

**FY 2015 Department of Transportation
Environmental Collaboration and Conflict Resolution (ECCR)¹
Policy Report to OMB-CEQ**

The U.S. Department of Transportation (DOT) submits its annual report on environmental collaboration and conflict resolution (ECCR), pursuant to the reporting requirements set forth in the revised policy memorandum that the Director of the Office of Management and Budget (OMB) and the Chairman of the President's Council on Environmental Quality (CEQ) issued on September 7, 2012. This report covers activities in FY 2015. In keeping with guidance from OMB and CEQ, DOT has collected and aggregated information from its operating administrations and components and is submitting a single report using the template provided.

¹ The term 'ECCR' includes third-party neutral assistance in environmental collaboration and environmental conflict resolution.

FY 2015 ECCR Report

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Date this report is being submitted:	February 17, 2016
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- 1) **ECCR Capacity Building Progress:** Describe steps taken by your department or agency to build programmatic and institutional capacity for environmental collaboration and conflict resolution in FY 2015, including progress made since FY 2013. Include any efforts to establish routine procedures for considering ECCR in specific situations or categories of cases. To the extent your organization wishes to report on any efforts to provide institutional support for non-assisted collaboration efforts include it here. If no steps were taken, please indicate why not.

[Please refer to the mechanisms and strategies presented in Section 5 and attachment C of the OMB-CEQ ECCR Policy Memo, including but not restricted to any efforts to a) integrate ECCR objectives into agency mission statements, Government Performance and Results Act goals, and strategic planning; b) assure that your agency's infrastructure supports ECCR; c) invest in support, programs, or trainings; and d) focus on accountable performance and achievement. You are encouraged to attach policy statements, plans and other relevant documents.]

The U.S. Department of Transportation (DOT) took the following steps to build programmatic and institutional capacity for ECCR in FY 2015:

- The Federal Aviation Administration (FAA) provided ECCR training at its annual Environmental Forum. Additionally, FAA is in the process of updating its Community Involvement Manual, which identifies the use of facilitated conflict resolution as a means to address project issues.
- The Federal Highway Administration's (FHWA's) Office of Project Development and Environmental Review (HEPE) continues to allocate money to an indefinite delivery, indefinite quantity contract for conflict resolution, facilitation, and mediation for environmental disputes. The scope of the contract

includes pre-approved third party neutrals that FHWA can use for specific project or program related conflicts, disputes, and issues.

- FHWA and the Federal Transit Administration (FTA) continue to work on updating joint guidance to implement 23 U.S.C. § 139 (titled Efficient Environmental Reviews for Project Decisionmaking), which includes dispute resolution provisions. The agencies made the guidance available for public comment in FY 2015.
- FTA increased internal infrastructure support for the environmental review process, including ECCR, by increasing the number of permanent Environmental Protection Specialist (EPS) positions, and now employs at least one EPS in nine of its ten Regional Offices. These EPSs manage the environmental process, including preventing, identifying, and resolving environmental issues and conflicts. Additionally, FTA provided EPS contractor support at FTA Headquarters and in most Regional Offices to further support FTA's capacity for environmental management. Further, FTA includes "environmental collaboration and conflict resolution" as a tracking component in its environmental findings database, which is used for tracking the environmental review process for projects around the country.

2) ECCR Investments and Benefits

- a) Please describe any methods your agency uses to identify the (a) investments made in ECCR, and (b) benefits realized when using ECCR.

Examples of investments may include ECCR programmatic FTEs, dedicated ECCR budgets, funds spent on contracts to support ECCR cases and programs, etc.

Examples of benefits may include cost savings, environmental and natural resource results, furtherance of agency mission, improved working relationship with stakeholders, litigation avoided, timely project progression, etc.

- To identify investments that may be needed or that have been made in ECCR, FTA relies on regularly-scheduled biweekly environmental discussions between Headquarters and Regional Offices, as well as the environmental findings database. The Regional Offices may also contact Headquarters' subject matter experts to discuss individual projects and their potential need for ECCR.

- b) Please report any (a) quantitative or qualitative investments your agency captured during FY 2015; and (b) quantitative or qualitative results (benefits) you have captured during FY 2015.

