State of California
DEPARTMENT OF TRANSPORTATION

California State Transportation Agency

Memorandum

Serious drought.
Help Save Water!

To: MALCOLM DOUGHERTY
Director

KOME AJISE
Chief Deputy Director

CRIS ROJAS
Deputy Director
Administration

Date: June 10, 2016

File: P3010-0628

From: WILLIAM E. LEWIS
Assistant Director
Audits and Investigations

Subject: **FINAL AUDIT REPORT – CONTROL ENVIRONMENT FOR ETHICAL BEHAVIOR**

Audits and Investigations (A&I) completed an audit of Caltrans' Control Environment for Ethical Behavior. We performed the audit to determine if Caltrans has established ethical practices and policies; promotes a climate of ethical conduct; and takes prompt action for unethical behavior. The scope of the audit included a review of the Office of Enterprise Risk Management's Ethics Program, a survey of executive management in all district offices and headquarters programs during the period of September 2015 through February 2016.

The final audit report includes the response from the Office of Enterprise Risk Management. We request that the status of corrective action be provided to A&I within 60-, 180-, and 360 days from the date of the final audit report. If all the recommendations are not implemented within 360 days from the date of the final report, we also request that status reports be provided every 180 days until they are fully implemented. As a matter of public record, the final audit report and the status reports will be posted on Caltrans' website.

We would like to thank the staff from the Office of Enterprise Risk Management and executive management from all the districts and headquarters programs for their assistance during this audit. If you have questions or need additional information, please contact Juanita Baier, Internal Audit Manager, at (916) 323-7951 or Zilan Chen, Chief, Internal Audits, at (916) 323-7877.

Enclosure

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AUDIT REPORT

Department of Transportation Control Environment for Ethical Behavior

P3010-0628

June 2016

Prepared By:

Audits and Investigations

California Department of Transportation

"Provide a safe, sustainable, integrated and efficient transportation system to enhance California's economy and livability"

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ATTACHMENT

1) **Response from the Office of Enterprise Risk Management**

Summary, Objectives, Scope, Methodology, Background, and Conclusion

SUMMARY

The California Department of Transportation (Caltrans) Audits and Investigations completed an audit of Caltrans' Control Environment for Ethical Behavior. The purpose of the audit was to determine if Caltrans has established ethical practices and policies; promotes a climate of ethical conduct; and takes prompt action when unethical behavior occurs.

Caltrans recognizes that ethical conduct is an organizational and an individual responsibility and has policies in place addressing ethical conduct. The Office of Enterprise Risk Management (OERM) is responsible for "fostering a culture of ethical conduct and integrity throughout Caltrans with its Ethics Program." OERM has made significant strides in establishing an Ethics Program in the short time it has been in existence. We reviewed related policies and procedures, interviewed OERM staff responsible for the Ethics Program, interviewed executive management in all 12 district offices and headquarters programs, and reviewed closed cases from the Ethics Helpline.

Our audit disclosed that Caltrans is on its way to having a mature ethical climate as it has implemented many of the recommended industry practices for a highly effective ethical culture. This includes strong "tone at the top," senior management involvement, organization-wide commitment, and an anonymous incident reporting system. Caltrans can continue strengthening its Ethics Program as follows:

- Promote, Communicate, and Monitor Ethics Statewide.
- Finalize the Code of Conduct.
- Roll Out Ethics Training to All Employees.
- Improve Aspects of the Ethics Helpline.
- Improve Conflict of Interest Process.
- Update Some Ethics and Related Policies.

In addition, we assessed Caltrans' ethical culture by interviewing districts and headquarters program executive management; conducting a statewide ethics survey; and analyzing the results of the 2015 Organizational Excellence "all employee" survey. We found that although Caltrans has made significant progress in developing and promoting an ethical climate, it still has opportunities to improve its ethical culture statewide.

OBJECTIVES, SCOPE, AND METHODOLOGY

The audit was performed in accordance with the International Standards for the Professional Practice of Internal Auditing and covered the period of July 2014 to February 2016. We conducted our audit from September 2015 to February 2016. Changes after these dates were not tested, and accordingly,

our conclusions do not pertain to changes arising after February 2016. The objectives of the audit were to:

- Evaluate if policies and procedures are established for addressing integrity and ethical values.
- Determine if ethics and related policies and guidelines are consistent with Caltrans' mission, vision, values, and goals.
- Evaluate if Caltrans fosters a culture of ethical behavior, including the "tone at the top" established by management and other methods used to promote ethical behavior.
- Assess if internal controls are in place to identify inappropriate and unethical behavior.
- Determine if prompt and appropriate action is taken when inappropriate and unethical behavior occurs.

To achieve our objectives, we performed the following:

- Reviewed Caltrans' ethics and related policies.
- Evaluated the Ethics Program elements, the Ethics Helpline, and Conflict of Interest processes.
- Met with Caltrans' Director and Chief Deputy Director.
- Interviewed executive management at the 12 district offices and eight Headquarters programs to identify how they promote and communicate ethics, and address unethical conduct.
- Identified industry standards to establish a benchmark to determine if Caltrans' current practices could be improved.
- Analyzed the 2015 Organizational Excellence "all employee" survey to evaluate the Caltrans' ethical culture.
- Conducted an Ethics Survey jointly with OERM.

We also reviewed industry practices by various sources and guidance issued by the Institute of Internal Auditors (IIA), including the IIA's *International Professional Practices Framework for Ethics* guidance, Sai Global, *Compliance and Ethics Program Best Practices,* and *The Defense Industry Initiative, Creating and Maintaining an Effective Ethics Program.*

BACKGROUND

The California legislature requested Caltrans to establish Enterprise Risk Management and Ethics functions during Assembly and Senate hearings in 2011 and 2012 because it believed Caltrans did not have internal controls in place to identify inappropriate behavior. Caltrans established the OERM under the Division of Administration in 2013. The Ethics Program is part of OERM and is responsible for providing guidance to foster a culture of ethical conduct and integrity throughout Caltrans by implementing an Ethics Code of Conduct, providing annual Ethics Training, managing the Conflict of Interest process, and managing the Ethics Helpline.

