



OFFICE OF THE INDEPENDENT PERFORMANCE AUDITOR

Annual Fraud, Waste and Abuse Report

Fiscal Year 2020

July 2020

About the Fraud, Waste and Abuse:

The Office of the Independent Performance Auditor (OIPA) is the official body of the agency to investigate allegations of potential fraud, waste, and abuse identified by agency staff or other stakeholders. Once the investigation into the allegations has been conducted, the OIPA advises the SANDAG Audit Committee and the Office of General Counsel on whether improper activities occurred.

[SANDAG Board Policy No. 41](#) - Internal Control Standards is intended to help prevent and detect potential fraud, waste, and abuse of public funds by guiding and encouraging agency management and staff to consider, implement, and monitor good system controls.

Fraud, Waste, and Abuse of Public Funds or Assets Defined

"Fraud, waste, or abuse" means any activity by a local agency or employee that is undertaken in the performance of the employee's official duties, including activities deemed to be outside the scope of his or her employment, that is in violation of any local, state, or federal law or regulation relating to corruption, malfeasance, bribery, theft of government property, fraudulent claims, fraud, coercion, conversion, malicious prosecution, misuse of government property, or willful omission to perform duty, is economically wasteful, or involves gross misconduct.

Per the Board of Directors approved [Board Policy No. 039](#), the Independent Performance Auditor (IPA), the IPA is the official body of SANDAG to investigate allegations of potential fraud, waste, and abuse identified by staff or other stakeholders. Once the investigation into the allegations has been conducted, the IPA advises the Audit Committee, the Office of the General Counsel or outside counsel under contract with SANDAG on whether improper activities occurred.

An employee, contracted parties, member of the public, or other stakeholders of SANDAG can file a complaint with OIPA alleging improper activities. A member of the public or other stakeholders are encouraged to file as soon as the complainant had knowledge of the alleged improper activity. An employee or applicant for employment that is subject to Government Code Section 53297 shall have the right to file a complaint within 60 days of the date of the act or event which is subject of the complaint. Prior to filing a written complaint, the employee shall first make a good faith effort to exhaust all available administrative remedies.



OFFICE OF THE INDEPENDENT PERFORMANCE AUDITOR

DATE: July 24, 2020

TO: Members of the Audit Committee

FROM: Mary Khoshmashrab, Independent Performance Auditor

SUBJECT: Independent Performance Auditor Annual Fraud, Waste, and Abuse Report- FY 2020

During Fiscal Year 2020 (July 1, 2020 – June 30, 2020) we received 8 Fraud, Waste and Abuse reporting's from external parties and ten internal reporting's to the Office of the Independent Performance Auditor (OIPA) for a total of eighteen filed reporting's. As of June 30, 2020, 6 of the 8 external reporting's have been closed while 2 remain open and have pending investigations. Further, of the ten internal reporting's 5 have been resolved and closed, while 5 remain open. Regarding the 5 internal reporting's that remain open, audit procedures and testing have been incorporated into OIPA's Salary and Benefit and Other Compensation Audit that is currently in progress and estimated to be completed by August of 2020. The results of the audit should address and bring closure to the pending reporting's.

Table 1 on the following page summarizes the types of reporting's received during Fiscal Year 2020.

Table 2 on page 3 provides detailed reporting and status on External Fraud, Waste and Abuse Reporting's.

Table 3 on page 7 provides detailed reporting and status on Internal Fraud, Waste, and Abuse Reporting's.

