit Committee recently retained Renne Public Law Group (“RPLG”) to answer, initially, three questions related to a Draft Audit report. It was impressed upon RPLG to render objective answers to the questions, without exhibiting favoritism on behalf of anyone involved. In addition, RPLG certified that it had no conflict with, or prior representation of: SANDAG; Hasan Ikhrata; John Kirk; or Mary Khoshmashrab.

Our analysis follows.

II. QUESTIONS

You asked for our opinion the following questions:

1. Is SANDAG, the OIPA, the Audit Committee, and/or SANDAG’s Board under a 12-month constraint in voiding any allegedly improper appointments, promotions, titles, salaries or benefits for the contracts identified in the OIPA’s Draft Audit?
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2. Is SANDAG subject to civil service personnel rules under any federal, state, county law or regulation, or any internal policy or procedure, or by any case law precedent?

3. Are the severance payments made to former top-level managers who resigned from SANDAG an invalid gift of public funds under California law?

III. EXECUTIVE SUMMARY

First, neither SANDAG, the OIPA, the Audit Committee, nor SANDAG’s Board is under a 12-month constraint in voiding any allegedly improper appointments, promotions, titles, salaries, or benefits for the contracts identified in the OIPA’s Draft Audit. Although it was unclear from the Draft Audit what the basis for voiding such personnel actions would be, the only statute that appears to impose a 12-month timeframe for bad faith appointments does not apply here because SANDAG is not subject to state civil service rules (see infra, Issue Two). Of course, an employee could claim laches or equitable estoppel if SANDAG unreasonably delays in taking action and that delay results in prejudice. But we do not believe that carefully investigating this issue before taking action would be perceived as unreasonable by a court, and courts are reluctant to apply laches against public agencies, particularly when doing so would require enforcement of an allegedly unlawful contract. Finally, although the internal policies or procedures for SANDAG, its Board, the Audit Committee, and OIPA contemplate taking corrective action in a “timely” fashion, they do not impose a strict timeline for acting. 1

Second, SANDAG is not subject to civil personnel rules under state, federal, or county laws, regulations or case law precedent because SANDAG is not a state or county employer, does not receive any state or federal grants that are conditioned on maintaining a merit personnel system, and has broad authority over its personnel under its enabling legislation. Although SANDAG’s Employee Handbook does maintain a general policy of abiding by a merit-based recruitment system, the Handbook has many exceptions to that system that appear to apply here. 2

1 After RPLG submitted a draft opinion for feedback, Ms. Khoshmashrab indicated that OIPA never referenced Government Code section 19257.5, and “the OIPA did not cite a 12-month period to avoid appointments.” In advance of the August 28 Audit Committee meeting, RPLG therefore believed that the 12-month deadline was a moot issue. However, during the Audit Committee meeting, Ms. Khoshmashrab indicated that the deadline at issue involved a limitation under CalPERS rules and regulations, such that if an employee received an allegedly impermissible promotion or salary increase for over twelve months, the pension contributions made at the higher salary could not be reversed, and SANDAG would suffer the financial consequence of paying lifetime pensions at an improperly inflated rate. We address this new issue infra.

2 In response to reviewing our draft opinion, Ms. Khoshmashrab wrote that OIPA “did not imply or state that SANDAG was a state agency.” However, she asserts that the Employee Handbook
Third, whether or not the severance payments made to former top-level managers at SANDAG upon their resignation are considered “invalid gifts of public funds” depends on the specific circumstances of each employee leading up to his or her resignation. If the former employees had good faith, colorable claims against SANDAG, and the severance payments were used to secure the release of these claims, the expenditures would be considered a legitimate use of public funds for a public purpose and not “gifts.” Based on our review of the facts in Ms. McDonough’s memo detailing the potential claims each resigned employee had against SANDAG and analyzing SANDAG’s potential legal exposure pertaining to those claims, we think it is likely that the severance payments made to the former employees would be considered a proper use of public funds to release those claims. However, these are fact-based inquiries which depend on a full evaluation of all documentation and other evidence. The maintenance of direct documentation highlighting the basis for the separations and perceived legal risks, including the demand letter, is critical in ensuring success during any litigation challenging the payments.

IV. BACKGROUND

The San Diego Association of Governments (“SANDAG”) is the public agency that serves as the regional forum for the 18 incorporated cities within the County of San Diego and the County itself to come together and conduct planning, decision-making, and project implementation. (See SANDAG Fiscal Year 2019 Annual Report, at p. 1.)

SANDAG began as a joint powers authority pursuant to Government Code section 6500 et seq. (See Pub. Util. Code, § 132005.) In 1985, the Legislature designated SANDAG as the San Diego County Regional Transportation Commission. (See Pub. Util. Code, § 132050 [creating Commission]; id., § 132051 [providing that the SANDAG Board of Directors shall serve as the Commission]; id., § 132052 [providing that the Commission shall use SANDAG’s staff and compensate SANDAG accordingly]; id., § 132100 [adopting the joint powers agreement, bylaws, and all rules and regulations of SANDAG as the established rules for the Commission].) In 2002, the Legislature enacted SB 1703, which consolidated all transit planning, programming, project development, and construction into a new successor agency to SANDAG. (See Pub. Util. Code, § 132353.1 [providing that SANDAG “shall be consolidated into a public agency known as

made “invalid” changes, and that SANDAG remains committed to following “a merit process similarly found at other governmental agencies.” Given time constraints, and the timing of this assertion (August 27), we did not analyze whether the Employee Handbook is somehow invalid. We note, however, that the Administrative Rules and Regulations dating back to 2003 also have exceptions permitting deviation from strict application of the rules when the Executive Director determines it is in the best interest of the organization. The 1995 Administrative Rules and Regulations do not appear to have any similar exceptions, but it is unclear whether these have any continuing vitality in light of the fact that the Legislature created a new consolidated agency when it enacted SB 1703.
the consolidated agency’”); id., § 132350.2 [defining consolidated agency]; id., § 132351.3 [providing that the “consolidated agency is the successor agency to the San Diego Association of Governments (SANDAG) and those entities set forth in Article 4”].)³

In 2017, the Legislature passed AB 805, which required SANDAG to establish an audit committee and hire an independent performance auditor. (See Pub. Util. Code, §§ 132351.4, subd. (a)(5), 132354.1.) SANDAG subsequently appointed Mary Khoshmashrab, MSBA, CPA, as the Independent Performance Auditor in charge of the Office of the Independent Performance Auditor (“OIPA”).

On July 30, 2020, the OIPA issued a Draft Preliminary Salaries and Compensation Performance and Compliance Audit (“OIPA Draft Audit”) to the Chair of the SANDAG Board of Directors and the Chair of the SANDAG Audit Committee. Relevant here, the OIPA Draft Audit asserted that recent appointments made by SANDAG violated civil service employment laws and could be cancelled if undertaken in bad faith. (See OIPA Draft Audit at pp. 62-65.)

The OIPA Draft Audit also took issue with severance payments made to former SANDAG employees after they signed separation agreements releasing all claims against the organization. The OIPA Draft Audit asserted that these payments could be unlawful gifts of public funds because no claims were filed against SANDAG under the Government Claims Act (Gov. Code, § 810 et seq.) and the former employees had resigned and were not terminated for cause. (See OIPA Draft Audit at pp. 26-30.)

On August 14, 2020, SANDAG’s Executive Director, Hasan Ikhrata, sent a Confidential Management Response to the OIPA Salaries and Compensation Performance and Compliance Audit (“Management Response”), disputing many of the accusations in the OIPA Draft Audit. Relevant here, the Management Response contended that: (1) there was no 12-month period in which SANDAG needed to act to void any allegedly improper appointments (Management Response at pp. 5, 32-34); (2) SANDAG was not subject to any civil service personnel rules under federal, state, or local law or internal policy (id. at pp. 32-34); and (3) the severance payments made to recently departing SANDAG employees were not unlawful gifts of public funds because those employees could have brought claims against SANDAG and because the constitutional prohibition against gifts of public funds does not apply to SANDAG (id. at pp. 12-15).

³ For simplicity and in order to match the terminology used by SANDAG itself, we refer to this consolidated agency as SANDAG even though it resulted from the “consolidation of SANDAG and” the San Diego Metropolitan Transit Development Board and the North San Diego County Transit Development Board and is technically the “successor agency” to these entities. (See Pub. Util. Code, §§ 132350.2, subds. (a) & (i), 132351.3, 132353.4.)
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The SANDAG Audit Committee has asked us for an independent legal opinion regarding these three issues, assuming the facts in both reports are true.4

V. LEGAL ANALYSIS

A. ISSUE ONE: Is SANDAG, the OIPA, the Audit Committee, and/or SANDAG’s Board under a 12-month constraint in voiding any allegedly improper appointments, promotions, titles, salaries or benefits for the contracts identified in the OIPA’s Draft Audit?

The OIPA Draft Audit identifies seven positions that “were appointed rather than competitively hired.” (OIPA Draft Audit at p. 61, Table 12; see also OIPA Final Audit at p. 74, Table 12.) The Draft Audit notes that if “either the employee or employer fails to act in good faith [during the hiring process], the transaction is a bad faith appointment” that the “SANDAG Board of Directors has the authority to cancel.” (Id. at p. 62, Table 13.)5 The Draft Audit does not identify any timeline for the Board to undertake such a cancellation or the legal basis for voiding any allegedly improper appointments, promotions, titles, salaries, or benefits for the contracts identified in its Draft Audit. Nor does the Final Audit, which merely states that “there are some time sensitive audit recommendations that the Board should consider.” (OIPA Final Audit at p. 137 [Comment 8 to Management Response].) Nevertheless, we address several possible sources of authority as follows.

1. Government Code Section 19257.5

The Management Draft Response speculated that based on language in the Draft Audit on page 62, the OIPA was relying on Government Code section 19257.5. (See Management Response at pp. 6, 35.) In a subsequent email to the Audit Committee, however, the OIPA has stated that it is not relying on this provision. (See Email from M. Khoshmashrab to Paul J. Dostart dated Aug. 17, 2020, 4:44 p.m. “[The OIPA did not rely on Government Code Section 19257.5, and we are not aware of SANDAG’s reasons for citing the code. … [T]here are some time sensitive audit recommendations that the Board should be considering as quickly as possible, but those are not

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4 On the afternoon of August 26, 2020, as we were finalizing our draft analysis for submission to the Audit Committee, the OIPA issued an updated version of the audit entitled “Salaries and Compensation Performance and Compliance Audit” (“OIPA Final Audit”). Where applicable, we have strived to note the Final Audit’s distinctions from the Draft Audit and the effect, if any, on our analysis.

5 OIPA’s Final Audit omitted this assertion along with an extensive discussion of state civil service rules. (Compare OIPA Draft Audit at pp. 62-63, with OIPA Final Audit at pp. 74-75; see also OIPA Final Audit at p. 137 [Comments 7 and 9 to Management Response].)
related to the aforementioned code, which the OIPA did not use as criteria for any of our findings”].)\(^6\)

Out of an abundance of caution, before addressing any other potential sources of a 12-month deadline to void any allegedly unlawful appointment, we explain briefly why Government Code section 19257.5 does not apply here. Section 19257.5 provides:

> Where the appointment of an employee has been made and accepted in good faith, but where the appointment would not have been made but for some mistake of law or fact that if known to the parties would have rendered the appointment unlawful when made, the department may declare the appointment void from the beginning if the action is taken within one year after the appointment.

(Gov. Code, § 19257.5 [emphasis added].)

This section is found in Part 2 of Division 5 of Title 2 of the Government Code, which is entitled “State Civil Service.” Elsewhere, the Government Code provides that for purposes of the same part of the code, “Department” means the Department of Human Resources.” (Gov. Code, § 18521.5; see also id., § 18520 [“Unless the context requires otherwise, the definitions hereinafter set forth govern the construction of this part and the rules adopted hereunder”].) Section 18502 provides more background on this department, explaining that there is “hereby created in state government the Department of Human Resources” that “succeeds to and is vested with” all of the “powers and duties exercised and performed by the Department of Personnel Administration” and the “powers, duties, and authorities necessary to operate the state civil service system pursuant to Article VII of the California Constitution, this code, the merit principle, and applicable rules duly adopted by the State Personnel Board.” (Gov. Code, § 18502.) Accordingly, when section 19257.5 talks about a 12-month period during which the “department” may declare an appointment void under the state civil service laws, it is clearly referring to the state Department of Human Resources and appointments of employees to state agencies.

Indeed, section 19257.5’s implementing regulations confirm this construction. Section 243.2 of title 2 of the California Code of Regulations sets forth the circumstances under which “the Board, Executive Officer, or Department may take corrective action up to and including voiding” any appointments they determine are unlawful within one year of the appointment. (2 C.C.R. § 243.2(a.) But again, here, the “‘Department’ means the California Department of Human

\(^6\) The Final Audit also disclaims any reliance on this provision: “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.” (OIPA Final Audit at p. 137 [Comment 8 to Management Response].)
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Resources,” the “‘Board’ means the State Personnel Board of the State of California,” and the “‘Executive Officer’ means the executive officer of the board.” (2 C.C.R. §§ 4, 4.5, 6; see also id., § 1 [“Unless the context requires otherwise, the definitions hereinafter set forth govern the construction of these regulations”].)

SANDAG, by contrast, is not a state agency. Rather, as OIPA itself concedes, it is an independent special district. (See Email from M. Khoshmashrab to Paul J. Dostart dated Aug. 17, 2020, 4:44 p.m.; OIPA Final Audit at pp. 12-13; see also Pub. Util. Code, § 132355.4, subd. (b) [“For purposes of the wage orders of the Industrial Welfare Commission, the consolidated agency [SANDAG] shall be considered a special district”].)

2. Government Code Section 19800 et seq.

To the extent that the OIPA believes that SANDAG was subject to civil service rules by virtue of Government Code sections 19800-19811—which impose merit systems on local agencies as a condition of receiving certain state and federal grant funds—there is no one-year timeline associated with the enforcement of violations of those rules.7 Section 19806 provides for how the State Department of Personnel must proceed if it determines that a local merit system is not in conformity with established standards:

When the department, after hearing, determines that a local merit system is not in conformity with the established standards, it shall notify such local agency and appropriate state officer in writing of its decision. If the governing body of the local agency does not bring the system into conformity within 60 days of notification of the department's decision, or within such longer period as the department determines, the department shall certify to the state officer having responsibility for the overall administration of the program, pursuant to which the grant-in-aid requiring such merit system was made, that the particular merit system is not in conformity with established standards.

7 As we explain below, these provisions apply only when required as a condition of receiving certain state and federal grant funds and do not appear to apply to SANDAG. The OIPA now appears to agree with this position, as it has disclaimed reliance on state civil service laws in the Final Audit released on August 26, 2020 and asserts that SANDAG’s civil service obligations instead flow from its own internal policies. (See OIPA Final Audit at p. 137 [Comments 7 and 9 to Management Response].)
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(Gov. Code, § 19806.) Only then must the “appropriate state officer … take such action against the local agency as permitted by law or as necessary to obtain compliance without an additional administrative hearing being held by such officer.” (Gov. Code, § 19807.) These provisions do not impose any sort of 12-month time limit for voiding an appointment made in contravention of established merit system principles.

3. Principles of Laches and Equitable Estoppel

Although the doctrines of laches or equitable estoppel may apply independently to bar an action even in the absence of an applicable statute of limitations, we think it is unlikely that a court would apply either of these doctrines against SANDAG if it were to pursue an action to void an allegedly illegal personnel action.

As an initial matter, laches requires both unreasonable delay on the part of the party bringing the action, plus either acquiescence or prejudice to the party against whom the action is targeted. (Conti v. Board of Civil Service Commissioners (1969) 1 Cal.3d 351, 359-360.) In the context of actions by employees for reinstatement, courts have found that delays ranging from eight months to five years are unreasonable. (Id. at 357, fn. 3 [surveying cases but noting that “[t]welve of the fourteen cases involve[d] delays longer, in many cases substantially longer, than” the petitioner’s delay of 10 months and declining to apply laches without further showing of prejudice].) But unlike an employee’s delay in seeking reinstatement, an employer’s delay in carefully determining whether a public employee was properly hired, promoted, or compensated seems much more likely to be viewed as reasonable. Here, it would be difficult to portray SANDAG’s cautious deliberation and investigation into this issue as “unreasonable” or to establish prejudice to the employees resulting from holding their positions for period of time longer than 12 months.

