

FY 2018 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 2018.

The report deadline is April 12, 2019.

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 2018 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 2018 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 18 ECCR Report Template

Name of Department/Agency responding:	<u>U.S. Department of Transportation</u>
Name and Title/Position of person responding:	<u>Ami Lovell, Attorney Advisor</u> <u>Krystyna Bednarczyk,</u> <u>Attorney Advisor</u>
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Date this report is being submitted:	<u>April 12, 2019</u>
Name of ECR Forum Representative	<u>Ami Lovell, Krystyna Bednarczyk,</u> <u>Amy Coyle</u>

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 2018, 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 U.S. Department of Transportation (DOT) took the following steps to build programmatic and institutional capacity for ECCR in FY 2018:

Office of the Secretary (OST)

The Office of the Under Secretary for Transportation Policy (Policy) continues to have an interagency agreement (IAA) since 2016 with the U.S. Institute for Environmental Conflict Resolution (USIECR) through 2022 that includes a range of services related to improving efficiencies for environmental review and permitting to accelerate project delivery and achieve improved environmental and community outcomes. This includes use of collaboration and conflict resolution to improve interagency coordination and expedite projects related to the permitting and environmental review of major transportation infrastructure projects.

Federal Highway Administration (FHWA)

FHWA added ECCR capacity building to its IAA with USIECR. In March 2018, the IAA funded some FHWA staff to participate in the USIECR's *Collaboration in National Environmental Policy Act (NEPA)* course, which was hosted by the Environmental Protection Agency (EPA) Region 8 Office in Denver, CO. For the same course, an on-site training session is scheduled with the Arizona Department of Transportation (ADOT) in March 2019 to support the implementation of NEPA Assignment in Arizona.

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.

FHWA

FHWA's methods for identifying investments include the USIECR IAA. FHWA invested this past year for ECCR services under the USIECR IAA, and FHWA tracks benefits through case studies further discussed in case examples.

Federal Transit Administration (FTA)

To identify investments that have been made in ECCR, FTA relies on regularly-scheduled monthly environmental discussions between Headquarters and Regional Offices. The Regional Offices may also contact Headquarters' subject matter experts to discuss individual projects and their potential need for ECCR benefits.

- b) Please report any (a) quantitative or qualitative investments your agency captured during FY 2018; and (b) quantitative or qualitative results (benefits) you have captured during FY 2018.

FHWA

Based on a request from FHWA and Arizona DOT (ADOT), the USIECR recently acted as a third party neutral facilitator in the stakeholder engagement processes related to the Interstate 11 (I-11) Corridor. The USIECR took the lead on all communications with the various stakeholders interested in the proposed highway project on the I-11 Corridor, and conducted a brief situation assessment to determine the positions and interests of the various stakeholder groups. Following the assessment, the USIECR designed and held a series of meetings with the stakeholders, and then wrote a summary report about what was heard during the meeting. The USIECR's role as a third party neutral facilitator was effective in that it allowed for all voices to be heard, and allowed for a deeper understanding of the interests behind the positions held by the stakeholders. By identifying the various public and special interests, the USIECR identified the underlying issues that were important to all stakeholders, such as public health and highway safety. The investments of time and effort by USIECR third party neutral facilitators allowed for the stakeholders to find some common ground, and ultimately provided information to FHWA and ADOT on which proposed alignment for the I-11 Corridor would be the most feasible and "in the best overall public interest" (23 U.S.C. 109(h)).

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

Benefits are typically qualitative and the full benefits of an ECCR accomplishment in one fiscal year may not be measurable during that fiscal year. DOT does not have a tracking system in place to generate cost and benefit information.

FTA

In the current fiscally constrained environment, it is difficult for transit providers to set aside money for possible ECCR expenses. It is likely that transit providers would use funds from their projects' contingency funds, but contingency funds can be used for a variety of tasks. Thus, it is difficult to pinpoint or guarantee the availability of ECCR funds, making generating cost information near impossible.

3. **ECCR Use:** Describe the level of ECCR use within your department/agency in FY 2018 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 2018 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	<u> 1 </u>	___	___	___	<u> 1 </u> -	Training	___	<u> 1 </u>	___	<u> 1 </u>	
Siting and construction	___	___	___	___	___		___	___	___	___	
Rulemaking	___	___	___	___	___		___	___	___	___	
License and permit issuance	___	___	___	___	___		___	___	___	___	
Compliance and enforcement action	___	___	___	___	___		___	___	___	___	
Implementation/monitoring agreements	<u> 1 </u>	___	___	___	<u> 1 </u>	EIS	___	<u> 1 </u>	___	<u> 1 </u>	
Other (specify): Section 106 programmatic agreement (PA)	<u> 1 </u>	___	___	___	<u> 1 </u>	PA in Puerto Rico	<u> 1 </u>	___	___	<u> 1 </u>	
TOTAL	<u> 3 </u>	___	___	___	<u> 3 </u>		<u> 1 </u>	<u> 2 </u>	<u> 0 </u>	<u> 3 </u>	
		(the sum of the Decision Making Forums should equal Total FY 2018 ECCR Cases)									

² An “ECCR case” is a case in which a third-party neutral was active in a particular matter during FY 2018.