- FHWA HEPE investments include funds spent on: (1) the Interagency Agreement with the U.S. Institute for Environmental Conflict Resolution (USIECR) to support USIECR's roster of neutral third party facilitators; (2) a new interagency agreement with the USCG for a national liaison to facilitate communication among bridge permitting offices, FHWA Division Offices, and State transportation agencies; (3) an interagency agreement with the U.S. Department of Commerce, National Marine Fisheries Services (NMFS) for a new national liaison position in that agency to facilitate communication between FHWA, NMFS, and State transportation agencies on reviews under Section 7 of the Endangered Species Act (ESA); (4) a liaison program that continues to support national liaisons in the U.S. Environmental Protection Agency (EPA), the U.S. Fish and Wildlife Service (FWS), and the U.S. Army Corps of Engineers (USACE) to facilitate environmental permitting, consultation, and communication between FHWA and each of these resource agencies; and (5) a liaison position in the Advisory Council on Historic Preservation (ACHP) to facilitate communication during environmental reviews that include complex issues related to Section 106 of the National Historic Preservation Act (NHPA).
- FHWA benefits include: (1) the national liaison's facilitation of communication between FHWA, our stakeholders, and field offices or State agencies, as appropriate; (2) support from USIECR for project-level and program-level efforts to facilitate communication and collaboration among various parties with conflicts or who need process improvements related to environmental reviews; and (3) the ability of State transportation agencies and FHWA division offices to use the services of USIECR for environmental

conflict resolution on Federal-aid projects through FHWA's interagency agreement. State transportation agencies can also use the USIECR roster to find qualified neutral third parties for all projects, regardless of funding or FHWA involvement. The benefits to FHWA from the position FHWA funded at the NMFS, as well as from all of FHWA's national liaison positions, include improved relationships, greater consistency, and significant cost savings associated with expediting document preparation and review times.

- FTA includes environmental collaboration and conflict resolution as a tracking measure in its environmental findings database, though no quantitative investment information is available because staff included the measure without procuring contractor support.
- MARAD is involved in qualitative program activities that involve informal discussions with stakeholders, sponsors, and/or local, State, or Federal Government partners to resolve issues, disputes, concerns and other matters related to the processing and assessment of deepwater port license applications.

c) What difficulties have you encountered in generating cost and benefit information and how do you plan to address them?

- DOT operating administrations typically do not have a process dedicated to tracking the costs and benefits associated with ECCR processes. The ECCR process in the FAA's one ongoing ECCR case is not far enough along to generate cost/benefit information. Determining what would have occurred and the costs associated with these activities, if negotiation and collaboration were not used, is difficult. However, these activities clearly have led to better working relationships between the FAA and the public and private stakeholders involved. Likewise, FTA is not able to generate cost information because of the general lack of funding dedicated specifically to ECCR expenses for transit providers. Similarly, MARAD's investments in ECCR are difficult to measure. This is especially true in instances where certain ECCR activities are an integral part of a project or a non-ECCR programmatic employee's day-to-day tasks.

3) **ECCR Use:** Describe the level of ECCR use within your department/agency in FY 2015 by completing the table below. [Please refer to the definition of ECCR from the OMB-CEQ memo as presented on page one of this template. An ECCR “case or project” is an instance of neutral third-party involvement to assist parties in a collaborative or conflict resolution process. In order not to double count processes, please select one category per case for decision making forums and for ECCR applications.

	Total FY 2015 ECCR Cases ²	Decision making forum that was addressing the issues when ECCR was initiated:					ECCR Cases or projects completed ³	ECCR Cases or Projects sponsored ⁴	Interagency ECCR Cases and Projects		
		Federal agency decision	Administrative proceedings /appeals	Judicial proceedings	Other (specify)				Federal only	Including non federal participants	
<i>Context for ECCR Applications:</i>											
Policy development	___	___	___	___	___		___	___	___	___	
Planning	1	1	___	___	___		___	1	___	___	
Siting and construction	___	___	___	___	___		___	___	___	___	
Rulemaking	___	___	___	___	___		___	___	___	___	
License and permit issuance	___	___	___	___	___		___	___	___	___	
Compliance and enforcement action	___	___	___	___	___		___	___	___	___	
Implementation/monitoring agreements	2	___	___	___	2	Tribal Consultation	2	2	___	2	
Other (specify): _____	___	___	___	___	___		___	___	___	___	
TOTAL	3	1	___	___	2		2	3	___	2	
		(the sum of the Decision Making Forums should equal Total FY 2015 ECCR Cases)									

² An “ECCR case” is a case in which a third-party neutral was active in a particular matter during FY 2015.

³ A “completed case” means that neutral third-party involvement in a particular ECCR case ended during FY 2015. The end of neutral third-party involvement does not necessarily mean that the parties have concluded their collaboration/negotiation/dispute resolution process, that all issues are resolved, or that agreement has been reached.