Table 1:

Reporting Received in Fiscal Year 2020

| Independent Performance Auditor Reporting's | Number of Reporting's | Closed | Open |
|---|------------------------------|---------------|-------------|
| External Reporting's | | | |
| Fraud | | | |
| Gross Mismanagement | | | |
| Waste | 1 | 1 | |
| Abuse | 3 | 2 | 1 |
| Substantial and Specific Danger to Public Health and Safety | 1 | 1 | |
| Combination of Allegations | 3 | 2 | 1 |
| Subtotal External Investigations | 8 | 6 | 2 |
| Internal Reporting's | | | |
| Abuse of Authority | 1 | 1 | |
| Unfair Treatment | 3 | | 3 |
| Employee Relations | 1 | 1 | |
| Overall Risk Lack of Control/Policy | 1 | | 1 |
| Theft of Time | 1 | | 1 |
| Combination of Allegations | 3 | 3 | |
| Subtotal Internal Investigations | 10 | 5 | 5 |
| Total Reports Received in Purview of the IPA | 18 | 11 | 7 |

Table 2:

Status of External Fraud, Waste and Abuse Reporting Fiscal Year 2020

| No. | Incident Type | Report # | Received | Date | Status/Outcome | Date |
|---|----------------------------|----------|----------|---------|------------------------|----------|
| 1.1 | Combo- Gross Mismanagement | 001.a | Received | 9-27-19 | Unsubstantiated/Closed | 11/12/19 |
| <p>An allegation that The City of San Diego’s was in violation of SANDAG Board Policy No. 031, Rule #17, Section IV Local Agency Balance Limitations 30% Rule.</p> <p>OIPA Response: According to the external oversight auditor’s FY 2018 <i>TransNet</i> Annual Fiscal and Compliance Audit official title “<i>TransNet</i> and <i>TransNet</i> Extension Activities” Page 297 AUP No. 8 the City of San Diego follows the 30% requirement rule. Based on the OIPA’s investigations, SANDAG and the City of San Diego follows BP. 031. The matter was found to be unsubstantiated. Report available upon request.</p> | | | | | | |
| 1.2 | Combo -Waste of Funds | 001.b | Received | 9-27-19 | Unsubstantiated/Closed | 11/12/19 |
| <p>An allegation that was made stating that “SANDAG agrees with San Diego County Regional Airport Authority (SDCRAA) that revenue diversions because the airport is located on State Tidelands and has had agreements and bond funding prior to 1982 Recently the SDCRAA has agreed that Airport Revenue can be used off-site for mitigation and Transportation to the Airport. What is needed is a legal opinion from our State Lands Commission (SLC) if SDIA somehow lost its Grandfathered status when the Airport and Port split on 01/01/2003. When the 2009 Federal Register states otherwise”</p> <p>OIPA Response: The Federal Aviation Administration (FAA) counsel confirmed that the San Diego Airport no longer holds grandfathered status. This expired in 2003 when the Port was no longer the sponsor of the Airport. The notation of San Diego Airport included in the 2009 manual was noted in error. This was confirmed by the agency counsel. According to the FAA counsel, the “sponsor” is the County Regional Airport Authority since January of 2003. The San Diego Airport no longer carries the grandfathered status as it is no longer held by the Port of San Diego.</p> <p>According to Chapter 15.10 of the FAA Airport Compliance Manual – Order 5190.6B (2009), the following provision establishes when the airport qualifies as “grandfathered”</p> <p>OIPA Conclusion: Unsubstantiated – the San Diego Airport does not currently hold grandfathered status. The status was lost upon separation from the Port of San Diego in 2003. This matter has been closed. However, further review by SANDAG Management regarding the opportunity and potential of General Airport Revenue for related mitigation and transportation uses as it relates to the Airport will continue.</p> | | | | | | |