³ A “completed case” means that neutral third party involvement in a particular ECCR case ended during FY 2018. 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 2018 cases it should equal total ongoing cases. If you subtract sponsored ECCR cases from Total FY 2018 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 2018 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 2018). Please limit the length to no more than 2 pages.

Name/Identification of Problem/Conflict
<p>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>
<p>In 2018, the Federal Highway Administration (FHWA) and Arizona Department of Transportation (ADOT) conducted the NEPA review of the Interstate 11 (I-11) Corridor Project from Nogales to Wickenburg, AZ. A Tier 1 Environmental Impact Statement (EIS) was prepared as a part of this process in accordance with NEPA and other Federal environmental laws. FHWA was the lead agency under NEPA and ADOT was the project sponsor.</p>
<p>The FHWA Arizona Division sought help from the USIECR for the stakeholder engagement process. USIECR organized and facilitated the stakeholder engagement meetings, which were funded through an interagency agreement between FHWA and USIECR. The meetings took place early in 2018, and USIECR developed a meeting summary report to highlight the outcomes of the interagency planning and public involvement efforts.</p>
<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>
<p>To complement ADOT’s extensive public involvement processes, FHWA believed it would be beneficial to collect additional input in a stakeholder group setting as opposed to the traditional public information meetings. The overall objective of the I-11 Corridor stakeholder group meetings was to better understand the diverse perspectives and underlying issues of the communities in southern Arizona. In addition, the stakeholder group meetings sought to identify common ground among the varying perspectives.</p>
<p>USIECR designed a series of meetings that allowed diverse groups in southern Arizona to discuss various alignments for the I-11 Corridor. Member groups included environmental organizations, public health and highway safety agencies, environmental advocacy groups, business interest groups, and more.</p>
<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>
<p>USIECR summarized the information gathered during the public engagement meetings in a report that was provided to the Federal agency leaders as they made their final decisions regarding the I-11 Corridor alternatives. Throughout the meetings, it became apparent that one of the two proposed alignments was untenable, due to cost and other logistical constraints. This information became apparent because of the open-conversation structure of the ECCR process designed by USIECR. Had a more traditional public forum been used, certain</p>

minority voices in the room might not have been heard or considered in the alternatives analysis process.

Reflections on the lessons learned from the use of ECCR

The use of ECCR in this process allowed for a more open conversation that allowed a greater number of voices to be heard, a greater range of viewpoints to be considered, and ultimately provided FHWA with a greater amount of information for making decisions during the alternatives analysis process developed for the I-11 Corridor Tier 1 EIS.

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

FHWA

In March 2018, the IAA between FHWA and USIECR funded some FHWA staff to participate in and review the USIECR training course on “Collaboration in NEPA,” hosted by the EPA Region 8 Office in Denver, CO.

This class is designed for those involved in the NEPA process. Participants learn how to assess and plan for meaningful, time efficient, and cost-effective collaboration during NEPA reviews, using appropriate tools, techniques and best practices. Participants also develop a better understanding of the national environmental policy goals of NEPA and the benefits of collaborative approaches to achieving these goals. This interactive and experiential training includes real-world NEPA case studies.

Based on FHWA’s review of the class, and to respond to Arizona DOT’s (ADOT) request for capacity building under NEPA Assignment, another on-site training is scheduled to take place in March 2019 at the ADOT.

Maritime Administration (MARAD)

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 the EPA 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 Department of Justice (DOJ)) 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 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.

FHWA

FHWA works with the USIECR on a number of agency priority areas. During FY 2018, FHWA and USIECR worked on training and collaboration in the NEPA process in Arizona and began working on building collaboration skills in preparation for the Arizona DOT (ADOT) to assume FHWA NEPA responsibilities under FHWA's NEPA assignment authority and on interagency collaboration in Puerto Rico to develop a programmatic agreement (PA) under Section 106 of the National Historic Preservation Act (Section 106) to respond to priority issues in Puerto Rico as part of updating an existing PA and responding to the emerging needs in disaster response.

7. Non-Third-Party-assisted Collaboration Processes: Briefly describe other significant uses of environmental collaboration that your agency has undertaken in FY 2018 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.*

FHWA

The National Historic Preservation Act Section 106 programmatic agreement (PA) among the FHWA, Puerto Rico Highways and Transportation Authority (PRHTA), Puerto Rico State Historic Preservation Office (PRSHPO) and the Advisory Council on Historic Preservation (ACHP) is set to expire soon. Given the emergency relief efforts post Hurricane Maria, additional support is necessary to facilitate the development of an effective PA among the parties. USIECR is hiring a contractor to support the interagency process to develop the Section 106 PA in Puerto Rico.

FTA

FTA continues to use a myriad of non-assisted collaboration techniques afforded by FTA's regulations at 23 CFR Part 771 and outlined in our Environmental Standard Operating Procedures, such as the following: development of PAs and memoranda of agreement with the ACHP and State Historic Preservation Offices (SHPO) for Section 106, and other Federal agencies where needed to assist in facilitation of the project; use of early scoping and early collaboration to communicate effectively and efficiently with stakeholders including the public, local, State and Federal agencies, interest groups, tribes, and project sponsors; process incorporation of timely additional public involvement into the environmental review where necessary; and, development of stakeholder working groups and project status meetings for specific projects.

