

FY 2020 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 2020.

The report deadline is February 26, 2021.

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 2020 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 2020 ECCR reports. You may be contacted for the purpose of clarifying information in your report.

For your reference, synthesis reports from past fiscal years are available at <https://www.udall.gov/OurPrograms/Institute/ECRReport.aspx>.

FY 2020 ECCR Report Template

Name of Department/Agency responding: U.S. Army

Name and Title/Position of person responding: Marc Van Nuys
Director of Dispute Resolution

Division/Office of person responding: Office of General Counsel

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Date this report is being submitted: Jan 2021

Name of ECCR Forum Representative: Carrie Greco, Litigation Attorney
Environmental Law Division
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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 2020, including progress made since FY 2019.

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 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.

Please refer to your agency's FY 2019 report to only include new, changed or actively ongoing ECCR capacity building progress. **If none, leave this section blank.**

In FY20, despite the disruptions from COVID-19, the Army Dispute Resolution Specialist continued to maintain the Army's Alternative Dispute Resolution program in accordance with the 22 Jun 07 memorandum issued by the Secretary of the Army and the Department of Defense (DoD) Instruction 5145.05, Alternative Dispute Resolution and Conflict Management of 27 May 16 (DODI 5145.05). Army issued a survey to identify the format and use of non-public engagements throughout COVID-19, along with recent policy guidance and lessons learned.

- b) Please describe the trainings given in your department/agency in FY 2020. Please include a list of the trainings, if possible. If known, please provide the course names and total number of people trained. Please refer to your agency's FY 2019 report to include **ONLY** trainings given in FY 2020. **If none, leave this section blank.**

The Judge Advocate General's Legal Center and School's annual General Litigation Course was conducted virtually in 2020. The course included a one-hour training block on alternative dispute resolution. One hundred thirty Army attorneys attended. No Army attorneys attended the Air Force's Negotiation and Appropriate Dispute Resolution Course in 2020, as it was cancelled due to COVID-19.

2. ECCR Investments and Benefits

- c) Please describe any **NEW or CHANGED or INNOVATIVE** investments made in ECCR in FY 2020. Examples of investments may include (but are not limited to):
- ECCR programmatic FTEs
 - Dedicated ECCR budgets
 - Funds spent on contracts to support ECCR cases and programs

Please refer to your agency's FY 2019 report to only include new, changed, or innovative investments made in ECCR. **If none, leave this section blank.**

Travel costs were eliminated or significantly reduced during virtual ECCR or non-third-party public engagements held during COVID-19. Investments in sharing information were reduced as engagement processes shifted toward providing documents and meeting rooms in virtual format. On occasion, investments were made to ship disks/dvds/documents to requesting individuals, and to establish consolidated remote sites or one on one meetings.

- d) Please describe any **NEW or CHANGED** benefits realized when using ECCR in FY 2020. Examples of benefits may include (but are not limited to):
- Cost savings
 - Environmental and natural resource results
 - Furtherance of agency mission
 - Improved working relationship with stakeholders
 - Avoidance of litigation
 - Timely project progression

Please refer to your agency's FY 2019 report to only include new or changed benefits of ECCR realized in FY 2020. If none, leave this section blank.

The Army benefited through the use of ECCR in one case where mediation helped the parties resolve a dispute over the allocation of cleanup costs. Mediation brought the parties together, opened communications, increased trust, and generated a resolution of the issues so the cleanup can proceed. The Army avoided the costs, salaries, and other resources required for formal discovery and full litigation in that one case.

3. ECCR Use

Describe the level of ECCR use within your department/agency in FY 2020 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.]

To avoid double counting processes, please select one category per case for decision making forums and for ECCR applications.

	Total FY 2020 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 below)
<i>Context for ECCR Applications:</i>					
Policy development	__0__	__0__	__0__	__0__	__0__
Planning	__0__	__0__	__0__	__0__	__0__
Siting and construction	__0__	__0__	__0__	__0__	__0__
Rulemaking	__0__	__0__	__0__	__0__	__0__
License and permit issuance	__0__	__0__	__0__	__0__	__0__
Compliance and enforcement action	__0__	__0__	__0__	__0__	__0__
Implementation/monitoring agreements	__0__	__0__	__0__	__0__	__0__
Other (specify): CERCLA cost recovery action	__2__	__0__	__0__	__2__	__0__
TOTAL	__2__	__0__	__0__	__2__	__0__
(the sum of the Decision Making Forums should equal Total FY 2020 ECCR Cases)					

****If you indicated above that any of your ECCR cases or projects were initiated in an “other” decision making forum, please elaborate here.**

These cases were CERCLA cost recovery actions where the parties were litigating the amount of costs, if any, that should be borne by the Army.

