

Title 14 INDEPENDENT AGENCIES

Subtitle 29 MARYLAND HERITAGE AREAS AUTHORITY

Chapter 05 Procedures for Hearings in Contested Cases

Authority: Financial Institutions Article, §§13-1107(6) and 13-1124, Annotated Code of Maryland

.01 General.

A. This chapter contains procedures for administrative hearings in contested cases under the Maryland Heritage Areas Authority's authority to:

- (1) Review complaints made by local governments or other entities established to administer heritage areas that relate to activities undertaken by State agencies which may adversely affect heritage area resources; and
- (2) Resolve any disputes that may arise in connection with the exercise of its authority to review such complaints.

B. The procedures under this chapter apply to complaints made by certified heritage area management entities that activities of State agencies reviewed under Article 83B, §§5-617 and 5-618, Annotated Code of Maryland, fail to assure that the activities will not have an adverse effect on the historic and cultural resources of a certified heritage area unless there is no prudent and feasible alternative. These procedures are required by the Maryland Administrative Procedure Act, State Government Article, §10-201 et seq., Annotated Code of Maryland.

.02 Definitions.

A. In this chapter, the following terms have the meanings indicated.

B. Terms Defined.

(1) "Adverse effect" means:

(a) In the case of historic or cultural resources, any effect that may alter, directly or indirectly, any of the characteristics of a historic or cultural resource that qualifies the resource for inclusion in the Maryland Register of Historic Properties in a manner that would diminish the integrity of the location, design, setting, materials, workmanship, feeling, or association of the resource; and

(b) In the case of natural resources, any negative impact "significantly affecting quality of the human environment" as that phrase is defined for detrimental effects under the National Environmental Policy Act, 42 U.S.C. §4332(2)(C), to the physical, biological, chemical, or aesthetic environment, or diminution or degradation of ecological processes, including, but are not limited to:

(i) Loss of open space;

(ii) Reduction of groundwater or surface water quantity and quality;

(iii) Diminished air quality;

(iv) Increases in impervious cover;

(v) Alteration of wildlife habitat;

(vi) Fragmentation of forested lands; or

(vii) Changes in landscape aesthetics.

(2) "Authority" means the Maryland Heritage Areas Authority.

(3) "Contested case" means a proceeding to resolve any disputes raised under Financial Institutions Article, §13-1108(4), Annotated Code of Maryland.

(4) "Certified heritage area" means a recognized heritage area designated as a certified heritage area by the Authority in accordance with Financial Institutions Article, §13-1111, Annotated Code of Maryland.

(5) "Decision maker" means the Maryland Heritage Areas Authority.

(6) "Heritage area resources" means natural, historic, or cultural resources.

(7) "Historic or cultural resource" means a district, site, building, structure, monument, or object significant in the prehistory, history, upland and underwater archaeology, architecture, engineering, and culture of the State, which is listed in or is eligible for listing in the Maryland Register of Historic Properties.

(8) "Natural resource" means forests, fish and wildlife, plants, vegetation, water and waterpower, soils, minerals, and all other similar natural, ecological, or recreational resources that contribute to the special character of the heritage area.

(9) "No prudent and feasible alternative" has the meaning stated in 49 U.S.C. §303I(4)(f) as to consultations required under Article 83B, §§5-617 and 5-618, Annotated Code of Maryland.

(10) "Party" means the certified heritage area management entity that filed the complaint, or the State unit named in the complaint as undertaking an activity which the certified heritage area management entity alleges may adversely affect heritage area resources.

.03 Notice and Hearing.

A. In a contested case all parties shall be afforded an opportunity for hearing after reasonable notice.

B. The notice shall:

(1) State the time, place, and nature of the hearing;

(2) State the legal authority under which the hearing is to be held;

(3) Cite the particular sections of the statutes and regulations, including procedural regulations, that are pertinent; and

(4) State concisely and simply:

(a) The facts that are asserted; or

(b) If the facts cannot be stated in detail when the notice is given, the issues that are involved.

.04 Hearing Officer.

The Authority may delegate to the Office of Administrative Hearings the authority to act as hearing officer for any complaint filed or dispute raised under Financial Institutions Article, §13-1108, Annotated Code of Maryland. The hearing officer shall conduct the hearing and submit in writing to the Authority proposed findings of fact, proposed conclusions of law, and a proposed decision. The Authority shall make the final decision.

.05 Representation.

A. A party may appear in proper person or be represented by counsel.

B. A corporation may be represented by an officer, agent, or attorney.

C. Parties and their attorneys shall give written notice to the hearing officer of their names and addresses before the hearing.

.06 Evidence.

A. Probative evidence that reasonable and prudent individuals commonly accept in the conduct of their affairs may be admitted at a hearing and given probative effect.

B. Incompetent, irrelevant, immaterial, or unduly repetitious evidence may be excluded.

C. Documentary evidence may be submitted by parties before and at the hearings and for such period of time that the hearing officer may designate the record to remain open after the hearing.

D. On a genuine issue in a contested case a party may call witnesses and cross-examine opposing witnesses.

.07 Hearing.

A. The hearing shall be open to the public, unless otherwise provided by law.

B. Upon written notice 7 days before a hearing and upon payment of costs, a party may request that a hearing be transcribed.

.08 Ex Parte Communications.

A. Persons other than advisory staff may not communicate ex parte with the hearing officer or decision maker.

B. Ex parte communications received in violation of §A of this regulation shall be placed in the record and disclosed to all parties who shall then have 10 days to rebut them.

.09 Record.

A. In the determination of a contested case, the decision maker may consider only evidence that is in the record.

B. The record in a contested case shall include:

- (1) Pleadings and motions;
- (2) Documentary evidence;
- (3) Statements;
- (4) Transcripts;
- (5) Unless privileged, staff memoranda;
- (6) Proposed findings of fact, proposed conclusions of law, and exceptions to them;
- (7) Preliminary and final decisions; and
- (8) Other writing germane to the case and not otherwise privileged.

.10 Decision.

A. If a hearing officer hears the case, the decision maker may adopt, modify, or rewrite a hearing officer's proposed findings of fact and proposed conclusions of law.

B. If a decision maker or a majority of them has not heard the evidence, a proposed decision, including findings of fact and conclusions of law, shall be served on each party. Parties adversely affected by the proposed decision shall be afforded the opportunity, within 10 days after receipt of the proposed decision, to file exceptions and present argument to the decision maker or the majority of them.

C. Copies of the final decision, findings of fact, and conclusions of law shall be delivered or mailed promptly to all parties or their attorneys.

D. Instead of a decision, a contested case may be disposed of by agreed settlement, consent order, or default.

.11 Time Periods.

For good cause, the hearing officer or decision maker may extend or waive time periods provided in this chapter.

.12 Appeal.

A. Upon issuance of a final decision, an aggrieved party may appeal to the Office of Administrative Hearings for a hearing in accordance with State Government Article, Title 10, Subtitle 2, Annotated Code of Maryland, or seek judicial review in accordance with applicable law. In an appeal to the Office of Administrative Hearings, the Office may not modify the Authority's decision unless the aggrieved party shows by a preponderance of the evidence that the final action of the Authority was arbitrary or capricious or the Authority failed to follow its own procedures or this chapter. The decision of the Office of Administrative Hearings is the final administrative decision.

B. Upon notice of appeal the record shall be transmitted promptly to the appropriate appellate tribunal, and within the time period prescribed in the Maryland Rules of Procedure governing appeals from administrative agencies.

.13 Interpretation.

This chapter is intended to complement the Maryland Administrative Procedure Act. In the event of conflict, the Act takes precedence over this chapter.