Risk-Based Stewardship and Oversight

TRANSPORTATION COOP COMMITTEE

What is Risk-Based Stewardship and Oversight?

Use our limited resources more effectively and efficiently to deliver an increasingly complex program

FHWA

- **1,000 staff in 52 Division Offices – 700 Staff in HQ**

  - **50 States + DC and Puerto Rico**

- **1,000+ Local Public Agencies**

- **$42 billion**

FHWA California Context

- **FHWA California Division office – 59 people**

- **$3.96 billion program**

- **Caltrans, 100s LPAs, State Parks, Direct Grant Recipients**

- **Ensure Compliance - 23 USC, 23 CFR, 2 CFR 200, 49 CFR, policies**

- **Provide technical support – EDC, SHRP2, best practices, SME, statutory, regulatory, policy guidance**

Caltrans California Context

▶ **Caltrans Local Assistance – 262 people (HQ 91, Dist 171)**

▶ **Hundreds of local agencies**

▶ **$1.9 billion program**

▶ **23 USC, 23 CFR, 2 CFR 200, State laws, SB1, LAPM, LAPG, Caltrans A/E procurement, Caltrans ROW Manual, etc.**

▶ **Provide technical and administrative support**

Risk-Based Stewardship and Oversight

Important Mechanism Allowing for More Effective Resource Utilization:

DELEGATE

Statutory S&O - Delegation

▶ **23 USC 106 – FHWA must delegate certain responsibilities for non-NHS facilities**

▶ **23 USC 106 – FHWA may delegate certain responsibilities for NHS facilities**

▶ **FHWA and State Shall Enter Into Stewardship and Oversight Agreement which documents delegation of authority.**

Statutory S&O - Delegation

- **FHWA/Caltrans S&O Agreement – 2015**

  - **Delegates actions on both NHS and non-NHS projects well beyond 23 USC 106.**

  - **46 Project-specific activities delegated to Caltrans**

  - **ROW certifications – 3 / 3W; design exceptions**

- **NEPA Assignment 2007 – significant reallocation of resources**

Additional Delegation

▶ **Legal determination as to what actions can be delegated to States and LPAs**

    ▶ **23 CFR 630.205 - PS&E assemblies for Federal-aid highway projects shall be submitted to FHWA for approval**

▶ **Eliminate project-specific or program specific reviews and approvals by FHWA that must occur prior to the State/LPA advancing to next step**

Additional Delegation

▶ **Delegate items that the State/LPA generally should be able to accomplish well without our involvement – where we are adding limited/incremental value to the process**

▶ **VERIFICATION PROCESSES MUST BE ESTABLISHED FOR DELEGATED ACTIVITIES**

Examples of Responsibilities that May Not Be Delegated

- ▶ **Approve FSTIP**

- ▶ **Approve Project Authorizations and Modifications**

- ▶ **Consultants in a Management Support Role**

- ▶ **Approve early and hardship acquisitions, protective buying**

- ▶ **Complete conformity determinations**

- ▶ **Approve Buy America Waivers**

- ▶ **Approve Emergency Relief Program time extensions**

S&O Process Revisions

- **Project Authorization Process**
  - **Delegated projects reviewed by Finance – focus on 7 key elements**
- **Caltrans billings**
  - **FHWA billed 2 times per week – Very limited review at reimbursement**
  - **Annual billing reviews, IPERIA, Improper Payment Reviews to confirm accuracy, completeness, validity**
- **Local Agency Single Audit Reviews – sample resolutions**

S&O Process Revisions

▶ **Statewide Preliminary Engineering System (SPES)**

▶ **PoDIs**

    ▶ **Formerly: Full-oversight (Interstate, >$1M, all actions)**

    ▶ **Current: Risk-based project selection, risk-based retained action selection, POAs**

▶ **CAP Reviews**

    ▶ **Review of requirements across the program**

    ▶ **Non-risk-based, data-driven project selection**

S&O Process Revisions

- **ER Program**
  - **FHWA risk-based approach to decide on-site visit or not**

- **Program level vs. Project level focus**
  - **D/B and CMGC Workshops**

- **Stewardship vs. Oversight Role**
  - **Fulfill much of role through stewardship activities**
  - **Example: Peer Exchanges**

Local Assistance Requirements

- **23 USC 106 - Caltrans must determine that LPAs have adequate project delivery systems and sufficient accounting controls for Federal-aid funded program and projects**