² An “ECCR case” is a case in which a third-party neutral was active in a particular matter during FY 2020.

<i>Context for ECCR Applications:</i>	Interagency ECCR Cases and Projects	
	Included Other Federal Agencies Only	Included Non-Federal Participants (e.g., states, Tribes, and nongovernmental)
Policy development	__0__	__0__
Planning	__0__	__0__
Siting and construction	__0__	__0__
Rulemaking	__0__	__0__
License and permit issuance	__0__	__0__
Compliance and enforcement action	__0__	__0__
Implementation/monitoring agreements	__0__	__0__
Other (specify): CERCLA cost recovery actions	__0__	__2__
TOTAL	__0__	__2__

<i>Context for ECCR Applications:</i>	ECCR Cases or projects completed ³	ECCR Cases or Projects sponsored ⁴
Policy development	__0__	__0__
Planning	__0__	__0__
Siting and construction	__0__	__0__
Rulemaking	__0__	__0__
License and permit issuance	__0__	__0__
Compliance and enforcement action	__0__	__0__
Implementation/monitoring agreements	__0__	__0__
Other (specify): CERCLA cost recovery actions	__2__	__0__
TOTAL	__2__	__0__

³ A “completed case” means that neutral third-party involvement in a particular ECCR case ended during FY 2020. 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 2020 cases it should equal total ongoing cases. If you subtract sponsored ECCR cases from Total FY 2020 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 2020 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 2020). If possible, focus on an interagency ECCR case. Please limit the length to **no more than 1 page**.

Name/Identification of Problem/Conflict:
<i>[Please add case "title" here]</i>
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.
The parties are in litigation over the allocation of CERCLA response costs. Prior to moving into costly discovery, and after issuing an opinion on summary judgment motions, the judge proposed the parties participate in a mediation conference. The court provided a Magistrate to act as the mediator. The virtual mediation took place via Zoom, so no extra funding was required.
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.
The mediator introduced herself, ensured informed commitment from all parties, and then shuttled between the parties for approximately 10 hours in a balanced fashion. She ensured an informed process, protected confidentiality, and developed trust among the parties by sharing only the information each counsel was comfortable sharing with the other side. This approach ensured a sense of accountability and openness and set the stage for each counsel to speak directly during the final hour. No agreement was reached before the mediation adjourned at mid-evening, but the mediator believed settlement could be possible through continued engagement.
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.
ECCR provided the parties the opportunity to use the mediator to communicate their key motivations for settlement and their requirements for a potential settlement. Understanding the opposing party's issues and limitations for a settlement allowed each side to make appropriate concessions and responses to concessions without compromising the essential tenets of an acceptable settlement. The mediation paved the way for continued discussions that may move the parties to an agreement on the settlement amount.
Please share any reflections on the lessons learned from the use of ECCR.
Since the cost of litigating this case could approximate its value, the use of mediation at this point, prior to beginning fact and expert discovery, was wise.

5. Other ECCR Notable Cases

Briefly describe any other notable ECCR cases in FY 2020. **(OPTIONAL)**

At a third-party CERCLA site, the parties were litigating the allocation of response costs when one party asked the court for a stay of litigation to resolve the dispute through mediation. The court agreed and issued a revised scheduling order implementing a stay of litigation for mediation. The parties hired a private mediator. The mediation costs were shared among the parties. Each party paid its own costs to participate in the mediation. The mediator established a staged process. During one session, a private party presented its claims against the Federal parties, and during a follow-up session, the Federal parties responded to those claims. These two sessions occurred in FY19. The mediation continued into FY20, but ultimately ended unsuccessfully in early FY20. The dispute was addressed in a trial.

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 FY 2019 report to only include new or increased priority uses. **If none, leave this section blank.**

The Army continues to use ECCR in CERCLA cost recovery matters.

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

Briefly describe other **significant** uses of environmental collaboration that your agency has undertaken in FY 2020 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.**

In FY20, the Army used non-third-party collaboration to resolve issues prior to their becoming formal claims or litigation, and to provide a more efficient and more comprehensive review of matters being addressed. In FY20, the Army used three methods to informally resolve disputes. First, the Army utilized alternative dispute resolution provisions in its federal facilities agreements and in the environmental annexes to its direct sales and partnering agreements. These provisions set forth options for parties to resolve disputes early and more efficiently. Second, the Army encouraged participation in community outreach via town hall meetings and other public forums. Open communication allowed stakeholders to address issues of concern before any disputes could arise. Third, the Army used non-third-party collaboration in its consultation and NEPA planning processes. Below are some specific examples of areas where the Army used non-third-party-assisted collaboration in FY20.