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| | Report available upon request. | | | | | |
| 1.3 | Substantial and Combo - Specific Danger to Public Health & Safety | 001.c | Received | 9-27-19 | Unsubstantiated/Closed | 11/12/19 |
| | <p>Several allegations stating that "SANDAG has not followed Caltrans' 2013 Memorandum to Designers MTD 20-10 Fault Rupture to confirm to deny active faulting along the Mid-Coast Corridor, Stations, and bridges over the San Diego River" and that "SANDAG has hid scientific evidence of active faulting from the State Geologist to update the old Alquist-Priolo Maps for the 2003 Point Loma Quadrangle and the 1991 La Jolla Quadrangle by failure to abide by Public Resources Code Section 2697 that requires all fault investigation and third-party review to be sent to our State Geologist to update old AP-Maps" and that "Since 2006 complainant had spoken with SANDAG staff about concerns of failure to confirm or deny active faulting and updating GIS Maps for consistency."</p> <p>OIPA Conclusion: Unsubstantiated. Report available upon request.</p> | | | | | |
| 2 | Abuse | 002 | Received | 10/18/19 | Unsubstantiated/Closed | 10/22/19 |
| | An allegation of improper and overbilling of managed toll roads the matter was investigated and found to be unsubstantiated. | | | | | |
| 3.1 | Combo- Gross Mismanagement | 003.a | Received | 12/11/19 | Unsubstantiated/Closed | 1/9/20 |
| | <p>An allegation stating that "potential misconduct performed by the San Diego Governments' Association (SANDAG) and SANDAG Staff. Said employee is a SANDAG employee and a Certified planner through the American Planning Association -American Institute of Certified Planners (AICP). Said employee appears to be a primary party involved in SANDAG's participation in unethically promoting the Violation of U.S. Federal Regulations (Rules) and California Regulations and Laws (Statutes). Specifically, in the matter a "multi-color pavement crosswalk"</p> <p>OIPA Response: Discussion with SANDAG staff assigned to this project did not support the above allegation. Report available upon request.</p> | | | | | |
| 3.2 | Combo- Significant Waste of Funds | 003.b | Received | 12/11/20 | Unsubstantiated/Closed | 1/9/20 |
| | An allegation stating that "Per section B.2 it states, 'We shall not accept an assignment from a client or employer when the services to be performed involve conduct that we know to be illegal or in violation of these rules.' SANDAG employee (employees name has been removed) may have also Violated this Rule as | | | | | |

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| | <p>the SANDAG project he is personally promoting and pushing forward consists of a clearly illegal feature that he is fully aware of.” thereby wasting public funds.</p> <p>OIPA Response: Discussion with SANDAG staff assigned to this project did not support the above allegation. Report available upon request.</p> | | | | | |
| 3.3 | Combo- Abuse of Authority | 003.c | Received | 12/11/19 | Unsubstantiated/Closed | 1/9/20 |
| | <p>An allegation stating that SANDAG and the City of San Diego was violating regulations by installing an illegal Crosswalk that would significantly divert attention and show that the illegal ‘street pavement aesthetic treatments’ of the Crosswalk is acceptable to the San Diego Region.</p> <p>OIPA Response: Based on conversation with SANDAG’s planner assigned to the Hillcrest Bikeways project, SANDAG’s involvement with the crosswalk located in this neighborhood would be to replace, in-kind, property including traffic sign, signal lights, crosswalks, street, roads, etc. to its original status that existed prior to its destruction as a result of a SANDAG Board-approved project. Additionally, the IPA does not have oversight authority over the City. The City Auditor would be responsible for oversight relating to city matters. At this point, SANDAG has not been involved with any project that replaces the standard crosswalk in this neighborhood. According to SANDAG Management, SANDAG’s role in the replacement of the crosswalk would not take place until 2021 or later. Matter is unfounded. Report is available upon request.</p> | | | | | |
| 3.3 | Combo- Substantial and Specific Danger to public Health and Safety | 003.d | Received | 12/11/19 | Substantiated/ Recommendation | 1/9/20 |
| | <p>An allegation stating that SANDAG, upon replacement of an in-kind sidewalk replacement that is in violation of CA-MUTCD California Manual on Uniform Traffic Control Devices would further be in violation should SANDAG replace the sidewalk after it’s project as an in-kind.</p> <p>OIPA Response: Upon review of this matter, it was determined that SANDAG would be in violation of a required manual (CA-MUTCD) should SANDAG replace the rainbow sidewalk as in-kind after the completion of SANDAG’s bike project. Therefore, OIPA provided a written recommendation to SANDAG Management that supports adherence to the CA-MUTCD Manual. Further, upon review by SANDAG’s General Counsel, SANDAG’s GC concurred with the OIPA’s conclusion. Report available upon request.</p> | | | | | |