In 2014, Caltrans and the California State Transportation Agency established the California Improvement Project as a result from the State Smart Transportation Initiative (SSTI) assessment in

2013. Caltrans developed new employee and supervisory handbooks and expectation memorandums in 2014 as a result of the SSTI assessment recommendation.

According to the IIA, an ethical culture is created through a robust ethics program that sets expectations for acceptable behaviors in conducting business within the organization and with external partners. It includes effective oversight, strong "tone at the top," senior management involvement, organization-wide commitment, a customized code of conduct, timely follow-up and investigations of reported unethical incidents, consistent disciplinary action, ethics training, communications, ongoing monitoring systems, and an anonymous incident reporting system.

Since Caltrans established the OERM, it has made significant strides for building a solid foundation for its Ethics Program. OERM's achievements for the ethics program include:

- Meeting with district offices and headquarters programs to discuss ethics.
- Creating and administering the Ethics Helpline which is an anonymous way for employees to report unethical behavior.
- Establishing a Conflict of Interest process.
- Revising the Ethics Policy to include retaliatory clause to protect employees who report misconduct.
- Creating an Ethics Helpline newsletter.
- Collaborating with Strategic Planning to include ethics questions in their Organizational Excellence surveys.
- Developing a Code of Conduct and implementing statewide Ethics Training under management review.
- Providing monthly updates to the Director, Chief Deputy Director, and Investigative Partners on helpline cases.

District offices and headquarters programs also know the importance of ethics and the responsibility of all Caltrans employees to behave ethically and report misconduct. We identified activities that executive and program management are doing in their respective areas for promoting and communicating ethics and for monitoring their staff.

CONCLUSION

Our audit disclosed that Caltrans has made significant strides in its Ethics Program; however, we found Caltrans can continue strengthening its Ethics Program as follows:

- Promote, Communicate and Monitor Ethics Statewide.
- Finalize the Code of Conduct.
- Roll Out Ethics Training to All Employees.
- Improve Aspects of the Ethics Helpline.
- Improve Conflict of Interest Process.
- Update Some Ethics and Related Policies.

In addition, we assessed Caltrans' ethical culture by interviewing district and headquarters program executive management; conducting a statewide ethics survey; and analyzing the results of the 2015 Organizational Excellence "all employee" survey. We found that although Caltrans has made significant progress in developing and promoting ethical climate, it still has opportunities to improve its ethical culture statewide.

VIEWS OF RESPONSIBLE OFFICIALS

We requested and received a written response to the finding recommendations from the Chief of the Office of Enterprise Risk Management, who worked with the Director's office on a joint response.

WILLIAM F. LEWIS, CPA
Assistant Director
Audits and Investigations

May 16, 2016

FINDING - Caltrans Can Continue to Strengthen Its Ethics Program

During the course of this audit, we reviewed industry practices by various sources and guidance issued by the Institute of Internal Auditors (IIA) on assessing ethical culture in an organization. The IIA provides various elements to determine the maturity of the ethical culture using a maturity model, which offers various levels ranging from an "immature" to a "world class" model. We determined that the Office of Enterprise Risk Management (OERM) has already done significant work in building a solid foundation to consider the Ethics Program a "mature" model. We identified the following areas that would further improve California Department of Transportation's (Caltrans) Ethics Program.

The Ethics Program Could be More Effective by Promoting, Communicating, and Monitoring Ethics Statewide

The Ethics Program is relatively new in Caltrans, and OERM has done an excellent job at promoting the Ethics Helpline statewide; however, we did not see evidence that other aspects of the program were promoted. We met with executive management in all 12 district offices and eight headquarters programs/divisions and found that some are hiring consultants to assist with training and investigative functions. During the course of our audit, we noted that not all districts and programs were aware of using the Ethics Program as a resource for ethics related questions. Utilizing the Ethics Program as a resource can increase the effectiveness of the ethics program and accountability of employees. The IIA's *International Professional Practices Framework for Ethics* guidance (IIA Ethics Guidance) states that a highly effective culture includes frequent communications and demonstrations of ethics and expectations within the organization.

We also found that the Ethics Program could improve how it promotes and communicates ethics statewide by developing annual education and communications plans. An annual education plan is part of a "mature" ethical culture and would include annual training goals and an evaluation process to determine the need for general training or targeted training. The training currently being developed will be discussed separately, but we did not see training goals or plans for targeted training. Industry practices suggest that a basic ethics program maintains an annual education plan, and a "mature" ethics program will use results from risk assessments and cultural surveys, and solicit input from cross-functional groups.

Another element of a mature ethical culture is a statewide communications plan that allows the ethics program to communicate the program's elements to employees statewide. It also helps leaders to understand how the Ethics Program works and how his/her role fits into the program and contributes to building and maintaining an ethical culture. According to the OERM, they communicate ethics during the statewide risk assessment every two years with executive management in all the district offices and headquarters programs and provide the Executive Board with updates. The OERM has taken a "top-down" approach to communicate by meeting with executive management to discuss ethics and the Ethics Helpline. However, none of these are formalized processes. Industry practices suggest that developing a comprehensive communication plan helps manage the task of

communicating the ethics program's elements to employees and stakeholders. Multiple methods for communicating the organization's commitment to ethical conduct should be considered to ensure the message is efficiently and effectively communicated to employees.