⁴ To be a “sponsor” of an ECCR case means that an agency is contributing financial or in-kind resources (e.g., a staff mediator’s time) to provide the neutral third party’s services for that case. More than one sponsor is possible for a given ECCR case.

4. ECCR Case Example

Using the template below, provide a description of an ECCR case (preferably completed in FY 2015). Please limit the length to no more than 2 pages.

Name/Identification of Problem/Conflict
Overview of problem/conflict and timeline, including reference to the nature and timing of the third-party assistance, and how the ECCR effort was funded
<p>The Riverside County Transportation Commission and the California Department of Transportation propose to construct the Mid County Parkway (MCP), with FHWA support. FHWA determined that the MCP would have an adverse effect on historic properties, including archeological sites with traditional cultural resources.</p>
Summary of how the problem or conflict was addressed using ECCR, including details of any innovative approaches to ECCR, and how the principles for engagement in ECCR outlined in the policy memo were used
<p>In accordance with Section 106 of the NHPA, FHWA developed a memorandum of agreement (MOA) with the State Historic Preservation Officer (SHPO) memorializing measures to mitigate adverse effects to historic properties. FHWA and the SHPO are signatories to the MOA. In accordance with tribal consultation requirements in the regulations implementing Section 106 (36 CFR part 800), FHWA invited nine American Indian tribes to be concurring parties to the MOA. The USIECR facilitated tribal consultation regarding traditional cultural resources, helping FHWA fulfill its legal obligation to consult with tribes and leading to two tribes choosing to sign the MOA as concurring parties.</p>
Identify the key beneficial outcomes of this case, including references to likely alternative decision making forums and how the outcomes differed as a result of ECCR
<p>This tribal engagement process led to better understanding among Federal, State, and local transportation agencies about cultural differences, and improved working relationships with the tribes. The parties involved are experiencing beneficial outcomes on other projects because of this ECCR facilitation.</p>
Reflections on the lessons learned from the use of ECCR
<ul style="list-style-type: none">• Recognize when to ask for help• Give sufficient updates and background to all parties involved• Build a foundation of trust early• Be patient and actively listen• Engaging a neutral third party can keep a project on schedule

5. Other ECCR Notable Cases: Briefly describe any other notable ECCR cases in the past fiscal year. (Optional)

- FHWA's Indiana Division Office is currently using ECCR to assist the Indiana State DOT in improving the consultation processes with Federally-recognized tribes during the NEPA and Section 106 processes for highway projects. The State DOT, FHWA, and tribes signed a Memorandum of Understanding (MOU) defining a framework for future consultation and coordination on projects throughout the State. USIECR facilitated tribal engagement to arrive at the MOU.
- A West Oakland community group brought a civil rights claim alleging a violation of Title VI of the Civil Rights Act of 1964, 42 U.S.C. § 2000d *et seq.*, against the City and the Port of Oakland relative to truck management issues associated with the Port's redevelopment. MARAD and DOT, along with the Department of Homeland Security, notified the parties involved in this matter that the Federal entities would support the continuing efforts of EPA's regional office to facilitate a resolution of the alleged Title VI violation at the lowest level possible, and would monitor progress towards a resolution.
- Since mid-2011, MARAD has participated in a liability allocation process supervised by third-party neutrals to apportion liability for contamination at the Portland Harbor Superfund Site (Site), in Portland, Oregon. The Site is a complex, mega site involving contaminated sediments. In accordance with EPA's regulations at 42 CFR part 300 and in an effort to seek an efficient and mutually beneficial resolution of the dispute and potential lawsuit(s) related to the Site cleanup, the Federal parties (represented by the U.S. Department of Justice) have engaged in the voluntary mediated allocation process with private parties identified as potentially responsible parties. Pursuant to a framework and timeline set forth in a confidentiality and mediation agreement governing the proceedings, participants are continuing to gather information and establish the allocation record that will form the basis for subsequent stages of the allocation.

6. Priority Uses of ECCR:

Please describe your agency's efforts to address priority or emerging areas of conflict and cross-cutting challenges either individually or in coordination with other agencies. For example, consider the following areas: NEPA, ESA, CERCLA, energy development, energy transmission, CWA 404 permitting, tribal consultation, environmental justice, management of ocean resources, infrastructure development, National Historic Preservation Act, other priority areas.