Moreover, the Court of Appeal has explained that “the doctrine of estoppel or the doctrine of laches may apply to a government body if ‘a grave injustice would be done if estoppel were not applied, and it did not appear that use of the doctrine would defeat any strong public policy or result in the indirect enforcement of an illegal contract.’” (City and County of San Francisco v. Ballard (2006) 136 Cal.App.4th 381, 392 [emphasis added], quoting County of San Diego County v. Cal. 8

8 The federal government defers compliance with federal grant-in-aid program personnel system requirements to the “[c]hief executives of State and local jurisdictions operating covered programs” and may not “exercise any authority, direction or control over the selection, assignment, advancement, retention, compensation, or other personnel action with respect to any individual State or local employee.” (5 C.F.R. § 900.604(b)(1), (b)(2); see also Pennsylvania Social Services Union, Local 668 v. Com., Dept. of Public Welfare, Office of Inspector General (Pa. Ct. Comm. 1997) 699 A.2d 807, 811 [concluding that labor union had “no private cause of action under federal law to enforce the merit system provisions of the relevant federal statutes”].)
Water Etc. Co. (1947) 30 Cal.2d 817, 826.) Here, it seems unlikely that a court would apply laches to require SANDAG to abide by any allegedly unlawful personnel actions.

Based on the foregoing, we do not believe that laches or equitable estoppel is likely to prevent SANDAG from taking action outside the 12-month period.

4. SANDAG’s Internal Policies and Procedures

Nor do SANDAG’s Bylaws, its Board Policies, or its Employee Handbook have any provisions that would require SANDAG to void any allegedly unlawful personnel actions within a 12-month period.

SANDAG’s Bylaws do not even address this issue. Board Policy No. 39 does require the Audit Committee to “[r]eview and oversee the implementation of corrective action to address noted audit deficiencies” and “[m]onitor the implementation of corrective action identified in audit and investigative reports and inform the Board when corrective action is insufficient or untimely.” (SANDAG Board Policy No. 39, §§ 3.1.3 & 3.1.9.) But this says nothing about having to pursue corrective action within an express period of time. The same analysis applies with respect to Board Policy No. 41, which talks about Management’s duty to take corrective action and track corrections. (See SANDAG Board Policy No. 41, § 6.6.)

The closest provision in the Employee Handbook is section 3.10, which provides for a six-month introductory period in which the organization can determine whether newly appointed regular employees meet the expectations of the role and whether continued employment is warranted. (Employee Handbook, § 3.10.) During this introductory period, “employment is ‘at-will’ and can be terminated with or without cause, with or without notice.” (Ibid.) The introductory period may be extended “for up to an additional six months” during which the “employment remains at-will and may be terminated at any time by the Executive Director, or his/her designee, without cause or notice.” (Ibid.) But “[e]ven after the introductory period, employment is not for any specific period or particular length of time” and “[b]oth SANDAG and the employee have the ability to terminate the employment relationship, at any time, for any reason, with or without cause, with or without notice.” (Ibid.)

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9 See https://www.sandag.org/organization/about/pubs/bylaws_final.pdf.
11 See https://www.sandag.org/organization/about/pubs/policy_039.pdf.
12 See https://www.sandag.org/organization/about/pubs/policy_041.pdf.
13 The Final Audit released on August 26, 2020 asserts that “management’s changes to Board policies and direction related to hiring practices, within the Employee Handbook, were not Board approved” and thus cannot supersede the civil service obligations in SANDAG’s earlier...
Finally, neither OIPA’s Policies and Procedures Manual nor SANDAG’s Procedures for Communicating Office of Independent Performance Audit Reports and Website Posting speaks to the issue of taking corrective action within any particular time period. (See generally SANDAG Office of the Independent Auditor, Policies and Procedures Engagement Manual (“OIPA Policies and Procedures Manual”) (August 2019); SANDAG Procedures for Communicating Office of Independent Performance Audit Reports and Website Posting.) If anything, the OIPA Policies and Procedures Manual cuts against moving too quickly, explaining that placing “unreasonable time constraints …upon the auditor to complete the engagement” may “create a threat to independence” by “coerce[ing] or use[ing] excessive influence upon the auditor.” (OIPA Policies and Procedures Manual at p. 12.) And while SANDAG’s Procedures for Communicating Office of Independent Performance Audit Reports and Website Posting requires SANDAG management to “take timely and appropriate steps to respond to … illegal acts,” it does not define “timely” and auditors must “first communicate the failure to report such information to those charged with governance.” (See SANDAG Procedures for Communicating Office of Independent Performance Audit Reports and Website Posting, § 1.6.1.)

5. Effect on CalPERS Pensions

At the August 28, 2020 closed session with the Audit Committee, the Auditor raised the possibility that SANDAG had to void the allegedly improper appointments within 12 months to avoid certain pension-related consequences. Specifically, the Auditor stated if actions were not taken quickly regarding improper appointments, pensions would be affected because classic employees are subject to the single highest year formula for pensions. Her position was that, if SANDAG rescinds these positions at a later time, CalPERS would not be able to adjust the formula later and the improperly appointed employees would become vested in a pension that is higher than is appropriate. The Auditor specifically referred to a CalPERS handbook providing that an employee’s “final compensation is your highest average annual compensation during any.

“Administrative Rules and Regulations.” (See OIPA Final Audit at p. 137 [Comments 7 and 9 to Management Response]; id. at pp. 27-30; id. at p. 75.) Both the Draft and Final Audit attached excerpts of these Administrative Rules and Regulations as Appendix A, but neither provided a complete copy. On August 28, 2020, we were provided copies of SANDAG’s Administrative Rules and Regulations from May 1995, July 2003, October 2003, February 2004, and November 2005. Putting aside the question of whether these have any continuing efficacy after the promulgation of the current Employee Handbook (see supra, note 2), none of them refers to any time period for bringing an action to void an allegedly unlawful appointment.

14 (See https://www.sandag.org/organization/oipa/OIPA-policies-procedures-manual.pdf.)

15 (See https://www.sandag.org/organization/OIPA/OIPA-Procedures-for-Communication-and-Website-Posting.pdf.)
consecutive 12- or 36-month period of employment.” (CalPERS Planning Your Service Retirement, at p. 9.)

However, the Government Code imposes a mandatory duty on CalPERS to “correct all actions taken as a result of errors or omissions of the university, contracting agency, any state agency or department, or this system.” (Gov. Code, § 20160, subd. (b) [emphasis added].) This duty continues throughout the PERS membership of the employee in question. (See id., § 20160, subd. (c).)16

Moreover, “[c]orrections of errors or omissions pursuant to this section shall be such that the status, rights, and obligations of all parties … are adjusted to be the same that they would have been if the act that would have been taken, but for the error or omission, was taken at the proper time.” (Id., § 20160, subd. (e).) As the Court of Appeal has explained:

As relevant to the PERS Board, the Legislature has prescribed a six-month period in which the PERS Board may correct “errors or omissions of any active or retired member[.]” (§ 20160, subd. (a).) For all other errors, the PERS Board’s duty to correct the mistake (upon proof of the right to correction by the applicant) does not terminate until “the expiration of obligations of this system to the party seeking correction of the error or omission,” which generally means throughout PERS membership and through the lifetime of retired PERS members. (§§ 20160, subd. (c), 20164, subd. (a).) As stated above, such corrections should ordinarily be made retroactive. (§ 20160, subd. (e).)

(City of Oakland v. Public Employees’ Retirement System (2002) 95 Cal.App.4th 29, 50 [holding that there is “no limitation period applicable to the administrative reclassification proceeding”]; see also Crumpler v. Board of Administration (1973) 32 Cal.App.3d 567, 586 [“correction of an erroneous classification cannot be equated to a modification or alteration of earned pension rights. Petitioners have no vested right in an erroneous classification”].)17

16 By contrast, CalPERS has the discretion to “correct the errors or omissions of any active or retired member, or any beneficiary of an active or retired member” only if the request was made within 6 months of discovering the error or omission. (Gov. Code, § 20160, subd. (a) [emphasis added].)

17 The regulations governing CalPERS do require employers to correct pension-related errors within 60 days of receiving notice from CalPERS, but this timeframe does not begin to run until CalPERS identifies an error and gives notice. (See 2 C.C.R. § 565.1 [“CalPERS shall notify the
In “some cases of delay, equity may bar an administrative proceeding, and the courts will apply notions of laches borrowed from the civil law.” (City of Oakland, supra, 95 Cal.App.4th at p. 51 [quotation marks omitted].) In some cases, “equity will ‘borrow’ a closely analogous civil statute of limitations to apply in an administrative proceeding.” (Ibid.) But even if this were the case, the most analogous civil statute of limitations would appear to be the three-year limitations period set forth in Government Code section 20164 for actions to adjust mistakes resulting in “payments into or out of the retirement fund.” (Gov. Code, § 20164, subd. (b); see also City of Oakland, supra, 95 Cal.App.4th at p. 50 [citing this statute and noting that the “Legislature has also set forth limitations regarding civil actions pertaining to matters within the PERS Board’s purview”].)

Accordingly, we believe the CalPERS Board would still be permitted to correct any errors or omissions in pension contributions and payments made based on the allegedly improper appointments even if they are not voided within 12 months.18

* * *

In sum, we conclude that neither SANDAG, the Board, the Audit Committee, nor the OIPA is under a 12-month constraint to void any appointments, promotions, titles, salaries or benefits for the contracts identified in the OIPA’s Draft Audit.

18 There is a separate issue of whether SANDAG could recoup overpayments made to the promoted employees if SANDAG wished to void the appointments under Labor Code section 221, which provides that “[i]t shall be unlawful for any employer to collect or receive from an employee any part of wages theretofore paid by said employer to said employee.” (Lab. Code, § 221.) However, “Labor Code section 224 provides in relevant part that section 221 ‘in no way make[s] it unlawful for an employer to withhold or divert any portion of an employee’s wages when the employer is required or empowered to do so by state or federal law.’” (Finnegan v. Schrader (2001) 91 Cal.App.4th 572, 584 [quoting and altering Lab. Code § 224].) Accordingly, the Court of Appeal has explained that “[w]e do not believe that these [Labor Code] provisions were intended to ratify illegal employment contracts or to immunize a public official from liability for a conflict of interest.” (Ibid. [affirming trial court’s disgorgement remedy in case under Government Code section 1090 despite arguments regarding Labor Code section 221].)
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August 31, 2020  
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B.  ISSUE TWO:  Is SANDAG subject to civil service personnel rules under any federal, state, county law or regulation, or any internal policy or procedure, or by any case law precedent?

The OIPA initially appeared to take the position that SANDAG employees are subject to state civil service rules because its employees are “public employees” and because the website “uslegal.com” provides that “civil servants are public employees hired by federal, state, county, and municipal governments” and “[t]he legislature provides the methods by which civil servants are selected and regulations governing the civil service.”  (Email from M. Khoshmashrab to P. Dostart dated August 17, 2020, 4:44 p.m.; see also OIPA Draft Audit at pp. 62-63.)

But not all public employees are created alike, particularly when determining whether the state civil service rules apply to the employee in question.  (See, e.g., Gonzalez v. Department of Corrections & Rehabilitation (2011) 195 Cal.App.4th 89, 97 [“A correctional officer employed by the Department of Corrections and Rehabilitation is a civil service employee.  (Cal. Const., art. 7, §§ 1, 4.)  A county deputy sheriff is not.  (Ibid.)”]; Los Angeles County Employees Ass'n, SEIU, Local 660 v. Superior Court (2000) 81 Cal.App.4th 164, 173, fn. 7 [“the determination of civil service status must be made on a county-by-county basis in accordance with each county’s charter”].)

The following analysis examines this issue in more detail by looking at a variety of potential sources for an obligation to abide by civil service rules.


The OIPA Draft Audit asserts that the “California Constitution requires employment practices to be based on the principle of merit, not familiar relationships.”  (OIPA Draft Audit at p. 61.) The OIPA Draft Audit, however, does not identify which provision of the California Constitution imposes this requirement on SANDAG.  It appears that OIPA was referring to article VII, section 1, which provides:

(a) The civil service includes every officer and employee of the state except as otherwise provided in this Constitution.

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19 It is unclear whether the OIPA still adheres to this position.  (See OIPA Final Audit at p. 137 [Comment 7 to Management Response].)

20 As noted above, the Final Audit issued on August 26, 2020 has disclaimed reliance on state civil service laws and asserts that SANDAG’s civil service obligations instead flow from its own internal policies.  (See OIPA Final Audit at p. 137 [Comments 7 and 9 to Management Response].)
(b) In the civil service permanent appointment and promotion shall be made under a general system based on merit ascertained by competitive examination.

(Cal. Const., art. VII, § 1 [emphasis added].)

By its own terms, this provision only applies to officers and employees of the “state,” not local government officers. The other provisions of article VII make clear that it deals with state employees. (See, e.g., Cal. Const., art. VII, §§ 2-11.) In fact, article VII clearly refers to local public agencies in other provisions, indicating that the reference to state employees in section 1 was not meant to encompass local agency employees. For example, section 6 speaks of local public agencies in a manner that implicitly understands they are exempt from the merit principles of article VII: “[w]hen the state undertakes work previously performed by a county, city, public district of this state or by a federal department or agency, the board by special rule shall provide for persons who previously performed this work to qualify to continue in their positions in the state civil service subject to such minimum standards as may be established by statute.” (Cal. Const., art. VII, § 6, subd. (c).)

The legislative history of this provision confirms this interpretation. The predecessor to this provision—article XXIV—was adopted by initiative in 1934 and “later became, without substantive change, article VII” in 1976. (California Attorneys, etc. v. Schwarzenegger (2009) 174 Cal.App.4th 424, 428, fn. 2, as modified (June 2, 2009), citing State Personnel Bd. v. Department of Personnel Admin. (2005) 37 Cal.4th 512, 521.) The “sole aim of the act [was] to prohibit appointments and promotion in State service except on the basis of merit, efficiency and fitness ascertained by competitive examination.” (Id. at p. 428 [emphasis added], quoting Ballot Pamp., Proposed Amends. to Cal. Const. with arguments to voters, Gen. Elec. (Nov. 6, 1934), argument in favor of Prop. 7, p. 12.) Indeed, in California Attorneys, supra, then-Attorney General Jerry Brown recognized the distinction between state employees subject to the merit principle and other public employees, authoring an amicus curiae brief in which he argued that “the substantial total compensation disparity between the Office of the Attorney General and other public sector employers now undermines the Attorney General’s ability to abide by the merit principle.” (Id. at p. 431.)

Here, the OIPA concedes that SANDAG is not a state agency and instead is an independent special district. (Email from M. Khoshmashrab to P. Dostart dated August 17, 2020, 4:44 p.m.; OIPA Final Audit at pp. 12-13; see also Pub. Util. Code, § 132355.4, subd. (b) [“For purposes of the wage orders of the Industrial Welfare Commission, the consolidated agency [SANDAG] shall be considered a special district”].) As an independent special district, SANDAG is not subject to the civil service personnel rules under state law.

For similar reasons, the civil service provisions set forth in Government Code section 18500 et seq., which is intended “[t]o facilitate the operation of Article VII of the Constitution,” “[t]o
promote and increase economy and efficiency in the state service,” and “[t]o provide a comprehensive personnel system for the state civil service,” (Gov. Code, § 18500, subds. (a-c) [emphasis added]), also only apply to state employees and do not apply to SANDAG.

2. SANDAG Does Not Appear to Be Subject to Civil Service Personnel Rules as a Condition of Federal or State Funding Under Government Code Section 19800 et seq.

Even though SANDAG is not subject to the civil service system applicable to state employees under the California Constitution and Government Code section 18500 et seq., that does not end the inquiry. We must still determine whether it is nevertheless subject to such rules as a condition of federal or state funding under Government Code section 19800 et seq.

Government Code section 19800 provides:

The 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[21] 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.

(Gov. Code, § 19800 [emphasis added]; see also 2 C.C.R. § 17010 [“Every Local Agency administering a state or federally funded aid program that requires as a condition of program participation that the Local Agency operate a merit-based Personnel System is subject to this Division”], emphasis added.) Section 19801, in turn, provides that

For the purposes of administration of state or federally supported programs under Section 19800, the department shall, by regulation, establish and maintain personnel standards on a merit basis for local agencies (including standards of qualifications, competency, education, experience, tenure, and compensation) necessary for proper and efficient administration, to ensure state conformity with applicable federal requirements.