The Ethics Program could benefit from establishing benchmarks for evaluating Caltrans' ethical culture and identifying improvements. Industry practices recommend periodic ethics surveys be conducted to help measure the ethical culture, and also to measure various ethics program elements including the code of conduct, policies, reporting mechanisms, training and communication, and leadership actions. The Ethics Program participated in the Strategic Planning Organizational Excellence Surveys in 2013 and 2015 by including three ethics related questions. According to Ethics Program staff, they reviewed the survey "open-ended" comments and brought potential ethics issues to management's attention and discussed the issues during strategic planning meetings. During our meetings with executive management, we also noted that not all districts and headquarters programs have addressed the survey results or comments.

Industry practices also identifies that establishing a formal recognition program for employees who demonstrate good ethical behavior could improve the ethical culture. Part of promoting ethical behavior is to empower employees by valuing, respecting, and recognizing them for good ethical behavior. Caltrans recognizes employees in various ways such as superior accomplishment and employee recognition awards, informal recognition, and internal newsletters; however, establishing a recognition program for good ethical behavior may improve the ethical culture. The IIA Ethics Guidance also states that a highly effective culture includes explicit strategies to support and enhance the ethical culture with regular programs to update and renew the organization's commitment to an ethical culture.

Office of Enterprise Risk Management Response:

The OERM agrees and added that comments were shared with the Organizational Excellence Goal Team to help inform the strategy development process. For a copy of the complete response, please see the Attachment.

The Code of Conduct Has Not Been Finalized

The IIA Ethics Guidance recommends that organizations develop a formal code of conduct, which is clear and understandable, contains related statements, policies, and aspirational views. In addition to the IIA Ethics Guidance, we noted that Caltrans Executive Board Decision Document - Reference December 11, 2012, states, "An Ethics function is a formal organizational initiative to implement standards of responsible business conduct, and detect and prevent misconduct."

We found that OERM developed a Code of Conduct for Caltrans that contains all the elements recommended for a "mature" organization, but it has not been issued. The draft Code of Conduct identifies Caltrans' policies and principles that govern ethical and legal obligations. In addition, the introduction contains a message from the Director relaying Caltrans' values and ethical standards for all employees. The draft Code of Conduct also contains questions and answers to illustrate

employee conduct and applicable policy. According to OERM staff, the draft Code of Conduct is in the review process.

Without a department Code of Conduct, employees may not understand the importance of ethics or their duty as a Caltrans employee. In addition, a formal Code of Conduct is a critical component of an ethics program.

Office of Enterprise Risk Management Response:

The OERM agrees and stated that the Code of Conduct is in the final stages of management review. For a copy of OERM's complete response, please see the Attachment.

Ethics Training Has Not Been Rolled Out to All Employees

Another important aspect of an effective Ethics Program is ethics training for all employees. OERM is in the process of finalizing Ethics Training specifically designed for Caltrans employees.

The Ethics Training is an online training program that will be required for all employees and will complement the Office of the Attorney General's Ethics Training. We reviewed the draft training modules and noted that they are comprehensive and cover the "what, why, and how" of ethics. The training also defines ethics in the workplace, the benefits of ethical behavior, and how to apply a values-based approach towards common situations in the workplace. However, at the time of our audit, it was unclear whether the training would be a one-time type of training or whether employees will be required to take the training on an annual basis or at other intervals.

According to OERM staff, the ethics training was developed but has not been rolled out because it is going through the review approval process.

The IIA Ethic Guidance states "a…highly effective ethical culture will likely include ethics training for all employees, suppliers, and major customers, including exercises in ethical decision-making with scenarios like those employees might encounter on their jobs." In addition, industry practices recommends targeted training geared towards specific audiences with periodic communications using a variety of tools and methods to reinforce training initiatives.

Training is a critical component of an Ethics Program as employees need to know Caltrans' expectations. Without a department ethics training, the ethics program is not complete and cannot function as intended.

Office of Enterprise Risk Management Response:

The OERM concurs that training is a critical component of an Ethics Program and stated that the Ethics Training is in the final stages of management review. For a copy of OERM's complete response, please see the Attachment.

Aspects of the Ethics Helpline Could be Improved

Effective Ethics Program also include easily accessible ways for employees to confidentially report alleged violations of the Code of Conduct, policies, and other acts of misconduct. OERM established an Ethics Helpline (Helpline) in September 2014 for employees to confidentially report possible fraud, waste, abuse of Caltrans assets, and/or illegal or unethical behavior.

The Helpline is a telephone and internet-based, multilingual site managed by a third party contractor for 24 hours a day, seven days a week. The contractor intakes all the necessary information received and logs it into a database (also known as the case management system) for OERM staff to access. OERM staff reviews the logged information to determine who should research the complaint. OERM does not investigate cases, instead cases are referred to investigative partners, such as the Division of Human Resources, Division of Safety and Management Services, Audits and Investigations, the Discrimination Complaint and Investigations Unit, Labor Relations, and to the Deputy District Director for Administration for the 12 districts, or designated individuals in headquarters programs.

There were 278 cases reported using the Helpline as of November 12, 2015. Out of the 278 cases reported, 96 closed cases were ethics related. We considered "ethics related" cases the ones categorized as fraud/theft, conflict of interest, unethical behavior/conduct, falsification of documents, incompatible activities and nepotism. We reviewed the closed cases and noted that only 15 were substantiated, which represents approximately 15 percent. The remainder 85 percent cases were not substantiated. We reviewed the closed cases from intake through closing to evaluate the process and noted the following:

- The initial identification of cases could be improved. We noted that Caltrans employees filing complaints may not understand what type of cases to report via Helpline. The Helpline has a drop-down box of options to select from, but there are no definitions to go along with each option. There are twenty categories to choose from and seven of them appear to be "ethics" related. It appears that employees, who are not familiar with ethics definitions, could choose the incorrect category which would misrepresent the type of case. The Ethics Program is relatively new, and currently, there are no written desk procedures to guide the OERM staff in categorizing incoming cases. The Helpline could be more effective with written desk procedures for OERM staff.