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| 4 | Abuse | 004 | Received | 1/13/20 | Open/unresolved | 6/30/20 |
| An allegation stating that SANDAG is allowing for unsafe traffic circles, ignoring and lying to the SANDAG Board of Directors, and evading the Brown Act. The matter is on hold and pending additional information that OIPA has requested from the complainant. | | | | | | |
| 5 | Abuse | 005 | Received | 2/15/20 | Unsubstantiated/Closed | 02/18/20 |
| An allegation of improper charges to complainant's credit card for toll road charges. The matter was found to be unsubstantiated. | | | | | | |
| 6 | Waste | 006 | Received | 2-17-20 | Unresolved/Closed | 6/30/20 |
| An allegation that SANDAG wasting public funds and not keeping promises to complete projects that were promised regarding voter approved tax revenue. The matter was closed due to failure to provide sufficient evidence to further the investigation. | | | | | | |
| 7 | Combo - Abuse | 007 | Received | 4-29-20 | Open/Unresolved | 6/30/20 |
| An allegation that SANDAG employee participated in contract collusion. Allegations include gross mismanagement by failing to promptly provide relevant information to team, causing extensive delays and wasting limited project budget; Significant Waste of Funds including claims that the said employee manipulated a public bidding process to route fund to a preferred consultant; and Abuse of Authority by coercing members of a team and influence direction. OIPA Response: This matter is currently under investigation. | | | | | | |
| 8 | Specific Danger to Public Health & Safety | 008 | Received | 6/05/20 | Referred/Closed | 6/5/20 |
| An allegation that SANDAG was performing street work in front of property for a long period of time that was disruptive and creating an environment that lead to unprecedented wave of vacancies. OIPA Response: matter was referred to SANDAG Chief Counsel and closed. | | | | | | |

Table 3:

Status of Internal Fraud, Waste and Abuse Reporting Fiscal Year 2020

| No. | Incident Type | Report # | Received | Date | Status/Outcome | Date |
|---|---|----------|----------|---------|-----------------|----------|
| 1 | Combo -Abuse of Authority and EE Relations | 001 | Received | 9/25/19 | Resolved/Closed | 4/1/20 |
| An allegation of abuse of authority and employee relations matter with a member of the management team. The matter was reviewed, guidance was provided to the employee and recommendations were given to management. The matter was successfully resolved. | | | | | | |
| 2 | Combo- Abuse of Authority Management Override | 002 | Received | 11/8/19 | Resolved/Closed | 12/10/20 |
| An allegation of abuse of authority and management override was reported by employee. The employee was provided guidance and a recommended corrective actions was given to management. Management took recommended action and the matter was successfully resolved. | | | | | | |
| 3 | Unfair Treatment | 003 | Received | 2/5/20 | Pending Audit | 6/30/20 |
| An allegation of unfair treatment of employee hiring without a competitive hiring process, and equal and fair opportunity for other qualified SANDAG staff. OIPA is in the process of performing an Audit of Salaries and Benefits and other Compensation which includes audit procedures to test and verify if the allegations of this matter can be substantiated. The estimated completion date for this Audit is August 2020. | | | | | | |
| 4 | Unfair Treatment | 004 | Received | 2/19/20 | Pending Audit | 6/30/20 |
| An allegation of unfair treatment of employee hiring without a competitive hiring process, and equal and fair opportunity for other qualified SANDAG staff. OIPA is in the process of performing an Audit of Salaries and Benefits and other Compensation which includes audit procedures to test and verify if the allegations of this matter can be substantiated. The estimated completion date for this Audit is August 2020. | | | | | | |
| 5 | Unfair Treatment | 005 | Received | 3/3/20 | Pending Audit | 6/30/20 |
| An allegation of unfair treatment among employees including favoritism. OIPA is in the process of performing an Audit of Salaries and Benefits and other Compensation which includes audit procedures to test and verify if the allegations of this matter can be substantiated. The estimated completion date for this | | | | | | |

