

FY 2017 TEMPLATE
Environmental Collaboration and Conflict Resolution (ECCR)¹
Policy Report to OMB-CEQ

On September 7, 2012, the Director of the Office of Management and Budget (OMB), and the Chairman of the President's Council on Environmental Quality (CEQ) issued a revised policy memorandum on environmental collaboration and conflict resolution (ECCR). This joint memo builds on, reinforces, and replaces the memo on ECR issued in 2005.

The memorandum requires annual reporting by departments and agencies to OMB and CEQ on progress made each year in implementing the ECCR policy direction to increase the effective use and institutional capacity for ECCR.

ECCR is defined in Section 2 of the 2012 memorandum as:

“ . . . third-party assisted collaborative problem solving and conflict resolution in the context of environmental, public lands, or natural resources issues or conflicts, including matters related to energy, transportation, and water and land management.

The term Environmental Collaboration and Conflict Resolution encompasses a range of assisted collaboration, negotiation, and facilitated dialogue processes and applications. These processes directly engage affected interests and Federal department and agency decision makers in collaborative problem solving and conflict resolution.

Multi-issue, multi-party environmental disputes or controversies often take place in high conflict and low trust settings, where the assistance of impartial facilitators or mediators can be instrumental to reaching agreement and resolution. Such disputes range broadly from policy and regulatory disputes to administrative adjudicatory disputes, civil judicial disputes, intra- and interagency disputes, and disputes with non-Federal persons and entities.

Environmental Collaboration and Conflict Resolution can be applied during policy development or planning in the context of a rulemaking, administrative decision making, enforcement, or litigation with appropriate attention to the particular requirements of those processes. These contexts typically involve situations where a Federal department or agency has ultimate responsibility for decision making and there may be disagreement or conflict among Federal, Tribal, State and local governments and agencies, public interest organizations, citizens groups, and business and industry groups.

Although Environmental Collaboration and Conflict Resolution refers specifically to collaborative and conflict resolution processes aided by third-party neutrals, there is a broad array of partnerships, cooperative arrangements, and unassisted negotiations that Federal agencies may pursue with non-Federal entities to plan, manage, and implement department and agency programs and activities. The Basic Principles for Agency Engagement in Environmental Conflict Resolution and Collaborative Problem Solving are presented in Attachment B. The Basic Principles provide guidance that applies to both Environmental Collaboration and Conflict Resolution and unassisted collaborative problem solving and conflict resolution. This policy recognizes the importance and value of the appropriate use of all forms collaborative problem solving and conflict resolution.”

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

This annual report format below is provided in accordance with the memo for activities in FY 2017.

The report deadline is February 23, 2018.

We understand that collecting this information may be challenging; however, the departments and agencies are requested to collect this data to the best of their abilities. The 2017 report, along with previous reports, will establish a useful baseline for your department or agency. Departments should submit a single report that includes ECCR information from the agencies and other entities within the department. The information in your report will become part of an analysis of all FY 2017 ECCR reports. You may be contacted for the purpose of clarifying information in your report. For your reference, prior year synthesis reports are available at <http://www.ecr.gov/Resources/FederalECRPolicy/AnnualECRReport.aspx>

FY 17 ECCR Report Template

Name of Department/Agency responding:	U.S. Department of Labor (DOL)
Name and Title/Position of person responding:	Susan Gilbert-Miller, Sustainability and Fleet Manager
Division/Office of person responding:	Office of the Assistant Secretary for Administration and Management, Business Operations Center (OASAM/BOC)
Contact information (phone/email):	(202)693-6662
Date this report is being submitted:	<u>February 23, 2018</u>
Name of ECR Forum Representative	Susan Gilbert-Miller

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 2017, including progress made since FY 2016. 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 Department of Labor's (DOL) involvement with environmental collaboration and conflict resolution (ECCR) is rare because DOL completes few projects that trigger National Environmental Policy Act (NEPA) environmental impact requirements and those conducted in the past did not involve ECCR. Therefore, DOL is completing this report for the one project completed in 2017 that involved a cooperative arrangement with the Federal Transit Authority (FTA) and Regional-level parties in California. The project did not include the use of third-party neutrals. Consequently, DOL is completing only Section 7 of this report.

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.

Not Applicable (N/A)

- b) Please report any (a) quantitative or qualitative investments your agency captured during FY 2017; and (b) quantitative or qualitative results (benefits) you have captured during FY 2017.