- **S&O Agreement - Participate in FHWA's Annual Program Analysis and Implementation of Risk Principles**

- **S&O Agreement - Annually provide FHWA a summary of significant stewardship and oversight activities, key findings, and action plans which include performance indicators**

Risk-Based Stewardship and Oversight

- **Informal process to allocate resources for S&O activities**

OR

- **Formal, recurring process to allocate resources for S&O activities**

CY 2019 Local Assistance S&O FHWA Report

▶ **Lean Six Sigma program revisions**

▶ **LAPM and LAPG updates**

▶ **Process Reviews and Action Plans**

▶ **Training**

▶ **Look back – see what we did and report it**

FHWA S&O Process

ANNUAL ALLOCATION OF RESOURCES TO RESPOND TO SPECIFIC RISKS

▶ **Program Analysis / Risk Assessment**

▶ **Risk Response Strategies**

▶ **Unit Plan**

▶ **Monitoring**

▶ **Reporting / Accountability**

Program Analysis

▶ **Tool used to assess a program at a high level to determine current condition and identify risks.**

▶ **Program – Broad Technical Area or Funding Program or…**

 ▶ **Construction, Design, Environment, etc.**

▶ **Identify and assess program elements - processes, requirements, etc.**

 ▶ **Adherence to 23 CFR 172**

 ▶ **Process for Reviewing and Approving Change Orders**

Program Analysis

- **SME Team brainstorms to identify and prioritize program element risks using various inputs:**

  - **Experience in administering the program**

  - **Recurring oversight processes (e.g. CAP Reviews)**

  - **Reviews/reports by A&I, OIG, GAO, Program Reviews**

  - **Program Indicators**

  - **List of predetermined program elements and/or requirements to consider during PA**

Risk Assessment

- **For prioritized program element risks, identify risk response strategies**

  - **Example: Improve Guidance in LAPM**

- **Prioritization process recognizes limited resources**

  - **Balances day-to-day activities with focused, short-term, specific risk response strategies**

FHWA Risk Assessment Process

Step 1 Program Analysis → **Step 2** Risk Assessment
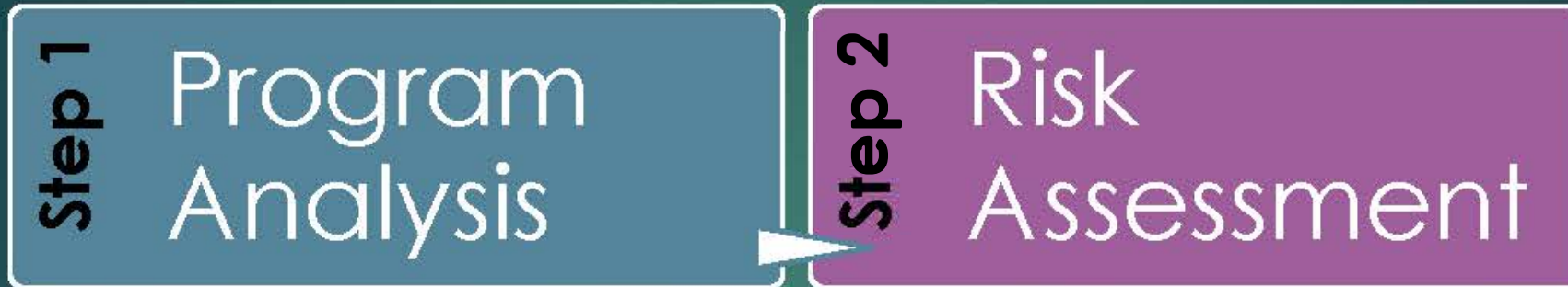
STEP 1: SMEs complete Program Analysis in 11 program areas

- Civil Rights
- Construction
- Planning and Air Quality
- Right of Way
- Finance
- Operations

- Safety
- Environment
- Design
- Local Assistance
- Infrastructure

Construction Program Analysis Example

- **Critical Program Elements to Consider During PA:**
  - **PS&E; Emergency Relief Program; Contract Administration; Construction Oversight; and Buy America**

- **In addition to the provided list, the Team brainstormed the following to consider during the Program Analysis:**
  - **Force Account, Final Voucher/Project Close-Out, Contract Time Management, Change Orders, Work Zones, Alternative Contracting, Post Construction – Authorization/PreFinal Voucher Modifications**

Construction PA Example

Critical Program Element	RA (y/n)	RECENT ACTIVITIES/OBSERVATIONS
Emergency Relief Program	Yes	• A recent OIG review identified a number of concerns with the ER Program. • The Division has recently taken back the delegation of the Damage Assessment Form (DAF) approvals from Caltrans. • California experienced a significant amount of infrastructure damage from the February 2017 storms.