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21 The chapter defines “local agency” to mean “any city, county, city and county, district, or other subdivision of the state, or any independent instrumentality thereof.” (Gov. Code, § 19810 [emphasis added].)
Section 19802 makes clear that “[n]othing 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”; however, “as to employees engaged in administering state and federally supported programs under Section 19800, such local systems and standards shall be subject to approval and review by the department to the extent necessary to qualify for federal funds.” (Gov. Code, § 19802.)

Accordingly, the applicability of these provisions to SANDAG turns on whether it is required by statute or regulation to maintain a merit system of employment as a condition of a state-funded program or federal grant-in-aid program established under federal law.

“Certain Federal grant programs require, as a condition of eligibility, that State and local agencies that receive grants establish merit personnel systems for their personnel engaged in administration of the grant-aided program. These merit personnel systems are in some cases required by specific Federal grant statutes and in other cases are required by regulations of the Federal grantor agencies.” (5 C.F.R. § 900.601(b).) These programs are identified in Appendix A to Subpart F of Part 900 of the Code of Federal Regulations:


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).

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).

\[22\] On January 6, 2020, the U.S. Department of Labor issued a final rule giving states increased flexibility in their administration of employment services activities funded under the Wagner-Peyser Act. (See 85 Fed. Reg. 592-01.)

\[23\] Public Law 92-603 repealed Titles I, X, XIV and XVI of the Social Security Act effective January 1, 1974, except that “such repeal does not apply to Puerto Rico, Guam, and the Virgin Islands.”
Aid to Families with Dependent Children, (Title IV-A of the Social Security Act); 42 U.S.C. 602(a)(5).  

Grants to States for Aid to the Blind, (Title X of the Social Security Act); 42 U.S.C. 1202(a)(5)(A).

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).

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).

Medical Assistance (Medicaid), Social Security Act (Title XIX), as amended, section 1902 (a)(4)(A); 42 U.S.C. 1396(a)(4)(A).

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).

Federal Payments for Foster Care and Adoption Assistance, (Title IV-E of the Social Security Act); 42 U.S.C. 671(a)(5).

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).

Occupational Safety and Health Statistics, Williams-Steiger Occupational Safety and Health Act of 1970; BLS Grant Application Kit, May 1, 1973, Supplemental Assurance No. 15A.


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24 Public Law 104-193 repealed the Aid to Families with Dependent Children program effective July 1, 1997.
25 See supra, note 23.
26 See supra, note 23.
27 See supra, note 23.
SANDAG’s Management contends that SANDAG does not receive any federal or state monies that would subject it to civil service rules. (See Management Response at pp. 32-33.) According to the Management Response, “[u]pon 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.” (Management Response at p. 33.) Assuming this is correct, then SANDAG would not be subject to civil service personnel rules under Government Code section 18900 et seq.


Government Code section 31100 et seq., the “County Civil Service Enabling Law,” was enacted “to enable any county to adopt such a limited civil service system as is adaptable to its size and type.” (Gov. Code, § 31102.) This part of the code is not intended to limit the power of counties and merely allows them to adopt civil service systems. (Id., § 31101; see also Holmgren v. County of Los Angeles (2008) 159 Cal.App.4th 593, 602 [“the County has plenary authority to determine who is a civil service employee and who is not”].) The County of San Diego has adopted civil service rules, but these rules do not appear to apply to SANDAG, which is an independent special district separate from the county. (See Pub. Util. Code, § 132355.4, subd. (b) [“For purposes of the wage orders of the Industrial Welfare Commission, the consolidated agency [SANDAG] shall be considered a special district”].)

4. SANDAG’s Enabling Legislation (Public Utilities Code § 132000 et seq.)

We next turn to SANDAG’s enabling legislation to determine whether anything in the Legislature’s grant of statutory authority to SANDAG subjected it to civil service rules.

The San Diego Regional Transportation Commission Act, which designated SANDAG as the Regional Transportation Commission, provided that SANDAG “may make contracts and enter into stipulations of any nature whatsoever, including, but not limited to, contracts and stipulations to indemnify and hold harmless, to employ labor, and to do all acts necessary and convenient for the full exercise of the powers granted in this chapter.” (Pub. Util. Code, § 132203 [emphasis added].)

28 The OIPA does not appear to dispute this point, based on the Final Audit it issued on August 26, 2020. (See supra, note 7.)

29 It appears that the OIPA does not dispute this conclusion based on its Final Report. (See supra note 20.)
Similarly, the San Diego Regional Transportation Consolidation Act, which consolidated transit planning, programming, project development, and construction into SANDAG as the consolidated regional agency, provided that the consolidated agency shall have an may exercise all rights and powers, expressed or implied, that are necessary to carry out the purposes of this chapter, including, but not limited to, the power to do all of 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.

(Pub. Util. Code, § 132354, subds. (f-g), (j), (o) [emphasis added]; see also id., § 132353.1 [providing that SANDAG “shall be consolidated into a public agency known as the consolidated agency”]; id., § 132350.2 [defining consolidated agency]; id., § 132351.3 [providing that the “consolidated agency is the successor agency to the San Diego Association of Governments (SANDAG) and those entities set forth in Article 4”].)

Section 132355, in turn, provides that the “[a]dministrative 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” and that 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.” (Pub. Util. Code, § 132355.)

The only limitation on SANDAG’s authority in hiring employees appears in section 132355.2, and provides that “[o]n the effective date of succession of the consolidated agency … [r]egular employees of the consolidated entities shall be deemed qualified, and no other qualifications shall be required for employment or retention by the consolidated agency.” (Pub. Util. Code, § 132355.2, subd. (b)(1).)
The broad grant of authority in these enabling statutes without any mention of subjecting SANDAG to civil service rules demonstrates that the Legislature did not intend to subject SANDAG to the state civil service regime when it passed these laws.

Indeed, when the Legislature has made civil service rules applicable to special districts in the Public Utilities Code, it has been very explicit in doing so. For example, in the Public Utility District Act (Pub. Util. Code, § 15501 et seq.), which governs public utility districts (see id., § 15503 [defining “District”]), the Legislature provided that the boards of such districts “shall make rules to effect a civil service system, and for examinations, appointments, promotions, and removals, and from time to time may make changes in existing rules.” (Id., § 16194; see also id., §§ 16195 [describing civil service examination requirements] 16196 [identifying exempt employees]; 16193 [requiring the classification of all places of employment under public utility districts as the classified civil service and providing that all appointments to the civil service must be made according to the rules set forth in this article].) By similar token, the Municipal Utility District Act (Pub. Util. Code, § 11501 et seq.), which governs certain districts formed under that Act and special districts for sewage disposal or solid waste resource recovery purposes (id., § 11503), the Legislature provided that the general manager of such districts “shall adopt a civil service system for the selection, examination, employment, classification, advancement, suspension, and discharge of employees included in the ‘district civil service.’” (Id., § 12051.)

Although it does not squarely address the applicability of civil service rules to districts like SANDAG, the Court of Appeal’s decision in *Lucas v. Santa Maria Public Airport District* (1995) 39 Cal.App.4th 1017, is instructive as to the broad authority SANDAG has under the Public Utilities Code with respect to recruiting, hiring, promoting, and terminating employees. In *Lucas*, a taxpayer filed suit against an airport district, created under the Public Utilities Code as a special assessment district, on the grounds that the district improperly entered into an employment contract for a term of years with its general manager. (See id. at pp. 1021-1022.) The Public Utilities Code gave the district the power to “[m]ake contracts, employ labor, and do all acts necessary or convenient for the full exercise of any of the powers of the district,” provided that these powers “shall be exercised by the board,” and that the “board shall appoint a general manager … [who] shall serve at the pleasure of the board” and whose compensation is fixed by the board. (Id. at p. 1023 [quoting Pub. Util. Code, §§ 22554, subd. (d), 22551, and 22437].) The district’s administrative code also provided that the general manager “shall serve at its pleasure.” (Ibid. [quoting Article, VI, § 1 of the District’s Administrative Code].) The district hired a general manager for an initial term of 32 months that would be extended for two years unless, after completion of an evaluation process, the district gave the general manager written notice of its decision not to extend the contract. (Ibid.) The taxpayer contended that “neither the Public Utilities Code nor the District’s Administrative Code permits the District to employ a general manager for a term of years” and that the district “violated law and committed waste by passing the resolution” authorizing the employment. (Id. at p. 1023.)
The Court of Appeal rejected this argument, explaining that “[a]s a matter of law, the provisions of the instant contract do not violate any applicable statutes or administrative regulations.” (Lucas, supra, 39 Cal.App.4th at p. 1024.) The court explained that the district had “the specific power to enter into a contract with its general manager of any length pursuant to Public Utilities Code sections 22437, 22551 and 22554, provided the District can terminate the contract at any time at its sole discretion.” (Ibid.) The court further noted that the contract could be terminated “any time for any reason the board determines in its discretion to be just” and “[t]he board’s determination of what is ‘just’ is itself discretionary and no ‘good cause’ or panoply of due process hearing rights is required by the instant contract.” (Id. at p. 1025.) Moreover, the Court of Appeal explained, because there was “no employee handbook or manual here which extends to [the general manager] any right to termination for cause,” the taxpayer plaintiff could not show that the contract provided the general manager “with any entitlement to continued employment.” (Ibid.) Accordingly, SANDAG’s enabling legislation strongly suggests that the state civil service personnel rules do not apply to SANDAG.

5. SANDAG’s Internal Policies

Finally, although SANDAG’s internal policies aspire to civil service personnel rules as a general policy, these policies are subject to numerous exceptions that appear to apply here.

SANDAG’s bylaws provide that the “Executive Director is hereby enabled to promulgate an employee manual, as well as all other administrative procedures of SANDAG.” (SANDAG Bylaws, Article V, § 4(d).) By similar token, Board Policy No. 17 provides that 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 administrative manuals, policies, and procedures.” (SANDAG Board Policy No. 17, § 5.)

SANDAG’s Employee Handbook, in turn, gives the organization substantial authority over hiring. The Handbook provides that “[t]he Executive Director, or his/her designee, is authorized to fill vacancies with qualified persons.” (SANDAG Employee Handbook, § 3.1.) Section 3.2 provides that 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.” (SANDAG Employee Handbook, § 3.2.) However, the Handbook further provides that “[v]acancies for Regular employee positions shall be filled via competitive recruitment processes” except for:

- “[w]hen the Executive Director, or his/her designee, determines that it is in the best interest of SANDAG to promote an existing SANDAG employee”;
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- “[w]hen 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”;

- “[w]hen a vacancy occurs and a qualified candidate is on one of the SANDAG recruitment lists, the candidate may be selected in accordance with Section 3.13”;

- “[w]hen an entity provides funding to SANDAG and such funding is conditioned upon, or the continuity of the work is dependent upon, a particular individual continuing to perform the work supported by that funding”; or

- “[w]hen a government entity is downsizing and a particular highly-qualified individual is subject to lay off by that entity, the Executive Director, or his/her designee, may appoint such an individual if the candidate is qualified for an open position at SANDAG.”

(SANDAG Employee Handbook, § 3.3.1-3.3.5.)

According to Management, the appointments that the OIPA takes issue with in the Draft Audit all fall within these exceptions. (See Management Response at pp. 34-35.) Assuming that is the case, then the Draft Audit appears to be incorrect in its assertion that SANDAG has violated civil service rules.

Nevertheless, the Final Audit released on August 26, 2020 asserts that “management’s changes to Board policies and direction related to hiring practices, within the Employee Handbook, were not Board approved” and thus cannot supersede the civil service obligations in SANDAG’s earlier “Administrative Rules and Regulations.” (See OIPA Final Audit at p. 137 [Comments 7 and 9 to Management Response]; id. at pp. 27-30; id. at p. 75.)

Both the Draft Audit and the Final Audit attached excerpts of these Administrative Rules and Regulations as Appendix A, but neither provided a complete copy. On August 28, 2020, we were provided copies of SANDAG’s Administrative Rules and Regulations from May 1995, July 2003, October 2003, February 2004, and November 2005. In light of this timing, the issue of whether the Employee Handbook supersedes these previous Administrative Rules and Regulations is beyond the scope of this opinion. However, we do note that the Administrative Rules and Regulations from 1995 pre-dated the Legislature’s creation, through SB 1703, of the consolidated agency that we now refer to as SANDAG. Moreover, SANDAG’s Bylaws do not refer to this document and empower the “Executive Director … to promulgate an employee manual, as well as all other administrative policies governing the administrative procedures of SANDAG.” (SANDAG Bylaws, § 4(d); see also Pub. Util. Code, § 132355 [vesting administrative authority over SANDAG in the office of the executive director, subject to the direction and policies of the

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30 The Handbook also empowers the Executive Director or his/her designee to approve “Limited-Term or TIPS positions without using the standard SANDAG competitive recruitment process.” (SANDAG Employee Handbook, § 3.4.)
agency as approved by the board, and empowering the executive director to “appoint employees as may be necessary to carry out the functions of the consolidated agency”.

In any event, here are what we perceive to be the salient differences regarding competitive hiring in the versions of the Administrative Rules and Regulations we have been provided:

- The May 1995 Administrative Rules and Regulations do not have any specific exceptions to the competitive hiring system, but they do permit the Executive Director to make a temporary employee who previously participated in open and competitive recruiting process a full-time employee (§ 1.6(p)) or offer a candidate who meets requirements of an available position within a reasonable time after an unsuccessful recruitment of that position using proper procedures (§ 3.7). And they provide that “[p]romotion is open to any employee who meets the qualifications for the higher position that is open” (§ 7.6).

- The July 2003 Administrative Rules and Regulations do not have any specific exceptions to the competitive hiring system, but they do give the Executive Director the “power to vary or modify the strict application of the provisions of these Rules to avoid injustice or when it is in the best interest of SANDAG” (§ 1.5).

- The February 2004 Administrative Rules and Regulations do not have any specific exceptions to the competitive hiring system, but they also give the Executive Director the “power to vary or modify the strict application of the provisions of these Rules to avoid injustice or when it is in the best interest of SANDAG” (§ 1.5).

- The November 2005 Administrative Rules and Regulations give the Executive Director the “power to vary or modify the strict application of the provisions of these Rules to avoid injustice or when it is in the best interest of SANDAG” if it is done in writing and signed by the Executive Director (§ 1.5) and set fourth five specific exceptions from the competitive hiring system:
  - “If the Executive Director believes a position will be vacant for a period of less than 24 months, the Executive Director may hire a person known to be qualified for that short-term need as a limited-term employee, TIPS employee, or Contract employee, without utilizing SANDAG’s standard competitive recruitment requirements” (§ 3.4.1);
  - “During any Consolidation, job openings at SANDAG may be filled in one of three ways: (1) by the traditional competitive method of filling vacancies described above, which is open to the public; (2) by transfer or promotion of a qualified SANDAG, MTDB, or NCTD employee; or (3) by opening the competition for a position solely to existing qualified SANDAG, MTDB, and/or NCTD employees” (§ 3.4.2);
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- “When the Executive Director determines that it is in SANDAG’s best interest to promote an existing SANDAG employee” (§ 3.4.3 [emphasis added]);

- “When a vacancy occurs and a qualified candidate is on one of SANDAG’s recruitment lists, the candidate may be selected in accordance with Section 3.8” (§ 3.4.4); and

- “When an entity provides funding to SANDAG and such funding is conditioned upon, or the continuity of the work is dependent upon, a particular individual continuing to perform the work supported by that funding” (§ 3.4.5).

Accordingly, since 2003, the Administrative Rules and Regulations have had an exception that allows the Executive Director to deviate from strict application of the rules if it is in the best interests of SANDAG and since November 2005, the Administrative Rules and Regulations have had a specific exception to the competitive hiring requirements when the Executive Director determines that it is in SANDAG’s best interest to promote an existing SANDAG employee. (See also Management Response at p. 12 & Attachment K, §§ 3.4.1-3.4.5.)

* * *

In sum, we conclude that SANDAG is not subject to any state, federal, or county requirement to follow civil service personnel rules, and that SANDAG’s current internal policies, while embracing merit recruitment and promotion as a general policy, have several exceptions that appear to apply here. SANDAG’s prior Administrative Rules and Regulations from 2003 onward appear to allow deviating from competitive hiring practices when the Executive Director determines it is in the best interest of the organization. But we would need more time and information to determine whether the 1995 Administrative Rules and Regulations—which do not contain a similar exception—have any continuing effect and whether the current Employee Handbook is “invalid,” as claimed by the Auditor.