N/A

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

N/A

3. **ECCR Use:** Describe the level of ECCR use within your department/agency in FY 2017 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 2017 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	_____	_____	_____	_____	_____	_____	_____	_____	_____
Siting and construction	_____	_____	_____	_____	_____	_____	_____	_____	_____
Rulemaking	_____	_____	_____	_____	_____	_____	_____	_____	_____
License and permit issuance	_____	_____	_____	_____	_____	_____	_____	_____	_____
Compliance and enforcement action	_____	_____	_____	_____	_____	_____	_____	_____	_____
Implementation/monitoring agreements	_____	_____	_____	_____	_____	_____	_____	_____	_____
Other (specify): _____	_____	_____	_____	_____	_____	_____	_____	_____	_____
TOTAL	_____	_____	_____	_____	_____	_____	_____	_____	_____
		(the sum of the Decision Making Forums should equal Total FY 2017 ECCR Cases)							

² An “ECCR case” is a case in which a third-party neutral was active in a particular matter during FY 2017.

³ A “completed case” means that neutral third party involvement in a particular ECCR case ended during FY 2017. 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 Sponsored - 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.

Note: If you subtract completed ECCR cases from Total FY 2017 cases it should equal total ongoing cases. If you subtract sponsored ECCR cases from Total FY 2017 ECCR cases it should equal total cases in which your agency or department participated but did not sponsor. If you subtract the combined interagency ECCR cases from Total FY 2017 cases it should equal total cases that involved only your agency or department with no other federal agency involvement.

4. ECCR Case Example

Using the template below, provide a description of an ECCR case (preferably completed in FY 2017). 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
N/A
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
N/A
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
N/A
Reflections on the lessons learned from the use of ECCR
N/A

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

N/A

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.

N/A

7. Non-Third-Party-assisted Collaboration Processes: Briefly describe other significant uses of environmental collaboration that your agency has undertaken in FY 2017 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.*

On December 5, 2013, the U.S. Department of Labor (DOL) National Office was notified that the Sacramento Municipal Utility District (SMUD) and the Sacramento Regional Transit District, commonly referred to as “RT”, was requesting that DOL grant an easement on the Sacramento Job Corps Center (JCC) property to relocate an existing SMUD 69 kilowatt (kV) overhead power line as part of the South Sacramento Corridor Phase 2 (SSCP2) Extension Project to bring light rail transit to Sacramento. In 2008, the U.S. Department of Transportation Federal Transit Administration (FTA), who was the lead federal agency for this light rail project, had approved a National Environmental Policy Act (NEPA) complaint Environmental Impact Study (EIS) for the project and issued a Final Record of Decision (ROD). The original EIS, upon which the ROD was based, did not include any high-voltage overhead power lines on the DOL JCC property.

In 2011, five modifications to the original project were considered and an Initial Study/Environmental Assessment (IS/EA) was prepared. The IS/EA was approved in October 2011 and was followed by FTA’s issuance of a “Finding of No Significant Impact” (FONSI). Sometime after 2011, additional modifications were identified, one of which is to relocate the 69 kV transmission line onto the Sacramento JCC property. The proposed transmission line relocation to the JCC property was not evaluated as part of these previous environmental review documents.

Thereafter, the Sacramento RT had a consultant prepare a “Initial Study/Proposed Mitigated Negative Declaration South Sacramento Corridor Phase 2 Extension 69 kV Transmission Line and Joint Pole Facilities Relocation Project” (October 2013, hereafter known as Initial Study). The Initial Study discussed the relocation of the 69 kV power line to the Sacramento Job Corps property. The environmental impacts included: the removal of 12 eucalyptus trees that would disturb nesting Swainson’s hawks which are California State-listed endangered species; and, several vernal pools located where the power line would cross the property were assumed to contain Federally-listed endangered species. Also included in the Initial Study were proposed measures to mitigate these impacts.

In a letter to the FTA on November 27, 2013, the Sacramento RT concluded that the new modifications created no additional adverse effects because previously-approved mitigation measures would suffice, including measures to protect endangered species and their habitats. Therefore, the Sacramento RT determined that no further NEPA evaluation was warranted. On December 31, 2013, the FTA concurred with Sacramento RT’s assessment and issued a 23 CFR Section 771.130(c) opinion letter that neither a Supplemental EIS nor Environmental Assessment was necessary for the

proposed modifications. However, the Initial Study did not consider that the transformer poles and lines were to be located on the DOL Sacramento JCC property.

