

FY 2019 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 reporting template is provided in accordance with the memo for activities in FY 2019.

The report deadline is February 22, 2020.

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 FY 2019 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 2019 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: <https://udall.gov/OurPrograms/Institute/ECCRReport.aspx>

FY 19 ECCR Report Template

Name of Department/Agency responding:	U.S. Department of Transportation
Name and Title/Position of person responding:	Ami Lovell Attorney Advisor Krystyna Bednarczyk Attorney Advisor
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Date this report is being submitted:	April 3, 2020
Name of ECCR Forum Representative	Ami Lovell and Krystyna Bednarczyk

1. ECCR Capacity Building Progress

- a) Describe any **NEW, CHANGED, or ACTIVELY ONGOING** steps taken by your department or agency to build programmatic and institutional capacity for environmental collaboration and conflict resolution in FY 2019, including progress made since FY 2018. Please also include any efforts to establish routine procedures for considering ECCR in specific situations or categories of cases, including any efforts to provide institutional support for non-assisted collaboration efforts. Please refer to your agency's FY2018 report to only include new, changed or actively ongoing ECCR capacity building progress. **If none, leave this section blank.**

(Please refer to the mechanisms and strategies presented in Section 5 and attachment C of the [OMB-CEQ ECCR Policy Memo](#) for additional guidance on what to include here.

Examples include but are not restricted to efforts to

- integrate ECCR objectives into agency mission statements, Government Performance and Results Act goals, and strategic planning;
- assure that your agency's infrastructure supports ECCR;
- 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 2019:

Federal Highway Administration (FHWA)

FHWA routinely creates Section 106 Programmatic Agreements with States to improve decision-making and streamline environmental review, as mandated by the National Historic Preservation Act (NHPA). These agreements can delegate some responsibilities to States and provide parameters for expedited reviews under certain

circumstances. Puerto Rico (PR) has a Programmatic Agreement for Section 106 that is expiring in the next year. Given the many demands in PR post Hurricane Maria, PR DOT and State Historic Preservation Offices (SHPO) are currently unable to invest the full level of effort needed to lead this effort. FHWA contracted with the U.S. Institute for Environmental Conflict Resolution to provide a facilitator to convene the agencies and help them to avoid conflicts that are likely to arise from putting together a new Programmatic Agreement, especially if they are unable to do so in a timely manner.

A Section 106 Programmatic Agreement is key to Federal and State coordination under NHPA, and revising this agreement creates an opportunity for collaboration to build common understanding and mitigate future disagreements. It is not uncommon that States and FHWA may have divergent views on the depth and applicability of environmental reviews and processes. In some cases, States may also have different interpretations of the policy and what is or is not appropriate for expedited review under Section 106. In addition, PR faces unique challenges in the context of Section 106 as substantial work continues in rebuilding communities after Hurricane Maria. Overall, a Programmatic Agreement helps State and Federal partners codify processes and expectations together to ensure a smooth and effective implementation. Providing a skilled bilingual facilitator is helping the agencies in PR navigate potential challenges to deliver an efficient and effective new Section 106 Programmatic Agreement. The project is ongoing and a draft Programmatic Agreement has been developed.

Federal Transit Administration (FTA)

FTA regional offices utilized the liaison program authorized by 23 U.S.C. 139(j) to help complete environmental review for project sponsors. This program allows for collaboration and conflict resolution during project development to expedite project delivery.

- b) Please describe the trainings given in your department/agency in FY 19. Please include a list of the trainings if possible. If known, provide the course names and if possible, the total number of people trained. Please refer to your agency's FY2019 report to include only trainings given in F 2019. **If none, leave this section blank.**

FHWA

FHWA funded the U.S. Institute for Environmental Conflict Resolution to deliver its "Collaboration in NEPA" training course to the Arizona Department of Transportation to improve its capacity to implement their NEPA assignment responsibilities. This 2-day course integrates effective collaboration into environmental planning and review under the National Environmental Policy Act (NEPA). This course is based on guidance from the President's Council on Environmental Quality called Collaboration in NEPA - A Handbook for NEPA Practitioners.