31 This exception is substantially similar to the exception set forth in section 3.3.1 of the current Employee Handbook.

32 As we note above, whether the 1995 Administrative Rules and Regulations have any continuing vitality is beyond the scope of this opinion given the timing of the assertion that the current Employee Handbook is invalid.
C. ISSUE THREE: Are the severance payments made to former top-level managers who resigned from SANDAG an invalid gift of public funds under California law?\textsuperscript{33}

Determining whether the severance agreements discussed in the OIPA Draft Audit amount to unlawful gifts of public funds requires answering three sub-questions:

1. First, does the California Constitution’s prohibition against gifts of public funds apply to a regional public agency like SANDAG?

2. Second, if so, did the basis for the payments serve a valid public purpose?

3. Third, even if the basis for the payments served a valid public purpose, did the amount of the payments comply with the law?

The analysis that follows addresses these questions in the foregoing order.

It should be noted that Sandra L. McDonough, outside counsel for SANDAG, provided a memorandum that describes the facts and circumstances surrounding each severance agreement. We received the memorandum on Saturday, August 29, 2020, and our opinion is premised in part on the information provided.

In sum, we conclude that it is unlikely any of the severance payments at issue would be found to constitute an unconstitutional gift of public funds.

1. Does the California Constitution’s prohibition against gifts of public funds apply to SANDAG?

We conclude that the Constitution’s prohibition against gifts of public funds does apply to SANDAG.

The California Constitution prohibits public agencies from making a gift of public funds. It states, in relevant part, that the “Legislature shall have no power . . . to make any gift or authorize the making of any gift, of any public money or thing of value to any individual, municipal or other corporation[.]” (Cal. Const., art. XVI, § 6.) In its Response to the Draft Audit, SANDAG Management asserted that the California Constitution’s prohibition on the gift of public funds only prohibits the Legislature from making or authorizing a gift of public funds, and therefore “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

\textsuperscript{33} The Final Audit issued on August 26, 2020 by the OIPA does not appear to deviate materially from the Draft Audit on this issue. (Compare, e.g., OIPA Draft Audit at pp. 3, 25-27, with OIPA Final Audit at pp. 3, 36-37.)
in SANDAG to make and enter into contracts, set compensation and the like.” (Management Response to OIPA Draft Audit, at p. 13, fn. 30 [citing Social Workers Union Local 535 v. Los Angeles County (1969) 270 Cal.App.2d 65].)

To be sure, the case upon which Management relied—Social Workers Union Local 535, supra, 270 Cal.App.2d 65—made clear that under home rule principles, article VI’s prohibition on gifts of public funds limits only the power of the Legislature itself and those powers of local government delegated to it by the Legislature, not charter powers which are constitutional in origin. (See Social Workers Union Local 535, supra, 270 Cal.App.2d at p. 78, citing Tevis v. City and County of San Francisco (1954) 43 Cal.2d 190.) Thus, the California courts have held that Los Angeles County’s bonus ordinance and the City and County of San Francisco’s vacation pay to discharged employees were not subject to California’s gift of public funds restrictions because they were authorized by each public agency’s individual charter powers and not the Legislature. (See Social Workers Union Local 535, supra, at p. 78; Tevis, supra, at p. 197.)

Here, by contrast, we are not aware of any constitutional basis, embodied in a charter, granting SANDAG the ability to enter into contracts or execute Separation Agreements. On the contrary, SANDAG’s authority with respect to these issues flows from the statutory delegations in the San Diego County Regional Transportation Commission Act and the San Diego Regional Transportation Consolidation Act. (See Pub. Util. Code, § 132203 [granting the power to “make contracts and enter into stipulations of any nature whatsoever, including, but not limited to, contracts and stipulations to indemnify and hold harmless, to employ labor, and to do all acts necessary and convenient for the full exercise of the powers granted in this chapter”]; id., § 132354 [granting the power to “appoint necessary employees,” to “enter into and perform all necessary contracts,” and to “fix the compensation of its officers, board members, and employees”].) Because the Legislature explicitly gave SANDAG this power through these statutory enactments, we believe it is subject to the article XVI prohibition on gifts of public funds. (See Golden Gate Bridge etc. Dist. v. Luehring (1970) 4 Cal.App.3d 204, 209 [applying constitutional prohibition against gifts of public funds to the Golden Gate Bridge and Highway District and citing authorities applying it to water agencies and a sanitary district]; 75 Ops. Cal. Atty. Gen. 20 (1992), 1992 WL 469699, at p. *3 [applying constitutional prohibition on gifts of public funds to local hospital district after explaining that “[t]he statutory grant of authority to local hospital districts contained in the District Law must be read against this constitutional prohibition”].) As such, we must evaluate the purpose and amount of money expended on the severance payments.

2. Whether the Severance Payments Were for a Valid Public Purpose

The California Supreme Court has stated that an expenditure from a public agency is not a “gift” within the meaning of the constitutional prohibition if it receives adequate consideration in exchange for the funds expended. (City of Oakland v. Garrison (1924) 194 Cal. 298, 302; see also

34 If the Audit Committee is aware of any such charter, we would need to revisit our analysis for this sub-question.
Sturgeon v. County of Los Angeles (2008) 167 Cal.App.4th 630, 637–638, superseded by statute on other grounds as stated in Sturgeon v. County of Los Angeles (2015) 242 Cal.App.4th 1437. If the funds are used for a public purpose within the jurisdiction of the appropriating body, it is generally not regarded as a gift. (City of Oakland, supra, at p. 302.)

California courts have generally agreed that the settlement of a good faith dispute between a public agency and a private party, such as an employee or contractor, is an appropriate use of public funds because “the relinquishment of a colorable legal claim in return for settlement funds is good consideration and establishes a valid public purpose.” (See Jordan v. California Dept. of Motor Vehicles (2002) 100 Cal.App.4th 431, 450, citing Orange County Foundation for Preservation of Public Property v. Irvine Co. (1983) 139 Cal.App.3d 195, 200; Page v. Mira Costa Community College Dist. (2009) 180 Cal.App.4th 471.) In contrast, the settlement of a “wholly invalid claim … is inadequate consideration and the expenditure of public funds for such a claim serves no public purpose and violates the gift clause.” (Jordan, supra, at p. 450.) As such, whether or not the severance payments made to former top-level managers who resigned from SANDAG are “invalid gifts of public funds” rests on whether the former employees relinquished “wholly invalid” or colorable legal claims against SANDAG as part of their separation agreements.

The OIPA appears to conclude that unless there was an actual claim against SANDAG by an employee, then a severance payment made to a departing employee would constitute a gift of public funds.35 We disagree with this contention and believe that facts and circumstances assessed in good faith to constitute the real possibility of a colorable claim against SANDAG would likely suffice. To be sure, although a formal claim is not required for there to be a good faith risk of litigation that justifies the use of public funds in a settlement, it would be easier to determine if SANDAG could assess whether the claims were colorable or “wholly invalid” prior to executing the separation agreements if there were formal claims, or if the nature of these claims were disclosed in the separation agreements for each former employee. The separation agreements for each former Director do not specify what specific claims they had against SANDAG, and there is no indication of any claims filed against SANDAG under the Government Claims Act.36

Page v. Mira Costa Community College Dist., supra, 180 Cal.App.4th 471, a case where a local taxpayer challenged Mira Costa Community College District’s $1.6 million payment to its President in exchange for her resignation and release of all claims against it as an invalid gift of public funds without there being a formal assertion of any tort claims, is informative. There, the

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35 (See OIPA Final Audit at p. 37 [“[M]anagement did not provide evidence that employees had filed claims against SANDAG, therefore there is no basis for the amounts paid to employees”].)

36 It should be noted that in our view, severance agreements are often made when an employee agrees to resign in lieu of being terminated. These agreements often do not recite the reasons for the employee being subject to termination because the departing employee does not want to create such a record which could negatively impact future employment.
district argued that its former president had a colorable claim even though she had not filed a
formal claim based on the fact that they had “engaged in an 11 to 12 hour mediation session” and
the mediator’s testimony that the “‘fair settlement value’ of the case was far in excess of $2
million.” (Id. at p. 494-495.) Yet, the Court of Appeal reversed the trial court’s summary
judgment in the district’s favor on this issue and remanded for trial because “a trier of fact could
question whether the District had sufficient information to make a thorough investigation of the
merit of [the former president’s] claims.” (Id. at p. 497.) Based on Page, in a litigation dispute
regarding claims of invalid gifts of public funds, a jury would need to look at the specific
circumstances leading up to the separation agreement to determine whether a good faith, colorable
legal claim existed against the public agency in the absence of a formally filed claim. (See ibid.)
As such, it is very important that any notes or reports regarding the identification of “legitimate
litigation and risks concerns” by counsel for SANDAG (see Management Response at p. 13) are
kept to prove the existence of potentially colorable claims that were released in exchange for public
funds.37

The OIPA Draft Audit suggested that the three directors who left SANDAG in Summer 2019
“were not entitled to [severance payments] because they voluntarily resigned from SANDAG” and
that “[s]everance payments should be granted to employees only when the employer discharges or
removes the employee without cause.” (OIPA Draft Audit at p. 3; see also OIPA Final Audit at
p. 3 [substantially similar statement].) However, Management had selected these three directors
for termination as part of a reorganization of SANDAG’s management team after an assessment
of their performance and competence in the roles. (See Executive Severance Payments Memo at
pp. 1-2.) Further, these directors, as a result of Management’s suggestion, agreed to voluntarily
resign and receive severance payments in exchange for releasing potential claims in lieu of
termination. (Ibid.)

We have reviewed the information provided on August 29 by outside counsel Sandra McDonough.
The circumstances revolving around each separation shed light on the potential claims they may
have had against SANDAG.

Three of the employees were subject to termination in the context of SANDAG’s reorganization.
Each of these employees had property rights in continued employment, such that each could only
be dismissed for “just cause” and each had the right to appeal their termination through a full
evidentiary hearing before the Board of Directors pursuant to the Employee Handbook. (See
SANDAG Employee Handbook, § 8.2.) The Employee Handbook also provides for layoffs “[i]f
it becomes necessary through lack of work, lack of funds, or for any other legitimate business
reasons…” (SANDAG Employee Handbook, § 12.3.)

The information provided by Ms. McDonough describes legitimate assessments of legal risk
related to each of the layoffs. One employee retained an attorney, who sent a demand letter. One
older employee was replaced by younger staff creating the risk of alleged age discrimination. Some were viewed as being poor performers, but there was a lack of documentation demonstrating this concern. There was an assessed risk that arguably discharging an employee for cause through a layoff procedure could give rise to colorable claims.

Based on the information provided by Ms. McDonough, there appear to be legitimate reasons for entering into the severance agreements, and it is unlikely these agreements would be found to constitute a gift of public funds. However, these are fact-based inquiries which depend on a full evaluation of all documentation and other evidence. The maintenance of direct documentation highlighting the basis for the separations and perceived legal risks, including the demand letter, is critical in ensuring success during any litigation challenging the payments.

As for the fourth employee, the record suggests that SANDAG’s “Counsel was of the opinion that factors existed upon which the [employee] could have based a claim for constructive discharge or workplace injury.” According to Ms. McDonough, the employee had informed SANDAG of a chronic health condition that had worsened due to SANDAG’s stressful work environment. The employee specifically declined to execute a release related to her separation. The circumstances described by Ms. McDonough support a conclusion that this separation could pose legal risks for SANDAG, and that the employee would have colorable claims. Again, it is critical to maintain good documentation surrounding the separation.

Overall, the unique circumstances of the resignation of the former SANDAG employees and their severance payments will dictate whether or not the severance payments were “invalid gifts of public funds.” Based on the information provided to us by Ms. McDonough, we think it is likely that the severance payments would be considered a proper use of public funds to release those claims.\footnote{38}

\section{The Amount of the Severance Payments Cannot Exceed SANDAG’s Maximum Legal Exposure and California’s Statutory Limits}

In order for the use of public funds to settle a colorable claim to be not considered a gift, the expenditure amount must not exceed certain limits. The payment of the settlement of a claim that exceeds the maximum legal exposure to the public agency is akin to payment of a wholly invalid claim and violates the gift clause. (\textit{Orange County Foundation, supra}, 139 Cal.App.3d at pp. 200–201; \textit{Jordan, supra}, 100 Cal.App.4th at pp. 450–451.) Further, the settlement amount must not exceed the amount permitted by California’s restriction on the amount an employee may receive

\footnote{38 It must be noted that a “colorable” claim does not mean that the claim will \textit{necessarily} impose liability on SANDAG. “Colorable” simply means that there is a good faith basis for the separated employee to make some sort of legal claim, thereby creating an exposure to SANDAG. We note that severance agreements similar to those at issue here are often made in the context of forced separations—which generally entail inherent legal risk in California.}
upon termination outlined in Government Code sections 53260 and 53261. Specifically, the law restricts the maximum cash settlement to an amount equal to the monthly salary of the employee multiplied by the number of month lefts on the unexpired term of the individual’s employment contract, but not to exceed 18 months’ compensation. (Gov. Code, § 53260; Gov. Code, § 53621.) The law also mandates that such a settlement may not include any other noncash items, except health benefits. (Gov. Code, § 53621.)

The validity of the settlement amount paid to the former SANDAG employees will be based on the specific severance payment made to each employee. The OIPA Draft Audit indicates that that SANDAG paid nearly $400,000 in severance payments to the four former employees. (See OIPA Draft Audit at p. 30.) These payments consisted of a $60,002.90 severance payment to an employee equating to 3 months of her annual salary, a $70,002.12 severance payment to an employee equating to 5 months of his annual salary, a $226,510.74 severance payment to an employee equating to 12 months of her annual salary, and a $53,955.28 severance payment to an employee equating to 3.5 months of his annual salary. (See ibid; see also Executive Severance Payments Memo.) Because these employees did not have a specific amount of time remaining on their employment periods, these severance payments to the directors all equating to less than 18 months of their annual salaries clearly comply with the statutory limits outlined in Government Code sections 53620 and 53621 as long as the amounts do not exceed SANDAG’s maximum legal exposure to each employee’s claims.

Factors such as expected attorney’s fees and potential damages awarded to the former employee are considered when determining maximum legal exposure. (See Page, supra, 180 Cal.App.4th at p. 496.) Ms. McDonough identified the cost of SANDAG’s legal exposure, considering each employee’s ability to bring an internal administrative proceeding and a claim under the Fair Employment and Housing Act. (See Executive Severance Payments Memo at pp. 2-3.) According to her analysis, the approximate legal fees for defending an internal administrative proceeding and writ proceeding would range from $75,000 to $100,000, and the defense of government tort claims (including economic damages, non-economic damages, and attorney’s fees) would total over $1,000,000 in legal fees or a minimum of $200,000 if SANDAG prevailed on summary judgement. Considering these approximate legal fees and the employees’ ability to bring an internal appeal for their “just cause” termination, high salaries, long tenure of employment at SANDAG, and potential FEHA claims, the $400,000 paid in severance payments appear reasonable based on the costs of legal exposure that would arise from their claims against SANDAG.

*   *   *

In sum, the severance payments made to former top-level managers at SANDAG upon their resignation will likely not be considered “invalid gifts of public funds” as long as the payments were used for a public purpose in the form of settling colorable claims against SANDAG that are not “wholly invalid.” SANDAG’s counsel has identified and documented the various potential claims that each former employee had prior to their resignation in a memo, and the facts described
would likely persuade a reasonable jury that colorable claims existed prior to the separation agreements. However, again, in the absence of formally filed claims, it is very important that counsel for SANDAG keep track of any notes, letters, reports or other documents related to the separations. In addition, the amounts paid pursuant to severance agreements look to be appropriate based on a comparison of the employees’ annual salary with their individual severance payments, as well as an analysis of the potential legal fees associated with each employee’s possible claims—estimated to be approximately $200,000 at a minimum and which could total over $1,000,000.

VI. Summary and Recommendations

Our conclusions can be summarized as follows:

- **First,** neither SANDAG, the OIPA, the Audit Committee, nor SANDAG’s Board is under a 12-month constraint in voiding any allegedly improper appointments, promotions, titles, salaries, or benefits for the contracts identified in the OIPA’s Draft Audit.