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| | Audit is August 2020. | | | | | |
| 6 | Theft of Time | 006 | Received | 4/30/20 | Pending Audit | 6/30/20 |
| | An allegation of use of time. Employee complained that some employees were abusing their flexibility in their work schedule by including their commute and workout time as time worked. OIPA has planned a Timekeeping Audit within the next year that will include audit procedures to test for misuse and abuse of productive work time. | | | | | |
| 7 | Over Risk to Agency Controls and/or Policy | 007 | Received | 5/6/20 | Unresolved/open | 6/30/20 |
| | An allegation of lack of controls and failure to create or follow policies. Complainant provided examples of SANDAG lacking controls and sufficient policy around various operations. This matter is currently pending further investigation and review of evidence. | | | | | |
| 8 | Combo- Abuse of Authority and EE Relations | 008 | Received | 4/21/20 | Unresolved /Closed at the request of the employee | 6/30/20 |
| | <p>Allegations that include Abuse of Authority and Poor Employee relations was reported to OIPA. The employee had misunderstood the term of their employment based on both misinformation at the beginning of employment and years later upon discovery of the actual term of employment. The employee claims that SANDAG Management instructed the employee to research and identify overtime worked for a period extending over several years. Upon attempt the employee identified that several years of work product and records were missing and were not recoverable nor was the employee calendars.</p> <p>OIPA Response: Upon further review of the matter, and emails provided there was evidence that SANDAG management misdirected the employee and made conflicting statements that further delayed the discovery and imposed delays that impacted recovery over overtime pay due to statute of limitations. However, prior to the completion of the review, the employee determined the matter was intolerable and requested that OIPA terminate the review. Closed at complainant's request.</p> | | | | | |
| 9 | Combo- Abuse of Authority, EE Relations, Management Override and Unfair Treatment | 009 | Received | 3/11/20 | Unresolved/Open | 6/30/20 |
| | An allegation which includes Abuse of Authority, Poor Employee Relations with Management, Management Override and Unfair Treatment among employees within a working group. Employee provided various examples where management directed the employee to allow for management override | | | | | |

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| | that was unsupported and against SANDAG policies. Further examples were provided that potentially support allegations of unfair treatment among staff and allowance for abuse of authority. OIPA has planned audits around areas that were identified as areas where potential control weaknesses may exist as the employee has requested that the matter not be directly investigated for fear of retaliation. OIPA has provided guidance to the employee which includes documenting conversations and directions provided by SANDAG Management and other staff. | | | | | |
| 10 | Employee Relations Matter | 010 | Received | 2/19/20 | Resolved/ Closed | 2/25/20 |
| | An allegation that includes poor employee's relations with and unfair treatment from SANDAG Management. Employee alleged that they were being put at risk for being passed over for future opportunity and promotions by not being allowed to participate in cross training of activity as others in the employee's area of SANDAG were. OIPA provided guidance and suggested the employee reach out to management and attempt to resolve. Employee did have a discussion with SANDAG Management, and the matter was successfully resolved. The matter has been closed. | | | | | |

Conclusion

The Office of the Independent Performance Auditor is committed to ensuring that all reported claims of fraud, waste, and abuse related to SANDAG's operations are sufficiently investigated and successfully resolved.

In Fiscal Year 2020, OIPA applied approximately 280 hours administering and investigating Fraud, Waste, and Abuse matters which included coordinating Intake, investigations, and preparing reports and year-end status summaries.

Respectfully submitted,



Mary Khoshmashrab, MSBA, CPA
Independent Performance Auditor

cc: Honorable Vice Mayor Bill Baber
Honorable Mayor Bill Wells
Audit Committee Public Members
SANDAG Board of Directors
Hasan Ikhata, Executive Director
OIPA Webpage and File