

# Maryland Heritage Areas Authority Program Guidance

## Coordination between State Units and Certified Heritage Area Management Entities

### Introduction

The Maryland Heritage Areas Authority and the Maryland system of recognized and certified heritage areas were established in 1996 by Chapter 601 (House bill 1), 1996 Laws of Maryland (Financial Institutions Article, Title 13, Subtitle 11, Annotated Code of Maryland - the heritage areas statute). This legislation is designed to promote historic preservation and areas of natural beauty in order to stimulate economic development through tourism. Heritage areas are discrete geographic areas or regions with a distinctive sense of place embodied in their historic buildings, neighborhoods, traditions, and natural features. They may be rural or urban places, where private ownership is anticipated to predominate but where development can be creatively guided to attract tourism.

The Maryland Heritage Areas Authority (MHAA), an independent unit of State government created by the heritage areas statute, oversees implementation of this heritage preservation and tourism initiative. The Authority is housed in the Maryland Department of Housing and Community Development (DHCD) and is provided administrative staff by DHCD's Division of Historical and Cultural Programs.

The statute establishes a process for heritage areas to become recognized and certified by meeting certain criteria, including the development of a heritage area management plan. Heritage area management plans must set forth the strategies, projects, programs, actions, and partnerships that will be necessary for an area to achieve its goals. The purpose of the management plan is threefold:

- to provide a strategic action blueprint for coordinating the many collaborative efforts required to develop a successful heritage area;
- to enable the key stakeholders to reach consensus on the roles each will play in implementation of the management plan; and
- to determine the optimum investment of public resources necessary to trigger the significant private investment commitments of dollars, energy, and programmatic support that will make the heritage area sustainable over time.

If the Maryland Heritage Areas Authority approves the management plan, the heritage area is designated as a **Certified Heritage Area** (CHA) and becomes, in shorthand, a “heritage enterprise zone.” Certified Heritage Area benefits include eligibility for grants and loan assistance for acquisition, development, public interpretation, and programming, as well as tax incentives for the rehabilitation of non-designated historic buildings and non-historic buildings in active tourism use. In addition, State government agencies are

required to cooperate and coordinate within CHAs to assure compatibility of their actions with the management plan for the heritage area.

This Program Guidance offers suggested strategies for CHA management entities and State Units to fulfill their respective responsibilities under the statute. The MHAA encourages CHA management entities and State Units to develop effective working relationships and partnerships that foster open communication, cooperation, and coordination. Through coordinated planning efforts, State Units and CHA management entities can help ensure that the actions of State Units are developed and implemented in an appropriate manner that not only meets the needs and goals of specific State Unit activities, but also are consistent with the strategies and interests of the relevant CHA.

### **Background**

The heritage areas statute establishes specific responsibilities for State Units and defined roles for the CHA management entities and MHAA when State Units conduct or support activities affecting a CHA. Specifically, Financial Institution Article § 13-1112 (b) states that:

- (b) Units of State Government that conduct or support activities affecting a CHA shall:
- 1) Consult, cooperate, and, to the maximum extent feasible, coordinate their activities with the unit or entity responsible for the management of each certified heritage area;
  - 2) To the maximum extent practicable, carry out the activities of the unit in a manner that is consistent with the approved management plan for the certified heritage area; and
  - 3) When conducting a review of State funded, licensed, or permitted activities under Article 83B, §§ 5-617 and 5-618 of the Code, assure that the activities will not have an adverse effect on the historic and cultural resources of the certified heritage area, unless there is no prudent and feasible alternative.

In this way, the statute gives CHA management entities formal opportunities to consult, cooperate, and coordinate with State Units to facilitate and ensure the consistency of state sponsored or supported activities with the approved management plan for a given CHA. In addition, the statute provides additional opportunities for CHA management entities to participate as consulting parties in the state historic preservation review process established under the Maryland Historical Trust Act of 1985, Article 83B, §§ 5-617 through 5-618, Annotated Code of Maryland (Article 83B), when State Units are conducting or sponsoring activities within CHAs.

The processes outlined in the heritage areas statute encourage, but do not mandate, preservation of a heritage area's historical, cultural, and natural resources and consistency with approved heritage area management plans. Sometimes there is no way for a needed project to proceed without some effect on a heritage area management plan or heritage area resources. Such effects may be either beneficial or adversarial. The review does, however, ensure that a heritage area's goals and strategies are factored into State Unit's planning and decision making processes.