- **Second,** SANDAG is not subject to civil personnel rules under state, federal, or county laws, regulations or case law precedent. Although SANDAG’s Employee Handbook does maintain a general policy of abiding by a merit-based recruitment system, the Handbook has many exceptions to that system that appear to apply here. SANDAG’s prior Administrative Rules and Regulations from 2003 onward appear to allow deviating from competitive hiring practices when the Executive Director determines it is in the best interest of the organization. But we would need more time and information to determine whether the 1995 Administrative Rules and Regulations—which do not contain a similar exception—have any continuing effect and whether the current Employee Handbook is “invalid,” as claimed by the Auditor.

- **Third,** whether or not the severance payments made to former top-level managers at SANDAG upon their resignation are considered “invalid gifts of public funds” depends on the specific circumstances of each employee leading up to his or her resignation. If the former employees had good faith, colorable claims against SANDAG, the severance payments were used to secure a release of these claims, and the severance payments did not exceed SANDAG’s maximum legal exposure or 18 months of the employee’s annual salary (or the number of months left on the unexpired term of the employee’s contract, whichever is less), then the expenditures would be considered a use of public funds for a public purpose and not “gifts.” Based on our review of the facts in Ms. McDonough’s memo detailing the potential claims each resigned employee had against SANDAG and analyzing SANDAG’s potential legal exposure pertaining to those claims, we conclude that the severance payments made to the former employees were likely a proper use of public funds. However, these are fact-based inquiries which depend on a full evaluation of all documentation and other evidence. The maintenance of direct documentation
highlighting the basis for the separations and perceived legal risks, including the demand letter, is critical in ensuring success during any litigation challenging the payments.
Memorandum

To: SANDAG Audit Committee  
    Hon. Bill Baber, Audit Committee Chair  
    Hon. Bill Wells, Audit Committee Vice-Chair  
    Paul Dostart, Public Member  
    Stewart Halpern, Public Member  
    Robert Monson, Public Member  

From: Arthur A. Hartinger  
      Ryan McGinley-Stempel  
      Anujan Jeevaprakash  

Date: September 10, 2020  

Re: Additional Question Regarding the Final Audit of the Office of the Independent Performance Auditor  

I. INTRODUCTION

The SANDAG Audit Committee recently retained Renne Public Law Group (“RPLG”) to answer, initially, three questions related to an audit report issued by the Office of the Independent Performance Auditor (“OIPA”). It was impressed upon RPLG to render objective answers to the questions, without exhibiting favoritism on behalf of anyone involved. After we submitted our analysis, we were asked to address two additional questions regarding the delegation of authority from the SANDAG Board of Directors to its Executive Director.

II. QUESTIONS

We have been asked to assume that SANDAG’s (1) bylaws, polices, and Administrative Rules and Regulations, (2) Employee Handbook, and (3) Employment Contract of Hasan Ikhrata were adopted by the Board of Directors with the requisite corporate formalities (i.e., formal resolution, board consideration, and adoption of such resolution by majority vote of the Board of Directors). In the context of these assumptions, we have been asked to answer:

1. Has the SANDAG Board of Directors unlawfully delegated or abdicated its obligations under law to the Executive Director?

   and correspondingly,
2. Has the Executive Director unlawfully usurped or appropriated the authority of the SANDAG Board of Directors?

III. EXECUTIVE SUMMARY

First, we conclude that based on the facts and assumptions presented to us, the SANDAG Board has not unlawfully delegated its obligations with respect to employment-related actions to the Executive Director. The Legislature has given SANDAG’s Board broad authority to delegate executive, administrative, and ministerial duties to the office of the Executive Director and has also given the Executive Director express authority regarding appointments of employees. Despite this broad grant of authority, the OIPA repeatedly contends in its Final Audit that SANDAG’s “Board cannot delegate its responsibility to govern the agency to management.” (Final Audit at p. 33.) This appears to conflate the formulation of policy—which is not delegable—with its implementation—which is delegable so long as it is guided by standards and has adequate safeguards. And here, assuming that the Employee Handbook was properly approved by the Board, it appears that the Board has not delegated fundamental policy to the Executive Director. Rather, the Board has delegated implementation of employment policy and has provided adequate standards to assist the Executive Director in implementing that policy. It is a relatively close question whether adequate safeguards were in place to ensure the implementation of that policy did not deviate from the Board’s wishes, but on balance, we conclude that adequate safeguards are present here such that the Board did not unlawfully delegate its authority with respect to employment actions to the Executive Director.

Second, we are generally of the opinion that the Executive Director likely did not unlawfully usurp or appropriate the Board’s authority, but more information regarding whether he reported the severance payments to the Board and whether the Board ultimately ratified his actions is necessary to reach a conclusion on this issue. Because we were asked to assume that the Employment Handbook was adopted by the Board with all of the appropriate formalities, then it would appear that the Executive Director has not usurped the Board’s authority through his promulgation and administration of the Handbook. There is a factual question as to whether the Executive Director complied with the requirements in the Board’s Bylaws and Policy No. 017 to report the agreements that were the basis for the severance payments made to employees who resigned. If he failed to report these agreements timely, then he may have usurped the Board’s authority as to this issue. But if the Board ultimately ratified these and other actions taken by the Executive Director, then they are arguably valid as actions by the Board, regardless of whether they were properly delegated in the first place.

IV. BACKGROUND

The Legislature has expressly permitted the SANDAG Board of Directors to delegate “all executive, administrative, and ministerial power” to its Executive Director. Public Utilities Code section 132351.1 provides:
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 any and 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.

(Pub. Util. Code, § 132351.1, subd. (c) [emphasis added].)

Section 132355, in turn, provides 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. 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.

(Pub. Util. Code, § 132355 [emphasis added].) The Legislature also provided that the chapter that consolidated transit agencies into SANDAG “is necessary for the public health, safety, and welfare, and shall be liberally construed to carry out the objects and purposes of this chapter and the declared policy of the state as set forth in this chapter.” (Id., § 132354.2.)

The SANDAG bylaws provide that “[a]ll powers of SANDAG shall be exercised by the Board of Directors,” which “may choose to delegate several of its responsibilities from time to time in accordance with Board policy.” (SANDAG Bylaws, Article III, § 2(a).)

The SANDAG bylaws provide that the Board “shall appoint an Executive Director who shall hold office until he or she resigns or is removed by the Board of Directors,” who “shall be the chief executive officer of SANDAG,” and who “shall have charge of all projects and property of SANDAG.” (SANDAG Bylaws, Article V, § 4(a).) Under the bylaws, the “Executive Director will be responsible to the SANDAG Board of Directors as set out in the 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

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1 AB 805, which established the Office of the Independent Auditor and the Audit Committee, did not alter any of these provisions. (See generally Assem. Bill No. 805 (2017-2018 Reg. Sess.).)
of Directors; (5) execution of the adopted personnel, purchasing, and budgetary systems; and (6) development of a recommended administrative policy that includes a process to conduct staff performance evaluations on a regular basis to determine if the knowledge, skills, and abilities of staff members are sufficient to perform their respective functions, and which is brought to the Board for review on an annual basis. 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.

(SANDAG Bylaws, Article V, § 4(b).)

Under the bylaws, the “Executive Director is hereby enabled to promulgate an employee manual, as well as all other administrative policies governing the administrative procedures of SANDAG.” (SANDAG Bylaws, Article V, § 4(d).)

The bylaws also provide that:

Delegation of authority from the Board of Directors for final financial/contracting approvals, including selection of vendors, acceptance of funding, stipulations of any nature, and any resulting budget amendment to serve as a limitation applicable to a particular job or program (not to be exceeded on a serial basis), shall be as follows:

a. Up to $100,000 to the Executive Director, subject to increase by Board action, or as may be modified in Board Policy No. 017 concerning delegation of authority to the Executive Director.

....

e. The Executive Director … shall report approvals under this section to the Board of Directors at least quarterly.

(SANDAG Bylaws, Article VI, § 5 [emphasis added].)

Board Policy No. 017, entitled “Delegation of Authority,” is meant to “establish the authority granted by the Board of Directors to the Executive Director” and “provide[] the Executive Director with authority to delegate functions he or she has been delegated by the Board to SANDAG staff.” (SANDAG Board Policy No. 017.) Relevant here, this policy authorizes the Executive Director to “[e]nter 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” ² and requires the Executive Director to “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 administrative manuals, policies, and procedures.” (SANDAG Board Policy No. 017, §§ 4.1, 5.)

Pursuant to these delegations, the Executive Director has promulgated an Employment Handbook that we have been asked to assume was adopted by the SANDAG Board of Directors with the requisite corporate formalities. (See SANDAG Employee Handbook, §§ 2.2 & p. 206 [discussing delegation of authority and Board Policy No. 017].) The Executive Director’s employment contract (which we have also been asked to assume was adopted by the Board with the appropriate formalities) references this Employment Handbook in section 2.4, making clear that the Executive Director is subject to the “policies contained in Section 13 of the SANDAG Employee Handbook and any other applicable Employee Handbook provisions, but only to the extent the Employee Handbook provision does not conflict with an expressly agreed-upon term in” his employment contract. (Employment Contract of Hasan Ikhrata, § 2.4.)

The OIPA took issue with these delegations in its Final Audit, asserting that:

- SANDAG’s “Board cannot delegate its responsibility to govern the agency to management.” (Final Audit at pp. 27, 33.)³

- “OIPA found that the Board is empowered by the Legislature to set compensation, not management.” (Final Audit at p. 37.)⁴

- “[T]he creation of Board policies and direction is a responsibility of the Board, and that responsibility cannot be delegated to the Executive Director.” (Final Audit at p. 75.)⁵

- “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.” (Final Audit at p. 135 [Comment 1].)⁶

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² “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.” (SANDAG Board Policy No. 017, § 4.1.)

³ (See also https://www.sandag.org/uploads/meetingid/meetingid_5554_27973.pdf, at pp. 331, 337.)

⁴ (Id. at p. 341.)

⁵ (Id. at p. 379.)

⁶ (Id. at p. 401 [Comment 1].)
• “The Draft Audit Report was amended to … 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.” (Final Audit at p. 136 [Comment 4].)  

• “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.” (Final Audit at p. 136 [Comment 6].)

V. LEGAL ANALYSIS

We have been asked by SANDAG’s Audit Committee to determine (A) whether the SANDAG Board of Directors unlawfully delegated or abdicated its obligations under law to the Executive Director; and correspondingly, (B) whether the Executive Director unlawfully usurped the authority of the SANDAG Board of Directors.

A. ISSUE ONE: Has the SANDAG Board of Directors unlawfully delegated or abdicated its obligations under law to the Executive Director?

Answering this question requires evaluating both (1) the extent to which the Legislature has authorized the Board to delegate its authority to the Executive Director; and (2) the constitutionality of that delegation.

1. Whether the Legislature authorized the SANDAG Board to delegate its authority regarding employment matters to the Executive Director

“[U]nless a statute expressly allows them to do so, public agencies and officers may not surrender or delegate to subordinates any powers involving the exercise of judgment or discretion.” (City of Los Angeles v. Superior Court (2013) 56 Cal.4th 1086, 1094-1095.) “Under normal circumstances and absent statutory provisions to the contrary the dismissal of employees involves the exercise of judgment or discretion.” (California Sch. Employees Assn. v. Personnel Commission (1970) 3 Cal.3d 139, 144; see also Bagley v. City of Manhattan Beach (1976) 18 Cal.3d 22, 24 [concluding that the statutory duty of cities to fix compensation of all appointive officers and employees could not be delegated to arbitrators because “[w]hen the Legislature has made clear its intent that one public body or official is to exercise a specified discretionary power, the power is in the nature of a public trust and may not be exercised by others in the absence of statutory authorization”], emphasis added.)

Thus, in California School Employees Assn., supra, 3 Cal.3d 139, the California Supreme Court concluded that a school district’s governing board had improperly delegated authority to suspend,  

7 (Id. at p. 402 [Comment 4].)  
8 (Id. at p. 402 [Comment 6].)
demote, or dismiss employees to the district’s business manager as well as to the personnel director of the district and its personnel commission. (Id. at pp. 141-142, 143-145.) The “pertinent statutory provisions” for the district revealed that the Legislature had crafted an intricate merit-based civil service system for the district in which the “power to employ, suspend, demote and dismiss merit system classified employees [was] vested [solely] in the governing board of each district.” (Id. at p. 142.) One statutory provision required the “governing board” to “employ, pay, and otherwise control the services” of such employees. (Ibid., citing former Ed. Code, § 13703.) Another set of statutory provisions set limits on the board’s authority to suspend, demote or dismiss employees, provided an intricate process for the district’s personnel director to challenge the board’s decision with the personnel commission, and provided a mechanism for requiring the board to reinstate an employee whose appeal was upheld by the personnel commission. (Id. at pp. 142-143, citing former Ed. Code, §§ 13742, 13743, 13744, 13745.)

In the Court’s view, these statutory provisions “by necessary implication” established that “it is the function the governing board of each district to suspend, demote or dismiss employees, the function of the commission’s personnel director thereupon to file written charges, and the function of the personnel commission to review the board’s action on appeal.” (California School Employees Assn., supra, 3 Cal.3d at p. 143.) Moreover, the “Education Code [did] not expressly authorize a district’s governing board to delegate to subordinates the power to suspend, demote or dismiss employees.” (Id. at p. 145.)

By contrast, in Golightly v. Molina (2014) 229 Cal.App.4th 1501, the taxpayer plaintiffs asserted that the Government Code did not allow the Los Angeles County Board of Supervisors to delegate its authority with respect to social program agreements (SPAs) based on the absence of any express authorization in the disputed Government Code provision allowing boards of supervisors to enter into such agreements. (Id. at p. 1515.) The Court of Appeal rejected this argument, explaining that “nothing in [the Government Code provision at issue] prohibits a board of supervisors from delegating its contracting authority with respect to SPAs” and another Government Code provision permitting counties to exercise their powers “through agents and officers acting under authority of the board or authority conferred by law.” (Ibid.) Accordingly, the Court “conclude[d] the Government Code permits a board of supervisors to delegate its authority to enter into SPAs with recipient social service organizations.” (Ibid.)

Here, unlike in California School Employees Assn., and as detailed at length in our previous memorandum dated August 31, 2020, the Public Utilities Code does not impose a civil service system on SANDAG. Moreover, similar to the Government Code provisions in Golightly and unlike the Education Code provisions in California School Employees Assn., the relevant Public Utilities Code provisions here expressly grant the SANDAG Board of Directors broad authority to delegate executive, administrative, and ministerial powers to the Executive Director and expressly give the Executive Director the power to make appointments. Section 132351.1 permits the SANDAG Board of Directors to “delegate and redelegate” “the exercise of any and all executive, administrative, and ministerial power” to “any of the offices” created by SANDAG’s enabling
 legislation, including the office of the Executive Director. (See Pub. Util. Code, § 132351.1, subd. (c); id., § 132355 [providing for the creation of the office of the Executive Director].) Section 132354 sets forth SANDAG’s broad powers, which include the power to “appoint necessary employees,” to “define their qualifications and duties,” and to “enter into and perform all necessary contracts.” (Pub. Util. Code, § 132354, subsds. (f) & (g).) And section 132355 provides that “[a]dministrative 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” and that “[t]he 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.” (Pub. Util. Code, § 132355.)

Accordingly, the Legislature made the considered choice to give the Executive Director substantial authority over employment matters and has clearly authorized the SANDAG Board to delegate significant executive, administrative, and ministerial power regarding these matters to the office of the Executive Director.

2. Whether the Board’s delegation of authority violates the non-delegation doctrine

The issue is therefore whether the SANDAG Board’s exercise of this duly-granted statutory authority nonetheless violates the constitutional principles embodied in the non-delegation doctrine.

As the California Supreme Court has explained, the “doctrine prohibiting delegation of legislative power … is well established in California” and also “precludes delegation of the legislative powers of a city.” (Kugler v. Yocum (1968) 69 Cal.2d 371, 375.) The “purpose of the doctrine … is to assure that ‘truly fundamental issues will be resolved by the Legislature and that a grant of authority is accompanied by safeguards adequate to prevent its abuse.” (Id. at p. 376 [quotation marks and alterations omitted].)