- To encourage early coordination with stakeholders, FAA has released a desk reference for FAA's NEPA procedures that outlines coordination and consultation practices for each environmental category (i.e., water, air, biological impacts, etc.) to ensure that stakeholders are notified early in the environmental process and that their concerns are heard and addressed prior to creation of a final document. Additionally, FAA is in the process of updating its Community Involvement Manual, which identifies the use of facilitated conflict resolution as a means to address project issues.
- FHWA priority efforts continue to include programmatic agreements (PA) with Federal resource agencies, such as: agreements with the FWS for the Indiana and northern long-eared bat to comply with the ESA; agreements with multiple resource and regulatory agencies for compliance with NEPA; and agreements with SHPO's, Tribal Historic Preservation Officers, and other interested tribes to facilitate the NHPA Section 106 process.
- FRA makes extensive use of programmatic approaches to align efforts with permitting and review agencies. FRA cosponsored the Indiana Bat programmatic biological agreement and is partnering with the California High Speed Rail Authority to explore use of advance regional mitigation for biology and water impacts from multiple projects in the same vicinity. FRA uses programmatic approaches to completing historic preservation reviews coordinated with the NEPA process and continues to use and benefit from NEPA/Clean Water Act Sections 404 and 408 merger processes. FRA worked with ACHP in developing PAs and other processes for the Section 106 process for FRA Projects. These PAs generally involve collaboration with SHPO's and project proponents.
- FRA has also continued implementation of streamlining measures identified in its 2013 report to Congress on streamlining historic preservation for railroad improvement projects.⁵ Over the past year, efforts were successful in gaining a legislative exemption from Section 4(f), and direction to create a NHPA Section 106 exemption for railroad rights-of-way.

⁵ This report is titled "Report to Congress: Streamlining Compliance with Section 4(f) of the Department of Transportation Act and Section 106 of the National Historic Preservation Act for Federally Funded Railroad Infrastructure Repair and Improvement Program" (March 2013).

- During FY 2015, MARAD and the USCG undertook collaborative efforts with the New York Department of State (NYDOS) to host final public licensing hearings for the final decision-making process for the Port Ambrose Deepwater Port License application. MARAD and USCG collaborated with the NYDOS for two reasons. First, the public hearing provided the State a reasonable opportunity to participate in the final Federal assessment to help facilitate New York's State-specific Coastal Zone Management Act (CZMA) requirements and other State decision-making priorities. While State-specific CZMA requirements are usually conducted as a separate and independent process from MARAD's and USCG's deepwater port licensing hearings, USCG and MARAD sought to ensure a smooth and efficient public hearing process that was comprehensive and transparent to the public. This effort allowed the State to inform the public of State-specific requirements of CZMA, and provided a first-hand opportunity for State representatives to hear directly from the citizens of New York regarding their concerns and comments relating to the Port Ambrose project.

7. Non-Third-Party-assisted Collaboration Processes: Briefly describe other significant uses of environmental collaboration that your agency has undertaken in FY 2015 to anticipate, prevent, better manage, or resolve environmental issues and conflicts that do not include a third-party neutral. *Examples may include interagency MOUs, enhanced public engagement, and structural committees with the capacity to resolve disputes, etc.*

- Non-third party negotiation activities have facilitated the accomplishment of FAA’s aviation safety mission, conserved its resources, and promoted better working relationships between the agency and the public and private stakeholders involved. FAA works collaboratively with other parties, including the public and other stakeholders, to resolve potential environmental conflicts. For example, the FAA is actively involved in community roundtables concerning numerous airports, serving as a technical resource.
- FHWA’s liaison program allows State DOTs to use Federal-aid funds for positions in resource agencies to improve and expedite environmental processes.
- MARAD promotes non-assisted collaboration amongst multidisciplinary and integrated intra-agency teams to enhance resource planning and project management. For example, to streamline the review of deepwater port license applications, the Office of Deepwater Ports and Offshore Activities has assembled a multidisciplinary planning, legal, and project management team from across the MARAD community to work in concert with our partners at the USCG during the environmental review phase. MARAD similarly collaborates on the environmental review of multimodal projects awarded TIGER grants.
- In addition, MARAD continued to rely on its Gateway Offices as MARAD’s day-to-day representatives throughout the Marine Transportation System (MTS) in FY 2015. These offices are critical to the viability and effectiveness of MARAD and its future programs. In addition to other responsibilities, the Gateway Offices represent DOT and industry interests on aquatic invasive species task forces and regional planning bodies organized under the auspices of the National Ocean Council. These offices help disseminate MARAD priorities to the industry, serve as liaisons to the regional maritime economies, and relay the concerns of a broad range of port, shipper, and carrier stakeholders to headquarters. For example, as a Federal participant representing the interests of the transportation industry, at the Asian Carp Regional Coordinating Committee (ACRCC), MARAD’s Gateway Directors advocated for early outreach to sectors potentially impacted by the findings of the FWS’s 2015 barge entrainment study, which investigated methods to prevent or minimize barge entrainment. As a result of the ACRCC’s outreach, industry stakeholders offered to partner with FWS and its State agency partners to develop additional phases of the barge entrainment study, to consider methods/technologies that could prevent and/or minimize the transport of fish

across the electric barriers into the Great Lakes ecosystem.