Thereafter, on January 3, 2014, the Sacramento RT Environmental Impact Statement was forwarded to DOL for review. By July, DOL staff contacted both the FTA's Region 9 and National Office, and the White House Council on Environmental Quality (CEQ) to discuss how DOL could become a Cooperating Agency to the FTA and have further investigations performed on the DOL property.

Between August 2014 and the end of January 2015, DOL had ongoing discussions with FTA (Region 9), and the Sacramento RT to identify options for relocating the transmission line poles. DOL's preference was to avoid the vernal pools and move the poles closer to the property boundary. Complicating the pole relocation was that the surrounding community was considered an environmental justice area. Therefore, the FTA was reluctant to approve a plan where the 69 kV power lines were situated too close to the residential boundaries. The Sacramento RT proposed a preliminary revision of the pole location that moved the 69 kV line away from the vernal pools and closer to the property boundary, but with a 100 foot buffer from the residential properties.

On February 24, 2015, FTA emailed to DOL an official invitation to be a Cooperating Agency. On March 24, 2015, DOL responded by accepting FTA's invitation and agreeing to act on the project as a "cooperating agency" in accordance with the CEQ's NEPA-implementing regulations at 40 C.F.R. 1508.5. DOL then requested that RT's proposed pole realignment be subject to an environmental assessment. RT agreed that the proposed modifications involved new actions that had not been evaluated during the previous NEPA compliance investigations. Therefore, the Sacramento RT contractors visited the Sacramento JCC property to assess the impacts of the proposed modification, as required by the California Environmental Quality Act (CEQA).

A CEQA Addendum, that also served to meet NEPA requirements, was prepared to evaluate the impacts of the modification. On December 14, 2015, the Sacramento RT Board of Directors adopted findings that there was no substantial evidence showing that the conditions described in CEQA Guidelines Section 15162, calling for preparation of a subsequent Environmental Impact Report (EIR) or Mitigated Negative Declaration, had occurred. The proposed realignment for portions of the previously-approved 69 kV power line would not result in any new effects or substantially increase the severity or magnitude of a previously identified effect. Further, the proposed modification would not result in any significant effects because the modification has been designed to avoid any sensitive resources, and the Sacramento RT had previously adopted mitigation measures in the 2011 Initial Study/Environmental Assessment (IS/EA). The CEQA Addendum was sent to DOL to review on April 19, 2016.

On April 29, 2016, the Sacramento RT requested in a letter sent to FTA that a NEPA review of the realignment of ten poles of a 69 kV power line for the South Sacramento

Corridor Phase 2 Light Rail Project. The letter was accompanied by the CEQA Addendum. The Sacramento RT requested that FTA review the materials and support a determination that neither a supplemental Environmental Impact Statement nor Environmental Assessment was required, in accordance with 23 CFR 771.130(c).

On May 17, 2016, the Sacramento RT was notified by FTA that the agency had completed its review of the Sacramento RT's letter, dated April 29, 2016, and accompanying materials. In their review, FTA incorporated comments received from DOL as a Cooperating Agency. FTA found that based on the environmental re-evaluation materials submitted by the Sacramento RT, the proposed changes were not substantial; and, with the mitigation specified in the re-evaluation materials, the changes would not cause significant environmental impacts that were not previously evaluated. Therefore, FTA found that neither the preparation of a Supplemental Environmental Impact Statement (SEIS) nor an Environmental Assessment was necessary, in accordance with 23 CFR §§ 771.115, 771.119, and 771.130(c). On May 27, 2016, DOL received notice from FTA of this determination.

As a Cooperating Agency, DOL adopted FTA's determination of when DOL's Office of Job Corps issued a FONSI initiated by a notice in the Sacramento Bee on July 31, 2016. The public comment period of 30 days ended on August 30, 2016. DOL published a draft FONSI in the Federal Register on August 16, 2016. No comments were received regarding the draft FONSI. On January 26, 2017, DOL granted SMUD an easement to relocate the 69 kV overhead power line.

By FTA invitation to DOL to act as a Cooperating Agency and by DOL agreement to do so, all parties worked carefully through the issues and achieved the intent of NEPA. Without using a third-party mediator, the final result provided greater protection to the environment, was protective of the local surrounding community, and supported California's goal to extend light rail transit.

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 23, 2018.

Submit report electronically to: owen@udall.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