Thus, numerous cases have held that while a “legislative body is constitutionally prohibited from delegating the formulation of legislative policy,” it may nevertheless “declare a policy, fix a primary standard, and authorize executive or administrative officers to prescribe subsidiary rules and regulations that implement the policy and standard and to determine the application of the policy or standard to the facts of particular cases.” (Birkenfeld v. City of Berkeley (1976) 17 Cal.3d 129, 167 [emphasis added]; see also, e.g., State Bd. of Education v. Honig (1993) 13 Cal.App.4th 720, 750 [“The Legislature may, after declaring a policy and fixing a primary standard, confer upon executive or administrative officers the ‘power to fill up the details’ by prescribing administrative rules and regulations to promote the purposes of the legislation and to carry it into effect”]; 45 Cal. Jur. 3d Municipalities § 329 [“while legislative or discretionary powers devolved by charter or law on the legislative body cannot be delegated to others, it is equally well established that ministerial or administrative functions may be delegated to subordinates or agents”].)
These cases recognize the principle that “delegation by legislative bodies is essential to the basic ability of government to function.” (Golightly, supra, 229 Cal.App.4th at p. 1515.) Thus, “[o]nly in the event of a total abdication of that power, through failure to either render basic policy decisions or to assure that they are implemented as made, will [a] court intrude on legislative enactment because it is an unlawful delegation.” (Gerawan Farming, Inc. v. Agricultural Labor Relations Bd. (2017) 3 Cal.5th 1118, 1146, quoting Kugler v. Yocum (1968) 69 Cal.2d 371, 384.)

The California Supreme Court has formulated this inquiry into two steps: “an unconstitutional delegation of authority occurs only when a legislative body (1) leaves the resolution of fundamental policy issues to others or (2) fails to provide adequate direction for the implementation of that policy.” (Gerawan, supra, 3 Cal.5th at p. 1146 [quotation marks and alterations omitted; emphasis added].)

Accordingly, we consider (a) whether SANDAG’s Board left the resolution of fundamental policy issues to the Executive Director or (b) whether the Board failed to provide adequate direction for the implementation of policy to the Executive Director.

a. Whether the Board has left the resolution of fundamental policy issues to the Executive Director

Delegating employment-related actions such as hiring, promoting, firing, and approving severance payments to the Executive Director does not leave fundamental policy issues to the Executive Director in light of the assumption that the Employment Handbook was adopted by the Board with the requisite corporate formalities and the fact that the SANDAG Board retained its budgeting authority.

In Golightly v. Molina, supra, 229 Cal.App.4th 1501, the taxpayer plaintiffs argued that the Los Angeles County Board of Supervisors had improperly delegated its power to the County CEO to enter into social program agreements (“SPAs”). (Id. at pp. 1509, 1515.) The Board had delegated authority to the County CEO (formerly the County’s chief administrative officer) to “execute such contracts and agreements as may be necessary to implement the social programs to be paid from funds appropriated in the Budget for discretionary use by the supervisors, when such programs are to meet the social needs of the population of the County, including but not limited to, the areas of health, law enforcement, public safety, rehabilitation, welfare, education and legal services, and the needs of physically, mentally and financially handicapped persons and aged persons.” (Id. at p. 1510.) The Court of Appeal rejected the plaintiffs’ delegation argument. After concluding that the Government Code authorized the delegation of authority by the Board, the court considered whether the authority delegated by the board left the resolution of fundamental policy issues to the County CEO. (See Golightly, supra, 229 Cal.App.4th at pp. 1515-1516.) The court concluded that it did not. Although “the approval of a county budget is a fundamental legislative function and the power and obligation to enact a county’s budget is vested by law in the board of supervisors,” the County CEO’s execution of contracts with social service providers using funds appropriated by the Board was not a policy decision but rather an implementation of a policy where
the “Board ha[d] retained its budgeting authority.”  (Id. at p. 1517, quoting Kugler, supra, 69 Cal.2d at pp. 379-380 [“fact that a third party, whether private or governmental, performs some role in the application and implementation of an established legislative scheme [does not] render the legislation invalid as an unlawful delegation”].)

In Rodriguez v. Solis (1991) 1 Cal.App.4th 495, the Court of Appeal held that the Fresno City Council properly delegated its authority to the City’s Director of Development to determine whether signs are “compatible with their surroundings” under a City zoning ordinance.  (Id. at p. 507.)  The plaintiffs argued that the delegation of authority was unlawful “because the Director has made the fundamental policy decision of banning all freestanding signs along Freeway 41” and “only the council has the authority to make that determination.”  (Ibid.)  The court rejected this argument, explaining that the “council set forth the purpose of [the ordinance] by requiring compatibility with surroundings before a sign permit could be approved in order to promote and protect the public health, safety and welfare” and that “the fundamental policy decision was, in fact, made by the council and the authority to implement the policy was entrusted to the Director.”  (Ibid.)

A long line of cases has permitted the delegation of authority over employment-related issues to administrative agencies, as well as private unelected mediators and arbitrators.  For example, in Hess Collection Winery v. Agricultural Labor Relations Board (2006) 140 Cal.App.4th 1585, 1604, the Court of Appeal recognized that the Legislature’s express declaration that “a need exists for a mediation procedure in order to ensure a more effective collective bargaining process between agricultural employers and agricultural employee” was a fundamental policy decision but that a regulation issued by the Agricultural Labor Relations Board outlining the specific factors the mediator and the Board would apply in arriving at a collective bargaining agreement (pertaining to the mediation procedure expressed by Legislature) was not a fundamental policy decision because “after declaration of the legislative goals and establishing a yardstick guiding the administrator, [the Legislature] may authorize the administrator to adopt rules and regulations to promote the purposes of the legislation and to carry it into effect.”  (Hess Collection of Winery, supra, at p. 1604.)  In Gerawan, supra, 3 Cal.5th 1118, the California Supreme Court reaffirmed Hess, upholding the Legislature’s delegation of authority to private mediators to arbitrate disputes arising in the context of negotiations over collective bargaining agreements regarding agricultural laborers.  (See id. at p. 1147.)

Similarly, in City of Los Angeles v. Superior Court, supra, 56 Cal.4th 1086, the Court concluded that compelling a city to arbitrate the validity of its furlough program under MOUs did not constitute an unlawful delegation to the arbitrator of two discretionary policymaking powers—salary setting and budget making—that the city’s charter vested in the city council.  (Id. at p. 1094.)  The Court explained that by “ratifying the MOUs” at issue, “the City made discretionary choices in the exercise of its salary-setting and budget-making authority.”  (Id. at p. 1095.)  Accordingly, “the arbitrator would not be exercising any such discretionary authority” by “deciding whether the furlough program violates the terms of the MOUs.”  (Ibid.)  Because “the arbitrator’s role [would]
be entirely adjudicative, not legislative,” it did “not constitute an improper delegation to the arbitrator of any of the City’s discretionary authority.” (Ibid.; see also Fire Fighters Union v. City of Vallejo (1974) 12 Cal.3d 608, 622 & fn. 13 [rejecting nondelegation challenge to a Vallejo city charter provision that permitted an arbitral board to resolve disputed terms of employment after considering “‘all factors relevant to the issues from the standpoint of both the employer and the employee, including the City’s financial condition’” so long as “the arbitrators do not proceed beyond the provisions of the Vallejo charter”].)

These decisions illustrate that “fundamental policy decisions” are the goals and standards outlined by the legislative body, and that the implementation of these outlined policies are not fundamental policy decisions and therefore can be appropriately delegated.

Here, the SANDAG Executive Director is given authority over various employment actions by statute, under Board Policy No. 017, and in the Employee Handbook.

As discussed above, the Executive Director has the power to appoint employees under the Public Utilities Code and may be delegated executive, administrative and ministerial powers by the Board. (See Pub. Util. Code, §§ 132351.1, subd. (c), 132355.)

Board Policy No. 017, in turn, requires the Executive Director to “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 administrative manuals, policies, and procedures.” (SANDAG Board Policy No. 017, § 5.)

To this end, the Employee Handbook states that the “Board of Directors has delegated responsibility and authority for administration of SANDAG to the Executive Director.” (SANDAG Employee Handbook at p. 206.) It further states that the “Executive Director or his/her designee shall be responsible for administration of the human resources program 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 Handbook.” (See SANDAG Employee Handbook at p. 11.) As seen from the “Employment Practices” section of the SANDAG Employee Handbook, the Board\(^9\) outlined the standards of these employment actions, i.e. the “fundamental policy decisions” regarding employment matters. The powers delegated to the Executive Director, such as hiring and firing, are implementations of those outlined employment policies similar to what courts have upheld in the cases discussed above.

The OIPA asserts that “the Board is empowered by the Legislature to set compensation, not management.” (Final Audit at p. 37.) But the Handbook also makes clear that the SANDAG

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\(^9\) We have been asked to assume that the Employee Handbook, as well as its predecessor document (the Administrative Rules and Regulations), were adopted by the Board with the requisite corporate formalities.
compensation program is “[s]ubject to approval by the Board of Directors as part of the Annual Budget.” (SANDAG Employee Handbook, § 10.4.)

Further, the use of language such as “authority for administration of SANDAG” and “subject to the provisions of this Handbook” are indicators that the Board has controlled the employment policies and the Executive Director is carrying out executive, ministerial, and administrative powers which, as noted above, are allowed to be “delegated and redelegated” pursuant to Public Utilities Code section 132351.1.

b. Whether the Board failed to provide adequate direction for the implementation of policy to the Executive Director

Answering the second prong of the delegation inquiry turns on whether the governing body has “provided an adequate yardstick for the guidance of the administrative body empowered to execute the law” and “safeguards adequate to prevent … abuse.” (Gerawan, supra, 3 Cal.5th at pp. 1150-1151.) Of these two, courts have recognized that safeguards are more important than standards: “The need is usually not for standards but for safeguards. … [T]he most perceptive courts are motivated much more by the degree of protection against arbitrariness than by the doctrine about standards.” (Kugler, supra, 69 Cal.2d at p. 381.)

In Kugler, supra, 69 Cal.2d 371, the Court concluded that a city ordinance that would benchmark city firefighter compensation against another city “contain[ed] built-in and automatic protections that serve as safeguards against exploitative consequences from the operation of the proposed ordinance” since “Los Angeles is no more anxious to pay its firemen exorbitant compensation than is Alhambra. Los Angeles as an employer will be motivated to avoid the incurrence of an excessive

10 To be sure, in Bagley v. City of Manhattan Beach (1976) 18 Cal.3d 22, the California Supreme Court upheld a general law city council’s refusal to place an initiative on the ballot that would subject future labor negotiations to binding interest arbitration because “the city council may not delegate its power and duty to fix compensation.” (Id. at pp. 25, 27.) But this conclusion derived from the rule that “[w]hen the Legislature has made clear its intent that one public body or official is to exercise a specified discretionary power, the power is in the nature of a public trust and may not be exercised by others in the absence of statutory authorization.” (Id. at p 24 [emphasis added].) As the Bagley Court explained in distinguishing Kugler v. Yokum, supra, 69 Cal.2d 371: “The case involved the sufficiency of standards necessary to a valid delegation of legislative power in the absence of statutes demonstrating an intent that the power be exercised by a specific legislative body. Here legislative intent limiting delegability is clear.” (Bagley, supra, at p. 26.) Here, by contrast, because the Legislature has granted the SANDAG Board the authority to delegate any and all administrative, executive, and ministerial functions to the office of the Executive Director and has given the Executive Director broad power over appointments, there is no basis to infer a legislative intent to limit delegability.
wage scale; the interplay of competitive economic forces and bargaining power will tend to settle the wages at a realistic level.” (Id. at p. 382.)

In Gerawan, supra, 3 Cal.5th 1118, the Supreme Court concluded that the Legislature had provided adequate standards and safeguards in a statute providing for compulsory interest arbitration before a mediator to determine collective bargaining agreements for agricultural laborers because the mediator could “consider those factors commonly considered in similar proceedings” and because the statute provided for a neutral mediator, a right to petition the Agricultural Labor Relations Board for relief, and judicial review with the Court of Appeal. (Id. at pp. 1150-1151.)

In Golightly, supra, 229 Cal.App.4th 1501, the Court of Appeal determined that the process for approving contracts with social services organizations had adequate safeguards such that the county’s delegation of authority to the County CEO to enter into such contracts was constitutional. (Id. at pp. 1517-1518.) These safeguards included legislation that contained limits on which organizations could receive funding, requirements that contracts had to be signed by other county officials, and multiple layers of scrutiny from specific county officials. (Ibid.)

In Rodriguez, supra, 1 Cal.App.4th 495, the Court of Appeal concluded that a zoning ordinance allowing the City of Fresno’s Development Director to determine whether signs are compatible with their surroundings had sufficient guidance because “[s]tandards for administrative application of a statute can be implied by the statutory purpose,” which was to promote the public welfare “by sign regulation using compatibility.” (Id. at pp. 509-510.) The Court did not, however, address the issue of adequate safeguards.

Here, SANDAG’s Bylaws, Board Policies, and Employment Handbook appear to have adequate standards to guide the Executive Director in his implementation of Board policy. The closer question is whether they have adequate safeguards to ensure the Board retains ultimate control.

Article V, section 4(a) of the Bylaws contemplates the removal of the Executive Director by the Board and requires the Executive Director to file with the Director of Finance an official bond in the amount of $100,000 or such larger amount as the Board specifies in order to guarantee “faithful performance of his or her duties.” (SANDAG Bylaws, Art. V, § 4(a).) Section 4(b) of Article V also makes the Executive Director accountable to the Board in several respects, providing that:

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; and (6) development of a recommended administrative policy that includes a process to conduct staff performance evaluations on a regular basis to determine if the knowledge, skills, and abilities of staff members are sufficient to perform their respective functions, and which is brought to the Board for review on an annual basis. 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.

(SANDAG Bylaws, Art. V, § 4(b).)

Board Policy No. 017, in turn, requires the Executive Director to “prepare for the Board’s consideration” and update on a regular basis “an administrative policy that includes a process to conduct staff performance evaluations on a regular basis … in order to allow the Board to monitor the staff evaluation process on a regular basis.” (SANDAG Board Policy No. 017, § 6.) It also requires the Executive Director to “promulgate an administrative policy governing the procedures for delegating his/her authority to other SANDAG staff” pursuant to Article V, Section 4(c) of the Bylaws. (SANDAG Board Policy No. 017, § 7.)

Together, Article VI, section 5 of the Bylaws and Board Policy No. 017 limit the Executive Director to agreements up to $300,000 that do not affect the budget adopted by the Board and require the Executive Director to report such transactions within a certain period of time. (See SANDAG Bylaws, Art. VI, § 5(a) & (e); Board Policy No. 017, § 4 [“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”].)

The Employee Handbook has detailed “delegations of authority through the Executive Director by the Board” for certain agreements and employment-related actions and makes clear that the “Executive Director must be authorized by the Board to carry out any and all of the delegated actions set forth in this policy.” (See SANDAG Employee Handbook at pp. 113-125 [Tables 1 and 3] & 206.) Notably, for any agreements in which the Executive Director seeks to authorize a payment pursuant to Board Policy No. 017, the Employee Handbook appears to require that all documents and transactions “have Office of General Counsel review and concurrence.” (SANDAG Employee Handbook at p. 114.) In addition, the “Finance Department must review and approve” these transactions. (SANDAG Employee Handbook at p. 115 [requiring such review for all transactions in Table 1 except for amendments that do not require a change in cost or revenue].) The Handbook also provides that “[t]he cumulative dollar limits on delegated authority will not be refreshed until a new budget has been approved by the Board.” (SANDAG Employee Handbook at p. 115.) And any check or wire transfer exceeding $5,000 must be signed by two individuals. (See SANDAG Employee Handbook at p. 123.)
In addition, the Employee Handbook alludes to the Board’s ability to terminate the Executive Director’s employment as set forth in his contract. (See SANDAG Employee Handbook, § 1.7; see also Employment Contract of Hasan Ikhrata, §§ 1, 4.2, 4.3, 7.1 [providing that Mr. Ikhrata is an “at-will employee” whose performance will be evaluated annually by the Board, whose bonus will be determined by his “overall responsiveness to appropriate Board of Directors’ requests and requirements,” and who may be terminated “immediately at any time with or without cause”]; cf. Seila Law LLC v. Consumer Financial Protection Bureau (2020) 140 S.Ct. 2183, 2209 [“The only constitutional defect we have identified in the CFPB’s structure is the Director’s insulation from removal. If the Director were removable at will by the President, the constitutional violation would disappear.”]; Marine Forests Society v. California Coastal Com. (2005) 36 Cal.4th 1, 49 [noting that the Legislature’s elimination of the power to remove appointees at will “significantly reduces the potential control that the legislative appointing authorities may have over their appointees”].)