- Once cases are received, the OERM staff determines if cases violate ethics related policies. It appears that some cases could have been triaged better and not forwarded to district and program management. In addition, due to the newness of the program, not all OERM staff have been adequately trained to triage cases.

- The current system notification that OERM uses to follow up on specific cases after they are assigned to investigative partners can be more effective. A "red" arrow to follow up on a case shows up only once on the database calendar. OERM can extend the follow-up date when indicated on the calendar, but without Helpline follow-up procedures, a case may remain outstanding longer than necessary.

In addition, some executive management in the district offices and headquarters programs/divisions expressed concerns that their staff may not have the technical knowledge for investigating the cases that are forwarded to them.

The IIA Ethics Guidance recommends a highly effective ethical culture that has clear delegation of responsibilities to ensure ethical consequences are evaluated, confidential counseling is provided, allegations of misconduct are investigated, and case findings are appropriately reported.

OERM already has some of these practices in place but could improve on designating a person to provide advice to managers and supervisors and in having clear delegation of responsibilities for its staff, the contractor, and the investigative partners. We found that OERM is developing guidelines for managers and supervisors, who assist in initial investigations, and for investigative partners titled "Conducting an Ethics Helpline Investigation," but it has not been finalized. These guidelines will provide managers and supervisors a summary of the investigation process to follow.

Office of Enterprise Risk Management Response:

The OERM agrees that the evaluation and prioritization of incoming cases is important and will work more closely with investigative partners to improve the intake and triage process. For a copy of OERM's response, please see the Attachment.

Conflict of Interest Process Could be Improved

To help identify potential conflicts of interest, the law requires agencies to develop a Conflict of Interest Code (code) and employees in designated positions to report their financial interests on a Statement of Economic Interest (Form 700). Conflict of Interest is defined by Deputy Directive 09 R5 as a "situation in which any official action taken by an employee is, may be, or appears to be, influenced by considerations of personal, financial, or other gain, rather than the general public good." OERM is the Conflict of Interest Officer responsible for Caltrans' code and collection of Form 700s.

We reviewed the Conflict of Interest process and noted the following:

- Caltrans' code has not been updated since July 2012. The Fair Political Practices Commission (FPPC) requires state entities to review and update their code every odd-numbered year. It is critical to have an updated code because it lists each district and program with designated classification and disclosure category required for reporting and working structure. The FPPC's Rules on Conflict of Interest Codes states, "It is essential and legally required that an agency's conflict of interest code reflects the current structure of the agency and properly identifies all officials and employees who should be filing a Form 700. To ensure the codes remain current and accurate, each agency is required to review its conflict of interest code at least every other year – state agencies in odd-numbered years." Caltrans is aware of the outdated conflict of interest code and has solicited updates from the programs to be in compliance with the FPPC requirements.

- OERM collects the Form 700s and performs a review of a random sample to ensure that the forms are complete. We reviewed the Form 700s submitted in 2014 because the ones submitted in 2015 were not available at the time. We noted that OERM did not verify that all staff required to submit a Form 700, submitted one. Each district office and headquarters program has a coordinator responsible for collecting, reviewing, date stamping, and sending the Form 700s to OERM by April 1st of every year.

- OERM management receives conflict of interest inquiries relating to Form 700 filers, but does not have a process for tracking these inquiries. OERM does not consistently log these inquiries into the database. Additionally, the OERM intranet webpage states conflict of interest questions should first be directed to the supervisor; then the coordinator, and lastly, to OERM. Although this is consistent with FPPC guidelines, OERM could be more proactive in assisting district and program coordinators with conflict of interest concerns since they are not trained conflict of interest representatives.

California Code of Regulations, title 2, section 18115, Duties of Filing Officer and Filing Officials - Statement of Economic Interests, states, "The filing officer is the person or agency which receives and retains original statements of economic interests. Filing officers who are responsible for statements of economic interest shall...determine whether the proper statement have been filed...promptly notify the filer if a statement does not satisfy the requirements of the subsection...compile and maintain a current list of all statements filed with the office."

Office of Enterprise Risk Management Response:

The OERM is aware that Caltrans' Conflict of Interest Code has not been updated since July 2012, is in the process of updating it, and is now verifying that all staff required to submit Form 700 submits one. OERM partially agrees that they could be more proactive in assisting districts and program coordinators with conflict of interest concerns. For a copy of OERM's response, please see the Attachment.

Some Ethics and Related Policies Need Updating

Caltrans has established ethics and related policies through Directors Policies (DP) and Deputy Directives (DD). We reviewed policies and directives relating to ethics to determine if they include appropriate statements for addressing ethics and are consistent with Caltrans' mission, vision, values, and goals. We found that not all policies and directives reviewed contained statements addressing ethics and some need updating.

Specifically, we found:

1) **DD-01, *Nepotism*; DD-10, *Competitive Procurement*; and DD-55, *Information Assets***
   These three directives include no requirement for managers and supervisors to initiate prompt investigatory, corrective, and/or disciplinary action for violations of the policies.

2) **DP-02-R3, *Ethics Policy***
We reviewed this policy and found that it does not define ethical standards; does not mention who will take prompt corrective action and/or disciplinary action if management behaves unethically; does not require ethics training for designated employees; and does not refer to ethics related policies.

3) **DD-09-R5, *Incompatible Activities and Conflict of Interest***
This directive is not consistent with Government Code section 19990 and Caltrans' values because it does not contain incompetency, inefficiency, neglect of duty, insubordination, or dishonesty as incompatible activities. In addition, it does not contain manager/supervisor responsibility to notice employees upon determination of final decision of informal investigation in order for the employee to file an appeal.

4) **DD-01, *Nepotism***
Under the Hiring Supervisor Responsibilities section, the directive states that exceptions may be granted under limited circumstances and that the supervisor must obtain the exception prior to making a hiring commitment. However, the policy does not define what these exceptions are or what limited circumstances means.