1. Tobyhanna Army Depot (TYAD) continued to be active in all three areas of non-third-party dispute resolution.

- TYAD continued to ensure all of its public-private partnering agreements, interagency support agreements with tenants, and union agreements contained dispute resolution provisions. This provided TYAD a forum to resolve issues before they reach formal action or potential litigation.

- TYAD continued to open its quarterly Tier I meetings to video teleconferences, allowing more people to attend, and ensuring social distancing in a COVID-19 environment. The scope of the meetings was expanded to include non-NPL issues such as emerging contaminants, green initiative, continuous improvement, pending permit modifications, and new developments. This provided the regulators and stakeholders a more comprehensive view of TYAD's environmental program. Regulators were given the opportunity to offer guidance and assist in expediting reviews of these matters.

TYAD initiated a Honey Bee and Pollinator Health Program in FY20 pursuant to Presidential Memorandum – Creating a Federal Strategy to Promote the Health of Honeybees and Other Pollinators (20 June 2014, <https://obamawhitehouse.archives.gov/the-press-office/2014/06/20/presidential-memorandum-creating-federal-strategy-promote-health-honey-b>). The TYAD program included the establishment of two bee colonies near a former Environmental Area of Concern and additional plantings of native flowers. The goals of this program are to enhance natural resources, increase public awareness of the importance of pollination, develop community partnerships with aviaries in the area, and provide research for improving colony survival rates nationwide. TYAD reached out to State and Federal

regulators for their input in the development of this program. Their valued input led to the successful implementation of this program.

- TYAD continued to hold Tier II meetings three times per year with Federal and multi-state regulators to maintain open communications among more senior management officials.

- TYAD operated under a 2015 programmatic agreement with a State Historic Preservation Office and the Advisory Council on Historic Preservation to address historic preservation issues related to TYAD.

2. Fort Carson and Piñon Canyon Maneuver Site used non-third-party collaboration in its community outreach, consultation, and NEPA collaboration process.

- As part of its community outreach, Fort Carson personnel held a meeting with the Southern Colorado Engagement Working Group, citizens from the Las Animas/City of Trinidad community, to brief them on current environmental issues and to address issues of community interest.

- Another part of its community outreach, Fort Carson staff hosted its annual meeting to consult with the Tribes on a variety of topics (Hogback Traditional Use Study; Integrated Natural Resources Management Plan; current and ongoing projects; past and future military training exercises). Fort Carson sponsored a field trip to various locations of cultural interest to the Tribal participants.

- In preparation of an Environmental Assessment, Fort Carson collaborated with the US Forest Service and Bureau of Land Management to renew an access permit to conduct high altitude mountain environmental training for helicopters.

- Fort Carson staff hosted an advisory group meeting to review past and future major undertakings of interest to our consulting parties.

- Fort Carson's Programmatic Agreement (PA) Mitigation Advisory Group (Advisory Members and the State Historic Preservation Office members) met to review several projects for potential funding as part of Fort Carson's PA mitigation obligations.

3. Fort Hamilton utilized non-third-party collaboration in activities of public outreach and consultation with internal and external stakeholders.

- Fort Hamilton held Installation Planning Board and Real Property Planning Board and environmental meetings with regulators and stakeholders to enhance collaborative communication and to allow stakeholders to address how they fit into the installation's vision and plans regarding infrastructure proposals real property projects and other environmental projects. Potential issues or concerns by all parties are preliminarily addressed, thus avoiding possible future conflicts.

- Fort Hamilton used public outreach to address archeological concerns of Federally

recognized Tribes regarding a proposed ground disturbance to install communication cables on post.

- Fort Hamilton also used public outreach to address public concerns regarding racial injustice in a proposal to rename certain buildings and monuments on post.

- Fort Hamilton collaborated a Programmatic Agreement with the installation's Residential Community Initiative partner to protect historical buildings that have been privatized. The Garrison was able to derive mutually-beneficial corrective actions to address the Army's housing crisis, thus avoiding potential conflicts with the partner itself, the State Historic Preservation Office and the general public.

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 FY 2019 report to identify new/increased difficulties. **If none, leave this section blank.**

None.

Please attach any additional information as warranted.

Report due Friday, February 26, 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