- For deepwater port license applications, MARAD and USCG, its partner on environmental reviews of deepwater port license applications, also maximize opportunities for interagency cooperation by inviting natural resource agency representatives to participate in early project planning as coordinating agencies for NEPA purposes. MARAD also sought out opportunities in FY 2015 to enhance its public engagement and anticipate concerns relative to its deepwater port licensing program. MARAD received hundreds of public comments from private, public, and Congressional representatives regarding concerns over the Federal review and public engagement process for the Port Ambrose deepwater port license application. Specifically, entities stressed concerns over inadequate access and transportation to public meeting venues as well as inadequate timing and scheduling of the meetings. In an effort to address the public's concerns and provide ample opportunity for full public participation, MARAD and USCG successfully held a total of six public hearings in January and November 2015, in locations specifically selected to provide increased space capacity for larger attendance of approximately 500+ public citizens, and in locations that were more conveniently accessible by private vehicle and public transportation. Such efforts to promote open and reasonable accommodation for full public participation have become a standard practice for MARAD in carrying out its day-to-day operations of the deepwater port licensing program.
- Collaboration between the Pipeline and Hazardous Materials Safety Administration (PHMSA), the Centers for Disease Control and Prevention's (CDC) and concerned Federal, State, and local partners to share information and facilitate safe and expedient movement and destruction of the hazardous materials was crucial to the development of an EA, in cooperation with the Department of Health and Human Services, CDC and other DOT operating administrations, related to the transport and destruction of Ebola virus infected materials. The EA analyzed PHMSA's issuance of a special permit to allow for the expedient and safe movement of potentially infected hazardous materials.
- In 2011, as part of the implementation of Executive Order 13604, DOT and CEQ established the Transportation Rapid Response Team (TRRT) to facilitate interagency coordination to improve the efficiency and effectiveness of surface transportation delivery consistent with cultural and environmental mandates. The TRRT includes participants from DOT, CEQ, and resource agencies, including the EPA, the Department of the Interior, the National Oceanic and Atmospheric Administration, USACE, USCG, ACHP, and FWS, as well as FHWA's national transportation liaisons from EPA, USACE, ACHP, and FWS.

8. **Comments and Suggestions re: Reporting:** Please comment on any difficulties you encountered in collecting these data and if and how you overcame them. Please provide suggestions for improving these questions in the future.

Please attach any additional information as warranted.

Report due February 15, 2016.

Submit report electronically to: ECRReports@omb.eop.gov

**Basic Principles for Agency Engagement in
Environmental Conflict Resolution and Collaborative Problem Solving**

Informed Commitment	Confirm willingness and availability of appropriate agency leadership and staff at all levels to commit to principles of engagement; ensure commitment to participate in good faith with open mindset to new perspectives
Balanced, Voluntary Representation	Ensure balanced inclusion of affected/concerned interests; all parties should be willing and able to participate and select their own representatives
Group Autonomy	Engage with all participants in developing and governing process; including choice of consensus-based decision rules; seek assistance as needed from impartial facilitator/mediator selected by and accountable to all parties
Informed Process	Seek agreement on how to share, test and apply relevant information (scientific, cultural, technical, etc.) among participants; ensure relevant information is accessible and understandable by all participants
Accountability	Participate in the process directly, fully, and in good faith; be accountable to all participants, as well as agency representatives and the public
Openness	Ensure all participants and public are fully informed in a timely manner of the purpose and objectives of process; communicate agency authorities, requirements and constraints; uphold confidentiality rules and agreements as required for particular proceedings
Timeliness	Ensure timely decisions and outcomes
Implementation	Ensure decisions are implementable consistent with federal law and policy; parties should commit to identify roles and responsibilities necessary to implement agreement; parties should agree in advance on the consequences of a party being unable to provide necessary resources or implement agreement; ensure parties will take steps to implement and obtain resources necessary to agreement