5) **DD-55, *Information Assets***
This directive does not require third party vendors, partners, contractors, volunteers, etc. who may have access to Caltrans' information assets and records to uphold the same ethical standards as Caltrans employees.

If policies and directives do not contain appropriate ethical statements that can be integrated into employees' everyday behavior, they will not be as effective. The IIA Ethics Guidance recommends that policies contain ethical statements that are consistent and provide easily understood messages of expected behavior. According to industry practices, the ethics policy should include the code of conduct, the institution of an inquiry and reporting mechanism and tracking system, periodic ethics training, and a mechanism to collect and report employee feedback.

The OERM handles policies regarding ethics, incompatible activities, and secondary employment. The incompatible activities and secondary employment policies were revised in 2014 to include a disciplinary action statement for violations of the policies. The ethics policy is currently being revised, and we reviewed a draft copy. If the language does not change during the review process, it will address our concerns. In addition, OERM is developing a Code of Conduct that will include all ethics and related policies.

Office of Enterprise Risk Management Response:

The OERM concurs and is currently in the process of revising the policies mentioned in the draft audit report. For a copy of OERM's complete response, please see the Attachment.

RECOMMENDATIONS:

To improve the Ethics Program, we recommend the OERM:

1. Consider adopting industry practices for promoting and communicating the Ethics Program statewide; and provide guidance on ethics related issues to district offices and programs.
2. Establish a benchmark and utilize the established benchmark to continually monitor and evaluate Caltrans' ethical culture.
3. Finalize the code of conduct and issue it to all employees.
4. Determine the frequency of the ethics training, finalize it, and roll it out to all employees.
5. Improve the functionality of the Ethics Helpline by ensuring cases are properly classified; developing written desk procedures for OERM Helpline staff; and providing written guidelines to districts and programs.
6. Strengthen the conflict of interest processes by finalizing the update of the current code and continuing to assist districts and programs with conflict of interest issues.
7. Review and revise relevant policies and directives to add appropriate language regarding ethical behavior.

Office of Enterprise Risk Management Response:

The OERM provided a response with a plan of action outlining how it will implement the recommendations. For a copy of OERM's complete response, please see the Attachment.

OBSERVATIONS

Caltrans Has an Opportunity to Improve Its Ethical Culture Statewide

The IIA Ethics Guidance recommends that, at a minimum, internal audits periodically assess the state of the organization's ethical climate and the effectiveness of its strategies, tactics, communications, and other processes. We assessed Caltrans' ethical culture by meeting with executive management in all district offices and headquarters programs/divisions; conducting an ethics survey jointly with OERM; and evaluating responses to the current ethics survey and the 2015 Organizational Excellence survey. The results indicate some gaps between executive management's perception and employees' perception of the current ethical culture. We determined the ethical culture can be strengthened by promoting, communicating, and reporting ethics. Specifically, employee perception of the "tone at the top" which includes executive management is not as strong as the tone in the middle, which includes supervisors and managers. This perception is contrary of what most executive management believe based on our meetings with executive management. In addition, survey results indicated that employees perceive executive management to consistently comply with laws, rules, and policies less than that of their manager or supervisor. These results could be viewed as an opportunity to improve by establishing a benchmark for monitoring and evaluating the ethical culture.

Executive Management Input

We met with executive management to obtain information on how management foster a culture of ethical behavior and identify mechanisms in place for reporting and handling misconduct and unethical behavior. We found that some district offices and headquarters programs have very specific activities to promote ethical behavior and improve the culture within their organization. However, this was not the case in all districts or headquarters programs. The majority of executive management stated that they promote ethical behavior by their example and they expect the same from managers and supervisors. Further, some executive managers emphasized the importance of promoting ethics within their communities and with external partners.

Executive managers in all district offices stated that expectations for ethical behavior are communicated annually through the employee expectations memorandum and a review of the required policies. In addition, some conduct regular meetings with senior management to discuss ethics issues and others stated that they can do more with communicating expectations. Executive management encourages senior management to meet with their staff but they stated that information is not always communicated to lower level supervisors. According to executive management, one of the challenges is communicating expectations to field office staff.

The majority of executive management take ethics seriously and believe they have a good ethical culture. Some believe a good ethical culture is inherent to their programs and others continue to make significant improvements. One district office stated they do not focus specifically on ethics but find safety and customer service to be more of the focus. Executive management believes that most employees want to do the right thing but it only takes a few unethical employees to significantly affect public perception of Caltrans' image. In addition, executive management faces many challenges, including monitoring and communicating with employees in field offices and ensuring

that senior management communicate information to lower level supervisors. Cultural diversity also presents a challenge when certain behavior patterns do not match expectations. We learned some managers have not addressed the Organizational Excellence survey comments because they focused on strategic development instead.

We identified the following activities that some districts and programs are using to promote and communicate ethics in their individual districts:

- Conduct employee empowerment workshops for all staff.
- Utilize social media to communicate information.
- Email blasts reminding staff of ethics and related policies.
- Conduct brown bag lunches and joint staff meetings to share information.
- Conduct management and staff meetings to discuss ethical issues.
- Conduct Town Hall meetings.
- Conduct internal employee surveys.
- Implement employee suggestion box.
- Incorporate ethics related questions during the hiring/interview process.