However, one potentially problematic conveyance of power to the Executive Director can be found at Section 1.5 of the Employee Handbook, where it states the following:

The Executive Director is vested with the power to vary or modify the strict application of the provisions of this Handbook to avoid injustice or when it is in the best interest of SANDAG. Any such variances must be granted in writing and signed by the Executive Director.

(SANDAG Employee Handbook, § 1.5.)

This could be problematic because it could be read to give the Executive Director the power to modify the Board’s employment policy decisions without Board approval. Further, there are no scrutiny requirements regarding this power, as the changes are to be signed by the Executive Director and not the Board. (See SANDAG Employee Handbook, § 1.5; see also id. at p. 120 [requiring signature of Senior Leadership Team for changes to the Employee Handbook, including Administrative policies].) No other language in the Handbook appears to restrict this power granted in Section 1.5, making it seem as if the Executive Director has significant authority to divert from the policies outlined in the Handbook by the Board in his implementation of these employment actions. Of course, the fact that such variances must be granted in writing does permit the Board to review them after the fact. But it is unclear when—if at all—the Board would be notified about such variances.

Accordingly, although we think it a close question whether adequate safeguards are present to ensure that the Board retains control over the implementation of the fundamental policy it has
adopted, we ultimately conclude that the Board has lawfully delegated its authority regarding employment related actions to the Executive Director.\textsuperscript{11}

\textbf{B. ISSUE TWO: Has the Executive Director unlawfully usurped the authority of the SANDAG Board of Directors?}

The primary theory under which the OIPA appears to believe that the Executive Director usurped the authority of the SANDAG Board of Directors deals with “assum[ing] control” of the Board’s Administrative Rules and Regulations and in adopting the Employment Handbook. (See Final Audit at pp. 27, 30, 45, fn. 6, 136 [Comment 6].) But if, as we have been instructed to assume, the Employment Handbook was adopted with the appropriate formalities, then we can definitively conclude that that the Executive Director did not usurp any authority on this front.

Nevertheless, the Executive Director may have usurped the authority of the Board by failing to report the severance payments to the Board on a timely basis. However, we find the OIPA’s report confusing on this front. According to the OIPA, the “full Board was not aware of nor approved the payments by a majority vote.”\textsuperscript{12} Yet elsewhere in the report, OIPA asserts that “[m]anagement provided an email from the Executive Director to the Board Chair and Vice Chair that stated that the [REDACTED] had resigned and the Executive Director would authorize a 3 month severance compensation payment to [REDACTED] in exchange for [REDACTED] signing a release of all claims against the agency.”\textsuperscript{13}

Article VI, Section 5(a) of the SANDAG bylaws and section 4.1 of Board Policy No. 017 authorize the Executive Director to enter into agreements up to $300,000 so long as the overall budget remains in balance, but Article VI, Section 5(e) of the bylaws requires the Executive Director to “report approvals under this section to the Board of Directors at least quarterly” and section 4 of Board Policy No. 017 requires the Executive Director to “report actions taken to the Board in summary written form at the next regular meeting of the Board.” (SANDAG Bylaws, Art. VI, §§ 5(a) & (e); SANDAG Board Policy No. 017, §§ 4 & 4.1.) If, as OIPA contends, the Executive Director failed to report these transactions in a timely fashion, then he may have overstepped his authority on this front. But as discussed above, the record is unclear.

It is also unclear whether the Executive Director has ever exercised section 1.5 of the Employee Handbook to vary the terms of the Handbook without Board approval. If so, then it is possible

\textsuperscript{11} It should be noted that while this memorandum outlines what authority \textit{may} be delegated to the Executive Director, and under what circumstances, this does not mean that the Board \textit{must} delegate any particular authority. This is a purely policy question for the Board.

\textsuperscript{12} (See \url{https://www.sandag.org/uploads/meetingid/meetingid_5554_27973.pdf}, at p. 330.)

\textsuperscript{13} (Id. at p. 343.)
that the Executive Director may have usurped the Board’s authority in that instance, as well. But more information would be needed to reach any conclusion on this front.

In any event, for any action by the Executive Director that the Board ultimately approved, “‘[a]n agency’s subsequent approval or ratification of an act delegated to a subordinate validates the act, which becomes the act of the agency itself.’” (Western Oil & Gas Assn. v. Monterey Bay Unified Air Pollution Control Dist. (1989) 49 Cal.3d 408, 427, quoting California Sch. Employees Assn., supra, 3 Cal.3d at p. 145.) In Western Oil, the plaintiff challenged a pollution control district rule on the ground that it “grant[ed] too much authority to the district’s air pollution control officer” and “delegated too much discretion to its control officer before adopting the rule.” (Id. at p. 427.) The California Supreme Court rejected the argument, explaining that “the control officer’s actions before the rule was adopted could not constitute improper rulemaking because the district adopted his list of substances as part of” the rule, thereby validating the act. (Ibid.) Here, if the Board has approved any actions by the Executive Director that have subsequently been determined to have exceeded delegated authority, then that approval by the Board could be deemed to validate the act. 14

VI. CONCLUSION

In sum, we conclude that the Legislature authorized the SANDAG Board of Directors to delegate substantial authority regarding employment actions to the Executive Director by permitting the Board to delegate executive, administrative and ministerial duties to the Executive Director and by expressly giving the Executive Director the power to make appointments. The Board’s delegation of power pursuant to these authorizations with respect to hiring, promoting, and firing and other employment-related actions does not appear to leave fundamental policy decisions to the Executive Director and provides sufficient guidance for applying the policies set by the Board. It is a closer question whether the delegation is accompanied by adequate safeguards to prevent

14 By contrast, in California School Employees Assn., supra, 3 Cal.3d 139, the Supreme Court refused to uphold an employee’s dismissal on a ratification theory because the board’s minutes from the relevant meeting reflected that “in dismissing [the employee] as of that day, the board was not acting upon, approving or ratifying the prior actions of [the school district’s personnel director and business manager], but rather was simply following [district personnel commission’s] prior determination that she should be dismissed.” (Id. at p. 145.) Similarly, in Civil Service Assn. v. Redevelopment Agency (1985) 166 Cal.App.3d 1222, the Court of Appeal refused to uphold the dismissal of an employee from an redevelopment agency based on the executive director’s subsequent ratification because the employee was entitled to final review before the director himself and the director’s “pro forma letter denying [the employee’s] request for appeal and expressing satisfaction with the decision rendered did not in any manner justify the summary process or ameliorate the resulting prejudicial abuse.” (Id. at p. 1226.) Both of these cases, however, appear to offer limited relevance here because they dealt with public agencies with robust civil service requirements.
arbitrariness and ensure the Board retains control, but the Board’s ability to terminate the Executive Director at-will and several other provisions in the Bylaws, Board Policies, and Employment Handbook appear adequate. Finally, because we have been instructed to assume that the Employee Handbook was adopted with the requisite procedural formalities by the Board, we do not believe that the Executive Director has usurped the Board’s authority with respect to the promulgation of that Handbook. However, if the Executive Director failed to report the severance payments as required by the Board’s Bylaws and Policy No. 017, then he may have usurped the Board’s authority with respect to that action. That said, to the extent that the Board has since approved any of the disputed actions, there is a good basis to conclude that they have been ratified by the Board and are now the valid action of the agency, even if the Board could not delegate them in the first place.
Timeline Related to Issuance of SANDAG’s Office of the Independent Auditor’s (“OIPA”) Draft and Final Audit Report 2021-lbr

<table>
<thead>
<tr>
<th>Date</th>
<th>Event Description</th>
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<tbody>
<tr>
<td>July 30, 2020</td>
<td>OIPA Submits its Draft Audit Report 2021-lbr to SANDAG Management.</td>
</tr>
<tr>
<td>August 12, 2020</td>
<td>SANDAG’s Audit Committee holds special closed session meeting to discuss potential litigation risks associated with the Draft Audit Report. Audit Committee agrees to engage independent outside counsel to provide advice regarding legal issues raised by the Draft Audit Report.</td>
</tr>
<tr>
<td>August 12 and 13, 2020</td>
<td>Audit Committee and OIPA agree that the Audit Committee will engage outside independent counsel; counsel will provide a privileged opinion to the Audit Committee on key issues prior to August 28, 2020; the Audit Committee will hold a special closed session meeting on August 28, 2020, to review opinion issued by independent outside counsel and OIPA’s and management’s response to the same; outside independent counsel will issue a final legal opinion on August 31, 2020.</td>
</tr>
<tr>
<td>August 14, 2020</td>
<td>Management submits its Response to the Draft Audit Report to OIPA, the Audit Committee and SANDAG’s Board Chair. OIPA agrees not to release Final Audit Report until after August 31, 2020.</td>
</tr>
<tr>
<td>August 26, 2020</td>
<td>OIPA submits its Final Audit Report to the full Board of Directors before August 31, 2020.</td>
</tr>
<tr>
<td>August 27, 2020</td>
<td>The Audit Committee provides outside independent counsel’s memorandum to OIPA and SANDAG management for their review and consideration prior to the special closed session meeting.</td>
</tr>
<tr>
<td>August 28, 2020</td>
<td>The Audit Committee holds special closed session meeting to discuss outside independent counsel’s report and associated legal risks.</td>
</tr>
<tr>
<td>August 28, 2020</td>
<td>OIPA indicates that the audit report is now final as of this date and agrees to include one paragraph from the outside independent counsel’s draft memorandum in the Final Audit Report. Management begins work on its Revised Response so that it will align with the contents of the Final Audit Report.</td>
</tr>
<tr>
<td>August 31, 2020</td>
<td>Independent outside counsel issues its final memorandum regarding legal issues raised by the Draft and Final Audit Report.</td>
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<tr>
<td>Date</td>
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<tr>
<td>August 31, 2020</td>
<td>OIPA issues the 'final' version of the Final Audit Report (referred to as the Revised Final Audit) to the Audit Committee. OIPA states that this document is unchanged from the version issued on August 26, 2020.</td>
</tr>
<tr>
<td>August 31, 2020</td>
<td>The Audit Committee learns that the confidential Revised Final Audit and management’s confidential Response to the Draft Audit Report have been provided to the Union-Tribune.</td>
</tr>
<tr>
<td>September 2, 2020</td>
<td>The Audit Committee docket a special meeting to discuss the Draft and Revised Final Audit Reports, Management’s responses thereto, and the Audit Committee’s recommendations for the Board of Directors based on the reports and responses.</td>
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<tr>
<td>September 10, 2020</td>
<td>Outside independent counsel provides additional memorandum to Audit Committee at Audit Committee’s request.</td>
</tr>
<tr>
<td>September 11, 2020</td>
<td>The Audit Committee holds open session meeting and adopts various findings and recommendations from the Audit Committee to be presented to the Board of Directors</td>
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<tr>
<td>FINDING</td>
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<tr>
<td>1. SB 1703, effective January 1, 2003, expressly delegates authority for</td>
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<td>employment-related matters to the Executive Director; this is restated in</td>
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<td>Board Policy No. 017, Delegation of Authority. The MRR clarifies that the</td>
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<td>Administrative Rules and Regulations no longer exist as a separate document</td>
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<td>and describes its evolution into the SANDAG Employee Handbook more than</td>
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<td>10 years ago. Regardless, at the Board’s direction, management will bring</td>
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<td>the Employee Handbook or other administrative policies to the Board to</td>
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<td>determine whether there are portions it wishes to review or amend. A timeline</td>
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<td>for completion of this activity will be included in the Action Plan developed</td>
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<td>in response to this audit.</td>
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<td>2. The Administrative Rules and Regulations are no longer in effect. The</td>
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<td>policies and procedures developed and maintained by management to</td>
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<td>effectively administer employment-related matters for the agency are</td>
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<td>contained within the SANDAG Employee Handbook. At the Board’s direction,</td>
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<td>management will bring the Employee Handbook or other administrative</td>
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<td>policies to the Board to determine whether there are portions it wishes to</td>
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<td>review or amend. Also, at the Board’s direction, management will draft edits</td>
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<td>to Board policy with respect to the Executive Director’s delegated authority.</td>
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<td>A timeline for completion of these activities will be included in the Action Plan</td>
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<td>developed in response to this audit.</td>
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<td>3. Management is confused by this recommendation. Not only does it seem to</td>
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<td>be outside of OIPA’s purview to determine the adequacy of current counsel, it</td>
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<td>also indicates a lack of understanding of the role of the Office of General</td>
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<td>Counsel (OGC) for the agency as it implies the OGC is unable to render</td>
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<td>independent or sufficient advice to the Board. As with all attorneys for public</td>
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<td>entities, the law is clear on the topic of who the client is for a public agency</td>
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<td>attorney. It is the governing body of the agency. The California Rules of</td>
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<td>Professional Conduct currently provide that where an organization is a client,</td>
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<td>“a member shall conform his or her representation to the concept that the</td>
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<td>client is the organization itself acting through its highest authorized officer,</td>
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<td>employee, body, or constituent overseeing the particular engagement.”</td>
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<td>The highest body of the organization is the Board of Directors. The rules also</td>
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<td>caution lawyers to inform representatives of the organization that the lawyer</td>
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<td>represents the organization, not the individual, “whenever it is or becomes</td>
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<td>apparent that the organization’s interests are or may become adverse to those</td>
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<td>of the constituent(s) with whom the member is dealing.” Thus, all attorneys</td>
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<td>hired to advise SANDAG owe their duty of loyalty to the Board of Directors and</td>
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<td>are required to provide advice to the Board as a whole rather than serving the</td>
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<td>interests of individual staff. Hiring other attorneys, unfamiliar with the unique</td>
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<td>aspects of the SANDAG, to provide overlapping services with those already</td>
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<td>provided by the OGC, is not a recommendation that the General Counsel of</td>
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<td>the agency supports.</td>
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<td>Furthermore, it must be noted that the OIPA also serves the Board of</td>
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<td>Directors. While the OIPA is independent, this independence is from</td>
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<td>management, not from the Board of Directors or its advisory body, the Audit</td>
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<thead>
<tr>
<th>AUDITOR’S RECOMMENDATIONS</th>
<th>MANAGEMENT’S RESPONSE</th>
<th>AUDIT COMMITTEE’S RECOMMENDATIONS</th>
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</thead>
<tbody>
<tr>
<td>To ensure that SANDAG’s Board properly governs and develops a system of</td>
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<tr>
<td>internal controls over salaries, compensation, and benefits, the Board should:</td>
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<tr>
<td>1. Assume ownership of and update the Board’s Administrative Rules and</td>
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<td>Regulations, including but not limited to,</td>
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<tr>
<td>• Citations of the applicable laws and regulations for which SANDAG will follow</td>
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<td>with regard to salaries, compensation, and benefits.</td>
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<td>• Define the responsibility for SANDAG management to create and update an</td>
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<td>Employee Handbook that is aligned with Board Bylaws, Policies, Administrative</td>
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<td>Rules and Regulations, and Manuals.</td>
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<td>2. Strengthen and amend the Board’s Bylaws, and other Board Policies as</td>
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<td>necessary, to ensure consistency and clarity of Board documents, including but</td>
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<td>not limited to,</td>
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<td>• Document that the Executive Director’s authority is limited subject to the</td>
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<td>Administrative Rules and Regulations, rather than Administrative rules and</td>
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<td>manuals, for administration of SANDAG business.</td>
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<td>• Document the hierarchy of Board Bylaws, Policies, Administrative Rules and</td>
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<td>Regulations, and management procedures and the Employee Handbook to</td>
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<td>ensure that management is aware of and adhering to the highest authority.</td>
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<td>• Clarify Board policy to ensure that sections pertaining to the Executive</td>
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<td>Director’s authority to administer SANDAG’s personnel system are clearly</td>
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<td>indicated.</td>
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<td>3. Evaluate retaining General Counsel for the Board to conduct legal research,</td>
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<td>prepare ordinances, resolutions, memoranda, administrative rules and</td>
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<td>regulations, and other legal documents, and advise the Board of Directors, and</td>
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<td>keep the Board apprised of its obligations for following applicable laws and</td>
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<td>regulations, and to ensure that Board documents are properly retained and</td>
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<td>changes approved by the Board to Board Bylaws, policies, and other</td>
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<td>documents are completed and tracked.</td>
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<td>4. Require SANDAG management to acknowledge that they are aware of and</td>
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<td>complying with the Board Bylaws, Policies, Administrative Rules and</td>
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<td>Regulations, and Manuals upon being hired and on an annual basis thereafter.</td>
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• The Audit Committee finds that the Board appropriately delegated  |
| authority to the Executive Director through the Executive Director’s contract,  |
| SANDAG’s Employee Handbook, and in accord with the governing sections of  |
| the Public Utilities Code.  |