Safety PA Example

Critical Program Element	Description/Justification	RA (y/n)
Pedestrian/Bicycle Program	Develop, with our partners, stakeholders, and other modal administrations an integrated, safe, accessible, and convenient transportation system for all users with an emphasis on pedestrians and bicyclists. 1. Caltrans has limited expertise in scoping and design of non-motorized facilities. 2. There is limited information on non-motorized infrastructure.	Yes

Design PA Example

Program Element:	Description:	Risk Assessment (y/n)?	Justification:
Consultant Selection	Capital and local consultant selection must follow regulations and policies.	Yes	Division does not have a good handle on whether consultant selections meet the requirements.

Risk-Assessment

▶ **Develop If/Then Statement**

▶ **Develop one or more Risk Response Strategies for each item**

Construction RA Example

		RISK ASSESSMENT SUMMARY		
Risk Rank:	**Critical Program Element:**	**Risk Statement:**	**Risk Response Strategies:**	**High Risk (y/n)**
4.1	**Emergency Relief**	If better ER program guidance is provided to the State and local agencies then ER program compliance will improve and projects will be implemented more expeditiously.	1. Develop an FHWA ER SOP to standardize Division procedures. 2. Update Caltrans' ER program guidance and provide training to all Districts. 3. Conduct a Program Review of ER projects.	**Yes**

Safety RA Example

Critical Program Element:	Risk Statement:	Risk Response Strategies:
Pedestrian and Bicycle (CPE#2)	If processes and projects continue to focus on non-motorized safety from partners, stakeholders, and other modal administrations, then an integrated, safe, accessible, and convenient transportation system for all users can be achieved in California.	Enhance: Enhance Caltrans knowledge of bicycle and pedestrian scoping and facility design by bringing Highway Safety Manual training for implementing or revising non-motorized facilities by March 31, 2018. Enhance: Support Caltrans in developing a Bicycle Safety Improvement Monitoring Program that will identify and address bicycle-related collision locations by April 30, 2018. Enhance: Work with Caltrans to update policy directives, standards, manuals, and guides to provide for a safe, accessible, and convenient transportation system for multiple types of non-motorized users by April 30, 2018.

Design RA Example

Critical Program Element:	Risk Statement:	Risk Response Strategies:
Consultant Selection & Administration (State and Local Assistance)	If A&E consultant contracts are not properly procured and managed, then Caltrans and FHWA may have to limit Federal reimbursement.	1. Complete Program Review of the procurement processes of a statistically-valid sample of State- and Locally-Administered A/E Contracts. 2. Require Caltrans approval of LPA A&E contracts prior to award. 3. TCC working group (Airport Meeting) to look at additional strategies.

Systematic, Structured Tools for Risk Response Strategies

▶ **Identify and complete Process Reviews - verification**

▶ **CAP-Type Reviews - verification**

▶ **Perform Audits – verification**

▶ **Perform Billing Reviews - verification**

▶ **Update Internal Policies and Procedures – program structure**

▶ **Update LAPM and LAPG – program structure**

Systematic, Structured Tools for Risk Response Strategies

- **Monitor Performance Indicators – measure/target**

- **Provide training – technical assistance**

- **Provide other technical assistance (e.g. LPA policy)**

- **Retain actions that are normally delegated due to elevated risks (e.g. PoDI approvals) – direct oversight**

Performance Plan

▶ **Leadership Team prioritizes and selects Risk Response Strategies to include in Plan**

▶ **Assign responsible person and/or team for each**

▶ **Establish deadline for each**

▶ **Publish Performance Plan**

▶ **Monitor progress via regular updates and/or meetings**

Submit Annual LAP Report to FHWA

▶ **Provide overview of Stewardship and Oversight Activities**

▶ **Brief – Incorporate by Reference (Program Reviews, etc.)**

▶ **Recognize that not everything in Performance Plan will be accomplished due to unforeseen circumstances**

▶ **Due annually to FHWA on December 31**