One such example occurred in FY 2018 that involved FTA funding is the Los Angeles County Metropolitan Transit Authority's (LACMTA) Union Station/Patsaouras Plaza El Monte Busway Station Project (Patsaouras Plaza Project) in Los Angeles, California. During construction, unanticipated human remains and complex archeological resources were found, which created substantial process and schedule challenges for the project team. As a result, FTA created a working group to address the Section 106 discoveries and to create an agreement for next steps, including future potential discoveries. The working group comprised a diverse group of local, State and Federal agencies involved in the Section 106 process for the project. The conflicts on the project were resolved through extensive outreach, communication, and collaboration, with the efforts primarily led by FTA Regional and Headquarters staff; no third-party facilitator was used due to budget constraints. The working group developed an aggressive project schedule to comply with Section 106 and restart construction. FTA continues to monitor the project to ensure the work undertaken is in accordance with the collaborative approach developed.

MARAD

MARAD promotes non-assisted collaboration among 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 of MARAD personnel to work in concert with its partners at the U.S. Coast Guard (USCG) during the environmental review phase. MARAD and USCG 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 similarly collaborates on the environmental review of multimodal projects awarded Transportation Investment Generating Economic Recovery (TIGER) grants.

Additionally, MARAD continued to rely on its Gateway Offices as MARAD's day-to-day representatives throughout the Marine Transportation System (MTS). 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 (NOC). 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, MARAD's Gateway Directors on the NOC Regional Planning Bodies for the Northeast and Mid-Atlantic Regions assisted in the release of the Nation's first regional ocean plans. The ocean plans require member Federal agencies to use regional data portals, where practicable and appropriate, for information to guide agency decisions and actions within the Northeast and Mid-Atlantic marine regions. The data portals may be used to identify who or what may be affected by proposed activities or where additional information is needed. Such data may include ecosystem information, impacted marine animals, human activities within the proposed geographical area, and other relevant projects. Additionally, member Federal agencies also committed in the ocean plans to implement best practices to facilitate early coordination with other Federal agencies, local governments, stakeholders, and tribes in actions affecting the two marine regions. While Executive Order 13840 revoked the National Ocean Council and Regional Planning Bodies, MARAD representatives will continue to facilitate discussion and early coordination among the various maritime stakeholders to ensure appropriate consideration of port, shipper, and carrier stakeholders in ocean and ocean transportation policy.

Federal Railroad Administration (FRA)

FRA has not used third-party ECCR processes, but employs various non-assisted collaboration efforts. Although FRA does not specifically dedicate resources for ECCR, non-assisted collaboration efforts can be employed for specific projects as needed and are considered a part of the project scope if required.

FRA worked with the ACHP in developing PAs and other tools for the Section 106 process for railroad projects. These PAs involve collaboration with other agencies.

FRA has conducted extensive coordination with the Army Corps of Engineers (ACE) to resolve various Agency differences in developing NEPA documents for the Texas Central project, resulting in agreements on defining Purpose and Need, and developed commitments for information exchange. These were conducted largely through Agency-to-Agency in person meetings with the District and Headquarters staff.

When a project is in the scoping phase, or even before the NEPA process starts, FRA assesses potential conflicts and works to resolve them early using memoranda of understanding or agreement that clearly state the roles and responsibilities of various interested parties. FRA has found this to be particularly useful in several projects where potential conflicts could have become worse without a clear understanding developed at the beginning of the process.

FRA also employs extending comment periods or holding additional public meetings to assure public input is received and tries to interact with citizens opposed to projects in a constructive, respectful way. This includes making phone numbers and emails available in FRA, and to the best extent possible, answering questions and responding to public requests and questions.

Pipeline and Hazardous Materials Safety Administration (PHMSA)

In 2018, PHMSA served as a cooperating agency on various pipeline construction and development projects. Four of these projects are proposed for Alaska. Other projects involve the development of new liquefied natural gas (LNG) facilities. PHMSA provides its expertise at the request of the lead agencies, typically Federal Energy Regulatory Commission (FERC) or the ACE, to help ensure pipeline safety and environmental protection.

Although PHMSA does not participate in or approve the construction of infrastructure, PHMSA often becomes aware of disputes between landowners and pipeline operators. These disputes most often arise during construction of a pipeline but also after the pipeline is operational. To assist with resolution of these disputes, PHMSA's Community Liaisons engage with pipeline stakeholders. The mission of the Community Liaison Program is to advance public safety, environmental protection, and pipeline reliability by facilitating clear communications among all pipeline stakeholders, including the public, the operators and government officials. Community Liaisons provide information about the Office of Pipeline Safety programs to pipeline safety stakeholders and work with pipeline operators to encourage prudent land use planning and prevent or mitigate excavation damage and encroachment.

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 April 12, 2019.

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