• The Audit Committee finds that the Board implemented Bylaws, and  |
| replaced the Administrative Rules and Regulations, which are no longer in  |
| effect.  |

• The Audit Committee finds that the Board (implicitly) ratified SANDAG’s  |
| Employee Handbook and the Board is estopped from retroactively changing  |
| prior employee contracts.  |

• The Audit Committee recommends Management present the current  |
| Employee Handbook to the Board for retroactive review and approval or  |
| ratification, as applicable.  |

• The Audit Committee recommends that every SANDAG employee  |
<p>| acknowledge receipt of the Handbook and Bylaws upon hire, and  |
| acknowledge their continuing applicability on an annual basis thereafter.  |</p>
<table>
<thead>
<tr>
<th>FINDING II</th>
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<tbody>
<tr>
<td><strong>AUDITOR’S RECOMMENDATIONS</strong></td>
<td><strong>MANAGEMENT’S RESPONSE</strong></td>
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<td>Committee. This is reflected in Board Policy No. 039, which states that the IPA reports to the Audit Committee and serves the Board of Directors, as well as the IPA’s employment agreement with SANDAG, in which the IPA has agreed to “abide by all policies and decisions made by SANDAG.” As stated by the California Court of Appeal, a conflict of interest in a public agency necessitating independent legal counsel arises only when one body is independent of the agency’s governing body as has final decision-making authority that is not appealable to that governing body. 4. Current employment practices include orienting new employees to the Employee Handbook and various administrative policies. Management is generally agreeable to requiring employees to acknowledge receipt of and a commitment to complying with the Employee Handbook with each new version published, and with the Bylaws, Board Policies, and other administrative policies each year, as applicable to employee roles and responsibilities within the organization. A timeline for completion of this activity will be included in the Action Plan developed in response to this audit.</td>
</tr>
<tr>
<td>To ensure that management cannot approve termination payments that exceed the amounts set forth in Board policies and rules and regulations, the Board should:</td>
<td>1. It is the opinion of General Counsel that the severance compensation payments and granting of additional sick leave made in exchange for the separated employees’ release of all claims against SANDAG, constituted the settlement of potential claims by the employees against SANDAG and as such was an appropriate use of public funds, and that the amount of the settlement was reasonable in light of the risk avoided by it. It is further the opinion of General Counsel that mandating the initiation of formal litigation or claims procedures as advocated by OIPA would result in additional risk to the agency in the form of increased outside counsel costs and increased settlement amounts driven by claimant’s need to compensate their own attorneys to initiate such proceedings. The opinions expressed by the General Counsel were affirmed by independent outside counsel hired by the Audit Committee specifically to evaluate the validity of assumptions underlying the findings presented by OIPA. 2. Management welcomes the Board’s input on any need to modify or establish more explicit delegated authority for negotiating severance agreements with employees, including any conditions on the exercise of that authority. 3. Management agrees that all staff must remain trained both on existing and updated procedures in their areas of responsibility. A timeline for completion of this activity will be included in the Action Plan developed in response to this audit.</td>
</tr>
<tr>
<td>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% 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.</td>
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<td>FINDING III</td>
<td>AUDITOR’S RECOMMENDATIONS</td>
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<td>To ensure that management and Board members cannot approve salary increases and large dollar payouts without justification, the Board should:</td>
<td>1. Upon direction, management will cooperate in any Board investigation. Management recommends that if there is still concern that an employee acted with any malfeasance after any additional investigation occurs, that a closed session be held involving legal counsel so the Board can be advised of whether the legal requirements for a valid cause of action of breach of fiduciary duty have been met and whether a claim against any person(s) is warranted.</td>
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<tr>
<td>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 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.</td>
<td>2. Management does not concur with this recommendation but will be responsive to any future direction from the Board regarding delegated authority with respect to salary increases and bonuses under the agency’s pay for performance program.</td>
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<tr>
<td>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.</td>
<td>3. Management does not concur that anything improper was done by the former Chair and Vice Chair, however, upon direction, management will support the Board if it decides to formulate and adopt policies designed to provide clarification regarding roles and responsibilities of Board officers and achieving increased levels of transparency.</td>
</tr>
<tr>
<td>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 (sic) and performance incentive pay.</td>
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<tr>
<th>FINDING IV</th>
<th>AUDITOR’S RECOMMENDATIONS</th>
<th>MANAGEMENT’S RESPONSE</th>
<th>AUDIT COMMITTEE’S RECOMMENDATIONS</th>
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<tr>
<td>To ensure that SANDAG’s Board is properly informed of SANDAG business and information is presented clearly, accurately, and timely, the Board should:</td>
<td>1. Management acknowledges the requirement for the Board to adopt a policy defining items of special compensation, consistent with California Code of Regulations, Title 2, section 571(b). A timeline for completion of this activity will be included in the Action Plan developed in response to this audit.</td>
<td>• The Audit Committee finds that Management did not breach its fiduciary duty with regard to special compensation payments identified in the Audit Report.</td>
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<tr>
<td>1. Create and promulgate a Board policy defining special compensation for SANDAG employees.</td>
<td>2. If requested by the Board, management will examine existing practices relative to applicable laws and regulations and implement changes as necessary with respect to the approval of salary schedules and special compensation. A timeline for completion of this activity will be included in the Action Plan developed in response to this audit.</td>
<td>• The Audit Committee recommends that Management propose a policy for special compensation, and present such policy to the Board for approval.</td>
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<td>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 agenized (sic) resolution at least annually, properly date approved schedules, and post the approved schedules on SANDAG’s website.</td>
<td>3. If requested by the Board, management will review practices and procedures, and prepare additional documentation, regarding budgeting and reporting of salaries and benefits information to the Board. In management’s opinion, there is no law or regulation that requires reporting of individual employee salaries and benefits to the Board.</td>
<td>• The Audit Committee recommends that SANDAG Management propose an annual process for Board approval of special compensation.</td>
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<td>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.</td>
<td>4. Management will review practices and procedures, and prepare additional documentation, regarding development of the annual compensation adjustment pool. A timeline for completion of this activity will be included in the Action Plan developed in response to this audit.</td>
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<td>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.</td>
<td>5. Management will evaluate whether further procedures for managing and reconciling awards made to employees from the annual compensation adjustment pool is appropriate. A timeline for completion of this activity will be included in the Action Plan developed in response to this audit. The level of</td>
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<td>5. Requirement (sic) 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 (sic) and regulations.</td>
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<thead>
<tr>
<th>AUDITOR’S RECOMMENDATIONS</th>
<th>MANAGEMENT’S RESPONSE</th>
<th>AUDIT COMMITTEE’S RECOMMENDATIONS</th>
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<td>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.</td>
<td>reporting detail recommended by OIPA must be reported to CalPERs, and is done in a confidential manner, but management knows of no law that requires individual employee information to be provided to the Board in a publicly available report. 6. Management commits to ensuring that employees understand their roles and responsibilities with respect to approval of salary schedules and special compensation. A timeline for completion of this activity will be included in the Action Plan developed in response to this audit.</td>
<td>None</td>
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<td>FINDING V</td>
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<td>To ensure that SANDAG has adequate procedures in place to ensure the accuracy and reliability of SANDAG’s financial information the Board should:</td>
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<td>1. Require Financial Services to create and formalize procedures for reallocating special compensations costs to projects, including but not limited to:</td>
<td>Management will review procedures for allocating costs associated with bonus awards with SANDAG’s financial auditor and make any corrections or procedural updates needed. A timeline for completion of this activity will be included in the Action Plan developed in response to this audit.</td>
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<td>▪ Verifying that fringe benefits and overhead are not charged when bonuses are charged to projects.</td>
<td>2. Management will review and update procedures for reporting special compensation to CalPERS. A timeline for completion of this activity will be included in the Action Plan developed in response to this audit.</td>
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<td>▪ Reallocations are supported by employee timesheets to ensure that costs are correctly allocated to projects.</td>
<td>3. Management will review and update procedures for reviewing and allocating bonuses to projects. A timeline for completion of this activity will be included in the Action Plan developed in response to this audit.</td>
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<td>▪ The total amount of bonuses charged to projects reconciles to the bonuses approved by the Executive Director.</td>
<td>4. Management will undertake a comprehensive review of payroll-related procedures and make updates as necessary. A timeline for completion of this activity will be included in the Action Plan developed in response to this audit.</td>
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<td>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.</td>
<td>5. Management will commit to ensuring that employees understand their roles and responsibilities with respect to financial practices. A timeline for completion of this activity will be included in the Action Plan developed in response to this audit.</td>
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<td>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.</td>
<td>6. Management will implement an employee acknowledgment process with respect to Board Policy Nos. 041 (Internal Control Standards) and 042 (Policy of Reporting Procedures and Form for Fraud, Waste, and Abuse). A timeline for completion of this activity will be included in the Action Plan developed in response to this audit.</td>
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<td>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.</td>
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<td>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.</td>
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<td>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.</td>
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<td>FINDING VI</td>
<td>FINDING VII</td>
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<td>Based on the auditor’s review, and to ensure adequate controls over approvals over performance incentives and special compensation the Board of Directors should:</td>
<td>1. Management acknowledges the requirement for the Board to adopt a policy defining items of special compensation, consistent with California Code of Regulations, Title 2, section 571(b). A timeline for completion of this activity will be included in the Action Plan developed in response to this audit.</td>
<td>• The Audit Committee recommends that SANDAG Management present procedures for Board approval consistent with OIPA’s recommendations.</td>
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<td>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.</td>
<td>2. Management will review and update existing procedures associated with the award and approval of annual compensation adjustments and performance rewards. A timeline for completion of this activity will be included in the Action Plan developed in response to this audit.</td>
<td>• The Audit Committee recommends that Management annually seek the Board’s approval of said compensation, maintaining adequate records to support such compensation.</td>
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<td>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.</td>
<td>3. Although management does not concur that anything inappropriate has occurred regarding performance incentives awarded to employees, it will review its procedures and if needed, provide additional support and resources to supervisors and employees with respect to the completion of performance evaluations. A timeline for completion of this activity will be included in the Action Plan developed in response to this audit.</td>
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<td>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.</td>
<td>4. Although management does not concur that anything inappropriate has occurred regarding performance incentives processed for employees, it will review its procedures and if needed, provide additional guidance to staff. A timeline for completion of this activity will be included in the Action Plan developed in response to this audit.</td>
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<td>4. Require Financial Services to develop and formalize a procedure for reconciling the performance incentives paid to employees to the amounts approved by management.</td>
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<td>To ensure that SANDAG has an adequate process for determining and setting salary ranges, SANDAG’s Board should:</td>
<td>1. Management will develop additional polices and documentation of procedures related to maintaining position salary ranges. It also will continue to conduct salary surveys using advice from consultants with expertise on these matters. A timeline for completion of this activity will be included in the Action Plan developed in response to this audit.</td>
<td>• The Audit Committee recommends that SANDAG Management present procedures for Board approval consistent with OIPA’s recommendations.</td>
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<td>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 (sic) 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 (sic) 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.</td>
<td>2. SANDAG conducted a full Classification Study in 2016 under the guidance of its compensation consultant. This project included a review of essential duties and typical responsibilities, as well as knowledge, skills, and qualifications required for all agency positions; job analysis was performed as needed. New and updated Classification Specifications were prepared and are currently in use. In management’s opinion, it would be duplicative to repeat this work at this time. Management is committed to evaluating individual or groups of positions on an as-needed basis to ensure they are accurately documented as part of the Classification program and will continue to monitor the effectiveness of the Classification program on at least an annual basis to determine when the next Classification Study shall be performed.</td>
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<td>2. Request management to conduct a job analysis by gathering, documenting, and analyzing information about the job duties to determine the activities and responsibilities.</td>
<td>3. Management believes that the classification specifications for each position at the agency are current based on the Classification Study conducted in 2016. Management will use these, and other relevant documentation, as a basis for creating job descriptions for each employee. A timeline for completion of any this (sic) activity will be included in the Action Plan developed in response to this audit.</td>
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<td>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.</td>
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<td>FINDING VIII</td>
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<td><strong>1. SANDAG should update agency documents, including its organizational charts and job titles to reflect accurate employee names, job titles, and other relevant information.</strong> <strong>2. Revert salaries for high level positions to salaries prior to the September 2019 salary schedule revisions.</strong> <strong>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 management positions based on the job duties and responsibilities.</strong> <strong>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.</strong></td>
<td>1. Management will take steps to improve the consistency and accuracy of agency documents that include information about employee names, job titles, etc. A timeline for completion of this activity will be included in the Action Plan developed in response to this audit. 2. Upon consultation with legal counsel, management has determined this proposed action would constitute a contract violation with those individuals who have signed Employment Agreements with SANDAG and for a variety of other reasons discussed in the MRR and with outside employment law counsel, does not plan to implement this recommendation. 3. The needs assessment and cost-benefit analysis recommended by OIPA was conducted prior to undertaking the agency reorganization in 2019. SANDAG conducted a strategic planning project in 2019 which included an organizational assessment and design component. This work was led by an expert organizational design consultancy. In management’s opinion, it would be duplicative to repeat this work and an unnecessary use of agency resources. 4. SANDAG conducted a market salary survey in FY 2019 (data was collected and compiled by the agency’s compensation consultants in late 2018) in which four representative executive level positions and four representative manager/principal level positions were benchmarked. Further, prior to implementing the executive-level position changes as part of the 2019 agency reorganization, the compensation consultant verified the previously collected market data for the executive-level positions was still current. Therefore, in management’s opinion it would be duplicative to repeat this work and an unnecessary use of agency resources.</td>
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<td>FINDING IX</td>
<td><strong>To ensure that SANDAG has fair, objective and competitive hiring practices SANDAG should:</strong> <strong>1. SANDAG should identify all employees who were appointed or promoted without undergoing a fair and competitive hiring process.</strong> <strong>2. For those positions determined to be filled without a fair and competitive hiring process, SANDAG should perform an evaluation to identify:</strong> • Whether the position and level of the position is necessary for the organization, this shall be supported a (sic) 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. <strong>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,</strong> • Documenting justification for advertising internally or externally including timeframes for advertisement.</td>
<td>1. The MRR discusses that the Executive Director acted within his delegated authority and currently established employment policies in appointing appropriately qualified individuals to executive-level positions during the 2019 agency reorganization. This assessment was confirmed by independent outside counsel hired by the Audit Committee specifically to review and interpret the actions of management with respect to applicable laws and regulations. Based on a legal risk assessment conducted by OGC regarding potential violation of employee contract rights associated with vacating currently filled positions, management will not consider this recommendation. A review of position necessity, including the level and scope of job duties, is currently conducted for each vacancy and for all new positions, and was conducted in conjunction with the reorganization last year. 2. Management will further document, review, and modify if needed, SANDAG’s policies, procedures, and practices that support recruitment and selection of individuals for open positions and other types of employment opportunities. Many of the recommended actions are already longstanding agency practices and have supported an effective and successful recruitment and selection program. A timeline for completion of this activity will be included in the Action Plan developed in response to this audit.</td>
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| X       | • 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. | 1. The Administrative Rules and Regulations are no longer in effect. The policies and procedures developed and maintained by management to effectively administer employment-related matters for the agency are contained within the SANDAG Employee Handbook. The Employee Handbook, including the policies in the appendices of that document, and Board Policy No. 007 (EEO Policy), already contain citations to relevant laws. Therefore, in management’s opinion, SANDAG already has established, documented, and communicated, via the Employee Handbook and procedural guides, legally sound policies and practices that appropriately ensure the rights of employees while also protecting the operational interests of the agency. | None |

Additionally, after considering RPLG’s advice:

1. The Audit Committee recommends that the Board determine whether the Executive Director timely reported severance payments to the Board.
2. The Audit Committee recommends that the Board specify the procedure for setting and reporting severance payments in the future.
3. The Audit Committee recommends that SANDAG’s Board discuss whether §1.5 of the Employee Handbook should be modified to require notification to Board leadership in defined circumstances.