Districts and headquarters programs suggested the following to improve ethical culture statewide:

- Perform consistent, statewide accountability for unethical behavior.
- Ensure consistent consequences for clear cut zero-tolerance unethical behavior.
- Educate staff on the disciplinary process.
- Provide class room ethics training and incorporate scenarios of unethical behavior.
- Conduct department-wide ethics surveys quarterly.
- Become more transparent as an organization.
- Reinforce positive behavior by providing recognition to staff who demonstrate good and ethical conduct.
- Ensure timely handling of the disciplinary process.
- Perform timely investigations of complaints.
- Consider contracting out the investigation of complaints.
- Consider using a third-party contractor to conduct background checks for the hiring process.
- Incorporate discussion of unethical behavior into the annual Individual Development Plan process.
- Provide better guidance in the ethics and related policies for disciplinary action.
- Communicate Caltrans' commitment to good ethical behavior to our external partners.
- Create a report by OERM that includes the outcome of ethics cases to be used as a tool for lessons learned.

2016 Ethics Surveys

We conducted two ethics surveys jointly with OERM to determine if managers and supervisors promote, communicate, and report unethical behavior. The managers and supervisors survey was sent directly to all Caltrans managers and supervisors. Notification of the rank and file survey, however, was sent to the selected districts and headquarters programs management with instructions to forward the survey link to employees. We selected Districts 2, 4, 7, 8, 10, 11 and Divisions of Maintenance, Design, Budgets, Human Resources, Procurement and Contracts, Rail and Mass Transportation, and Information Technology in headquarters. We received responses from all selected districts and programs except for Rail and Mass Transportation and Information Technology.

We summarized the results of the survey in the following chart. The numbers represent an average percentage of all "agree or strongly agree" responses to the questions by district and headquarters. The first three questions were included in the survey to managers and supervisors, and the last question was only asked to rank and file employees.

2016 ETHICS SURVEYS	Selected Rank and File Emloyees (percentages)			All Managers/Supervisors (percentages)		
	Districts	HQ	Average	Districts	HQ	Average
Executive Management promotes and demonstrates ethical standards in accordance with Caltrans' Ethics Policy.				70	72	71
Executive Management consistently complies with laws, rules, and policies related to my unit/program.				67	68	68
Executive Management communicates and ensures staff complies with ethics policies.				68	68	68
My manager/supervisor promotes and demonstrates ethical standards in accordance with Caltrans' Ethics Policy.	76	72	74	78	81	80
My manager/supervisor consistently complies with laws, rules, and policies related to my unit/program.	76	70	73	78	81	80
My manager/supervisor communicates and ensures staff complies with ethics policies.	73	69	71	77	80	78
My manager/supervisor takes immediate action when unethical behavior or misconduct is brought to his/her	63	56	60	70	77	73
My manager/supervisor is supportive when concerns of unethical behavior are brought to his/her attention.	66	60	63	75	82	79
Wrong doing or unethical behavior will stop if brought to my manager/supervisor attention.	62	50	56	64	69	67
Job related pressures and bias exist in my program that could create opportunities for unethical behavior.	33	40	36	37	41	39
If unethical behavior should occur in the work environment, I feel I have a means to report it.	71	68	70			

Although executive management is doing what they determine is appropriate, the results of the ethics survey indicate promoting and communicating ethics could be improved statewide. The highest numbers of managers/supervisors responded that they "agreed or strongly agreed" that their direct manager promotes, demonstrates and communicates ethics, and a lower number responded that executive management does the same. We also noted the lowest number, 67 percent, of all respondents "agreed or strongly agreed" that their manager or supervisor takes immediate action when unethical behavior is brought to their attention and wrongdoing will stop if brought to their attention.

LOWEST AVERAGE		HIGHEST AVERAGE
71 percent of all respondents agreed or strongly agreed that executive management promotes and demonstrates ethical standards in accordance with Caltrans' Ethics Policy.		**81 percent** of all respondents agreed or strongly agreed that their manager or supervisor promotes and demonstrates ethical standards in accordance with Caltrans' Ethics Policy.
68 percent of all respondents agreed or strongly agreed that executive management consistently complies with laws, rules, and policies related to their unit/program.		**80 percent** of all respondents agreed or strongly agreed that their manager or supervisor consistently complies with laws, rules, and policies related to their unit/program.
68 percent of all respondents agreed or strongly agreed that executive management communicates and ensures staff complies with the ethics policy.		**78 percent** of all respondents agreed or strongly agreed that their manager or supervisor ensures staff complies with the ethics policy.
67 percent of all respondents stated that wrongdoing or unethical behavior will stop if brought to their manager or supervisor's attention.		

The IIA Ethics Guidance states that all levels of management have a responsibility to promote ethics and exemplify ethical behavior including frequent communications and demonstrations of expected ethical attitudes and behavior. Also, according to the Ethics Resource Center Research Report, *Ethical Leadership 2014*, employee's perception of a leader's character is more significant than deliberate and visible promotion of ethics.

2015 Organizational Excellence Survey

The Office of Strategic Management conducted an "all employee" Organizational Excellence Survey in 2015, to determine if Caltrans is meetings its performance and organizational excellence goals. The OERM participated in conducting the survey by adding ethics and risk questions. We analyzed the survey responses by identifying questions that could affect the ethical culture as defined by the IIA.

The following chart includes the three ethics questions with the highest and three lowest average of "agree or strongly agree" responses for district offices and headquarters programs as follows:

2015 Organizational Excellence Survey	All Employees	
	Districts (percentages)	HQ (percentages)
I understand Caltrans' Ethics policy.	84	94
If I observe unethical behavior, I have a means of reporting the observation.	71	78
I am aware of the Caltrans Ethics Helpline.	80	89
Over the past 12 months, morale in my unit has: [Improved]	21	22
Creativity and innovation are encouraged or rewarded in my unit.	38	
Overall communication, professionalism, and customer service levels have improved over the last year.	31	36
Caltrans provides enough training for my current job.		39

We noted that while a large percentage of staff agreed or strongly agreed that they are aware of the ethics policy and the Ethics Helpline, a smaller percentage of staff felt they have a means to report unethical behavior. We also noted that the "agree or strongly agree" responses for the morale and overall communication survey questions were the lowest.