FTA

FTA provided the following trainings: Managing the Environmental Review Process, in Philadelphia for 51 people; Managing the Environmental Review Process, in

Seattle for 49 people; Advanced Environmental Justice, in Fort Worth for 35 people; Advanced Environmental Justice, in Chicago for 30 people; and a Regional Training Program on FTA's Standard Operating Procedures for three of its regional offices.

2. ECCR Investments and Benefits

- a) Please describe any **NEW or CHANGED or INNOVATIVE** investments made in ECCR in FY2019. Examples of investments may include ECCR programmatic FTEs, dedicated ECCR budgets, funds spent on contracts to support ECCR cases and programs, etc.

Please refer to your agency's FY2018 report to only include new, changed, or innovative investments made in ECCR. **If none, leave this section blank.**

- b) Please describe any **NEW or CHANGED or INNOVATIVE** benefits realized when using ECCR.

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.

Please refer to your agency's previous report to only include new or innovative methodology to identify ECCR investments and benefits. **If none, leave this section blank.**

3. ECCR Use

Describe the level of ECCR use within your department/agency in FY 2019 by completing the three tables 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 2019 ECCR Cases ²	Decision making forum that was addressing the issues when ECCR was initiated:			
		Federal agency decision	Administrative proceedings /appeals	Judicial proceedings	Other (specify)
<i>Context for ECCR Applications:</i>					
Policy development	_____	_____	_____	_____	_____
Planning	_____	_____	_____	_____	_____
Siting and construction	_____	_____	_____	_____	_____
Rulemaking	_____	_____	_____	_____	_____
License and permit issuance	_____	_____	_____	_____	_____
Compliance and enforcement action	_____	_____	_____	_____	_____
Implementation/monitoring agreements	1	1	_____	_____	_____
Other (specify): Training	1	_____	_____	_____	1
TOTAL	2	1	_____	_____	1
		(the sum of the Decision Making Forums should equal Total FY 2019 ECCR Cases)			

² An “ECCR case” is a case in which a third-party neutral was active in a particular matter during FY 2019.

<i>Context for ECCR Applications:</i>	Interagency ECCR Cases and Projects	
	Other Federal Agencies Only	Including non federal participants (includes states, Tribes, and non governmental)
Policy development	_____	_____
Planning	_____	_____
Siting and construction	_____	_____
Rulemaking	_____	_____
License and permit issuance	_____	_____
Compliance and enforcement action	_____	_____
Implementation/monitoring agreements	_____	1
Other (specify): Training	_____	1
TOTAL	_____	2

<i>Context for ECCR Applications:</i>	ECCR Cases or projects completed ³	ECCR Cases or Projects sponsored ⁴
Policy development	_____	_____
Planning	_____	_____
Siting and construction	_____	_____
Rulemaking	_____	_____
License and permit issuance	_____	_____
Compliance and enforcement action	_____	_____
Implementation/monitoring agreements	_____	1
Other (specify): Training	_____	1
TOTAL	_____	2

³ A “completed case” means that neutral third party involvement in a particular ECCR case ended during FY 2019. 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 2019 cases it should equal total ongoing cases. If you subtract sponsored ECCR cases from Total FY 2019 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 2019 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 2019). If possible, focus on an interagency ECCR case. Please limit the length to **no more than 1 page**.

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)**

6. Priority Uses of ECCR

Please describe your agency's **NEW or CHANGED** 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. Please refer to your agency's FY2018 report to only include new or increased priority uses. **If none, leave this section blank.**

7. Non-Third-Party-assisted Collaboration Processes (Optional)

Briefly describe other **significant** uses of environmental collaboration that your agency has undertaken in FY 2019 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.* **If none, leave this section blank.**

Pipeline and Hazardous Materials Safety Administration (PHMSA)

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. In an effort to assist with resolution of these disputes, PHMSA's Community Liaisons continue its Community Liaison Program in FY 2019 by engaging 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 also work with pipeline operators to encourage prudent land use planning and to prevent or mitigate excavation damage and encroachment.

8. Comments and Suggestions on Reporting

Please comment on any **NEW or CHANGED** 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 reference your agency's FY2018 report to identify new/increased difficulties. **If none, leave this section blank.**

Please attach any additional information as warranted.

Report due February 21, 2020.

Submit report electronically to: kavanaugh@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