We also analyzed the open-ended comments to the 2015 Organizational Excellence Survey by categorizing them into five areas that make up the ethical culture, including Tone at the Top; Goals and Objectives; Policies and Procedures; Communication; and Monitoring. We found that the top two areas of concern were consistently Tone at the Top and Communications.

RECOMMENDATIONS

To improve the ethical culture statewide, we recommend Caltrans executive management:

- Consider requiring that all districts/programs adopt the activities some districts are already performing to improve communication with employees and to ensure adherences to laws, rules, and policies.
- Communicate to managers and supervisors the importance of addressing unethical behavior when reported by employees and ensure immediate action is taken.
- Utilize survey results to monitor ethical culture periodically statewide.

Audit Team

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ATTACHMENT

State of California
DEPARTMENT OF TRANSPORTATION

California State Transportation Agency

Memorandum

serious drought.
Help save water!

To: WILLIAM E. LEWIS
Assistant Director
Audits and Investigations

Date: June 3, 2016

File: P3010-0628

From: Michelle Tucker Shanna Gurr for Michelle Tucker
Chief Risk and Ethics Officer
Office of Enterprise Risk Management

Subject: **RESPONSE TO DRAFT AUDIT REPORT – CONTROL ENVIRONMENT FOR ETHICAL BEHAVIOR**

The Office of Enterprise Risk Management (OERM) has reviewed the Draft Audit Report entitled "Control Environment for Ethical Behavior." OERM appreciates the partnership of Audits & Investigations (A&I) in evaluating the ethics program, a new function at Caltrans, to ensure that OERM is building a sound and sustainable ethics function. The evaluation helps to validate the efforts of this emerging discipline at Caltrans.

Generally, OERM concurs with the findings and considers that most action items are very close to resolution. As requested, attached is OERM's written response to A&I's findings and recommendations, along with OERM's proposed corrective action plans.

Please note the following comments regarding the draft audit report:

- The report states: "According to Ethics Program staff, they reviewed the survey 'open-ended' comments and brought potential ethics issues to management's attention and discussed the issues during strategic planning meetings." OERM would like to add, the comments were shared with the Organizational Excellence Goal Team to help inform the strategy development process; meetings were held with cross-functional teams in July 2015, Sept 2015, Nov/Dec 2015, and in early 2016.

- OERM **concurs** with the audit statement "Without a department Code of Conduct, employees may not understand the importance of ethics or their duty as a Caltrans employee. In addition, a formal Code of Conduct is a critical component of an ethics program." OERM's draft Code of Conduct is in the final stages.

- OERM **concurs** with the audit statement "Training is a critical component of an Ethics Program because employees need to know Caltrans' expectations. Without a department ethics training, the ethics program is not complete and cannot function as intended." OERM's draft Ethics training in the final stages of management review.

- The Audit report states: "Once cases are received, the OERM staff determines if cases are violations of ethics related policies. It appears that some cases could have been triaged better and not forwarded to the investigative partners. In addition, due to the newness of the program, it appears that staff have not been adequately trained to triage cases. Adequate review and evaluation up front will minimize cases without merit being forwarded to the investigative partners." OERM concurs that evaluation and prioritization of incoming cases is important. OERM will work more closely with investigative partners to improve the intake and triage process.

- The Caltrans Conflict of Interest Code has not been updated since July 2012. OERM is aware of this and of the requirement by the Fair Political Practices Commission (FPPC) that all departments review and update their code every odd-numbered year; the revised Caltrans Conflict of Interest Code was circulated to Caltrans management for comment in February 2016. The final version is expected to be completed by August 2016.

- OERM has changed its practice and would like to clarify the statement "OERM did not verify that all staff required to submit a Form 700, submitted one." OERM requested employee information from the Division of Human Resources to identify each classification listed in the code with employees. OERM is in the process of recording each form received.

- OERM partially agrees with the following statement that "OERM could be more proactive in assisting district and program coordinators with conflict of interest concerns since they are not trained conflict of interest representatives." Yearly, a meeting is held to discuss the Form 700 and the coordinators role. OERM is available to coordinators at any time to assist with any questions. In addition, OERM frequently provides Conflict of Interest advice and analysis to Caltrans managers and employees; conflict of interest inquiries will be referred to the legal division effective immediately.

Attachment
Office of Enterprise Risk Managements Corrective Action Plan

c: Malcolm Dougherty, Director,
Kome Ajise, Chief Deputy Director,
Cris Rojas, Deputy Director, Administration

Audits and Investigations (A&I) - Response to Draft Report

_____ 60 day / _____ 180 day / _____ 360 day

Audit Name: Control Environment for Ethical Behavior

Audit No. P3010-0628

Auditee: Office of Enterprise Risk Management

A&I Audit Recommendation	Auditee Response to Draft Report	Estimated Completion Date	Staff Responsible	A&I Analysis
Audit Report Finding #1 **Promote, Communicate, and Monitor Ethics Statewide**				
The Ethics Program should designate a person to provide advice to the investigative partners and should have clear delegation of responsibilities for staff, the contractor, and investigative partners.	Each district and division is assigned to a specific ethics analyst which will be documented in an electronic list and shared with leadership and appropriate staff. OERM will also post the list on the intranet. The Ethics Helpline Reference Binder delegates the ethics helpline responsibilities; staff, partners, and the contractor have a copy of the binder; ethics staff will ensure all new investigators have this. A tool on how to conduct administrative inquiries is in the final stages for preparation.	July-16	Ethics Program Staff	
Audit Report Finding #4 **Conflict of Interest (COI) Process Could be Improved**				
Update the Caltrans Conflict of Interest Code.	The Office of Enterprise Risk Management is in the process of updating the outdated code. OERM updated the code and shared with management in February 2016. Management suggestions were incorporated and OERM will be sending it to the FPPC for their review.	August-16	Office of Enterprise Risk Management	
Track Conflict of Interest Inquiries.	The Office of Enterprise Risk Management has no staff solely dedicated to the COI process. There is no formal process for requesting COI assistance. OERM will prepare a formal process for such inquiries and will partner with Caltrans Legal.	September-16	Office of Enterprise Risk Management Caltrans Legal	
Compile and maintain a current list of all statements filed with the office.	The Office of Enterprise Risk Management has a current list of all classifications that must file a form 700.	Complete	Office of Enterprise Risk Management	
Audit Report Finding #4 **Some Ethics and Related Policies Need Updating**				
Update DD-01 Nepotism Policy.	An update is in progress.	December-16	Division of Human Resources	
Update DD-10 Competitive Procurement.		December-16	Division of Procurement and Contracts	
Update DD-55 Information Assets.		December-16	Information Technology	
Update DP-02-R3 Ethics Policy.	An update is in progress.	December-16	Office of Enterprise Risk Management	
Update DD-09-R5 Incompatible Activities and Conflict of Interest.	An update is in progress.	December-16	Office of Enterprise Risk Management	

Audits and Investigations (A&I) - Response to Draft Report

_____ 60 day / _____ 180 day / _____ 360 day

Audit Name: Control Environment for Ethical Behavior

Audit No. P3010-0628

Auditee: Office of Enterprise Risk Management

Audit Report Finding #1

Promote, Communicate, and Monitor Ethics Statewide

A&I Audit Recommendation	Auditee Response to Draft Report	Estimated Completion Date	Staff Responsible	A&I Analysis
Consider adopting industry practices for promoting and communicating the Ethics Program statewide.	The Ethics Program was developed using the Federal Sentencing Standards and various best practices. Staff continue to take training to ensure they are current on industry standards and best practices.	Ongoing The Ethics Program will continue to pursue opportunities to update and advance subject matter knowledge.	Ethics Program Staff	
Provide guidance on ethics related issues to district offices and programs.	The Ethics Program recently established an email address (askethics@dot.ca.gov) that will be marketed to all employees. The intent of the email is to allow all employees the opportunity to seek guidance or ask questions related to ethics.	August-16	Ethics Program Staff	
Establish a benchmark and utilize the established benchmark to continually monitor and evaluate Caltrans' ethical culture.	A baseline was established in an all-employee survey in 2013. The 2015-2020 Caltrans Strategic Management Plan has a target to improve the number of positive responses to the ethics questions 5% annually.	December-20 2013 - 70% 2015 - 79%	Ethics Program Staff Goal 5: Organizational Excellence Sub-Team Office of Strategic Management	
Determine the frequency of the ethics training, finalize it, and roll it out to all employees.	Ethics training will be required each fiscal year and recorded in LMS. The Attorney General's Office "Ethics Training for Conflict of Interest Filers" will also be required yearly by Caltrans policy and captured in LMS.	October-16	Ethics Program Staff	
Provide targeted ethics training.	Ethics training is currently provided and targeted training is given at the Maintenance Leadership Academies on a regular basis. The Office of Enterprise Risk Management also provides training on an ad hoc basis and will continue to market this capacity.	Continuous	Ethics Program Staff	
Develop an annual training plan resulting from risk assessments and cultural surveys, and solicit input from cross-functional groups.	The Office of Enterprise Risk Management in collaboration with the Office of Strategic Management and the Learning and Development Office will develop an annual training plan that includes annual training goals and an evaluation process. Note: Caltrans general ethics training is in the final stages of review, as we modeled our Ethics program after the federal sentencing standards and other industry standards.	September-16	Ethics Program Staff Enterprise Risk Management Staff Office of Strategic Management Learning and Development Office Directors Office	

Audits and Investigations (A&I) - Response to Draft Report

_____ 60 day / _____ 180 day / _____ 360 day

Audit Name: Control Environment for Ethical Behavior

Audit No. P3010-0628

Auditee: Office of Enterprise Risk Management

A&I Audit Recommendation	Auditee Response to Draft Report	Estimated Completion Date	Staff Responsible	A&I Analysis
Audit Report Finding #1 **Promote, Communicate, and Monitor Ethics Statewide**				
Develop a statewide communications plan that allows the ethics program to communicate the program's elements to employees statewide, which will help mature the Caltrans' ethical culture. The plan should include multiple methods for communicating the organization's commitment to ethical conduct and must be efficiently and effectively communicated to employees.	The Ethics Program has a Newsletter that is sent out twice a year to employees communicating information about the program and trends. Fictitious scenarios are created and discussed. An annual report is also being prepared for management distribution. Additional communication to employees will be developed as deemed necessary.	October-16	Ethics Program Staff Enterprise Risk Management Staff Goal 5: Organizational Excellence Sub-Team	
Audit Report Finding #2 **Finalize the Code of Conduct**				
Develop a formal code of conduct that is clear and understandable, contains related statements, policies, and aspirational views.	A code of conduct is a critical component of an ethics program and the Caltrans Code of Conduct is in the final review process and is being circulated to proper review parties via the Caltrans DOTS system.	August-16	Ethics Program Staff	
Audit Report Finding #3 **Aspects of the Ethics Helpline Could be Improved**				
Properly classify ethics helpline cases.	Ethics Analysts have a list of definitions for all of our categories and are to review categories during the assignment process. We are updating guidance material and the script for our contractor to include this information.	July-16	Ethics Program Staff Ethics Helpline Vendor	
Develop desk procedures for ethics program analysts.	The Ethics Program analysts are in the process of developing desk procedures.	October-16	Ethics Program Staff	
Provide written guidelines to districts and divisions.	The Ethics Program is in the final stages of developing a inquiry guidebook and template for our partners in the districts and divisions that respond to ethical concerns received through the helpline.	July-16	Ethics Program Staff	