This Program Guidance recommends mechanisms for CHA management entities and State Units to fulfill their respective responsibilities under the three items specified in the heritage areas statute, and to coordinate those responsibilities with the Article 83B consultation process, when applicable. This document is intended to serve as general guidance. The Authority encourages CHA management entities and State Units to develop more detailed procedures for cooperation, coordination, and consultation relevant to their particular areas of interest and program goals and objectives. State Units may choose to include such procedures as part of the State agency program statements required by the heritage areas statute (Financial Institution Article § 13-1112 (a)). State Units required to prepare program statements detailing actions in the areas of planning, development, use, assistance, and regulation that support and assist the establishment and management of certified heritage areas include the Departments of Housing and Community Development, Business and Economic Development, Natural Resources, Transportation, and General Services and the Commission on Higher Education.

### **Roles and Responsibilities**

The heritage areas statute identifies responsibilities for State Units and roles for the CHA management entities for consultation, coordination, and cooperation. Consultation does not mandate a specific outcome. Rather, it is the process of seeking consensus about coordinating activities, ensuring consistency of State Unit activities with the approved management plan, and minimizing project effects on historic properties within CHAs. The consultation process is a negotiation conducted between the State Units and CHA management entities, and other appropriate parties.

**State Units:** State Units are responsible for initiating the consultation process with Maryland heritage area management entities. The extent of consultation for a specific program or project will vary depending upon the State Unit's planning process, the nature of the action, and its potential to impact heritage resources of the CHA. In developing procedures for consultation, State Units should take advantage of existing mechanisms for sharing information, such as the Maryland Department of Planning's State Clearinghouse. Through the consultation process, State Units will acknowledge responsibility for effects resulting from their activities within heritage areas and accountability for their decisions.

**Certified Heritage Areas:** The CHA management entity must determine how actively it wishes to participate in consultation with State Units for given programs and projects.

As a consulting party in this process, CHA management entities are entitled to share their views, receive and review pertinent information, offer ideas, and consider possible solutions together with the State Unit and other consulting parties. The heritage areas statute confers consulting party status on the CHA management entity only. Heritage area stakeholders and partners may participate in the consultation process if invited jointly by the CHA management entity and the State Unit.

As a consulting party, the CHA management entity has a role to share information, comments, and recommendations with the State Unit regarding the effects of a proposed activity on heritage resources of the CHA and the consistency of the proposed action with the approved CHA management plan. The State Unit should take into account the comments and recommendations of the CHA management entity in its decision making process. Based on the comments provided by the CHA management entity, the State Unit is expected to carry out its activities to the maximum extent practicable in a manner that is consistent with the heritage area management plan.

Please note that the CHA management entity is not required to participate in the consultation process. However, failure by the CHA management entity to consult with the State Unit once the State Unit has attempted to initiate consultation in good faith may limit future opportunities for the CHA management entity to influence project outcomes.

### **Applicability - Determining State Unit and Certified Heritage Area Involvement**

To determine whether a given State Unit must consult with the CHA management entity, the State Unit and CHA management entity must first determine:

- 1) Whether the activity constitutes an action or program conducted or supported by a State Unit; and
- 2) Whether the State Unit activity (action or program) is located within a CHA or may affect a CHA.

**State Unit Action:** If CHAs are concerned about a proposed State activity and whether the MHAA may be asked to resolve any specific dispute, the CHA management entity must first determine whether a State Unit is involved. Will a State agency fund or carry out the project? Is a State permit or license needed? The Authority is authorized to resolve disputes regarding activities within heritage areas if a State Unit action is involved, so confirming State involvement is a necessary first step.

If it is unclear whether the State is involved in a project, the CHA management entity should contact the project sponsor to obtain additional information and to inquire about State involvement. The CHA management entity then may write to the agency to request a project description, ask about the status of project planning, ask how the agency plans to comply with the consultation, cooperation, coordination, and other requirements under the heritage areas statute, and voice concerns. CHA management entities should keep the

Maryland Heritage Areas Authority advised of their interest and contacts with the State Unit.

Certified Heritage Area: In order for State Units to meet their consultation requirements under the statute, they must determine the CHA's boundaries within Maryland and review the approved management plan for the areas. The Maryland Historical Trust's website [www.marylandhistoricaltrust.net](http://www.marylandhistoricaltrust.net) lists under its Heritage Tourism section the current CHAs, contact information, and links to CHA websites. State Units should contact those CHAs to obtain copies of the approved management plans and establish contacts with the CHA management entity. Heritage area boundary GIS layers are available from the Maryland Historical Trust upon request; contact Jennifer Cosham at 410-514-7649.

### **Specific Coordination Requirements**

Cooperation and Coordination: Two requirements of the heritage areas statute require that:

(b) Units of State Government that conduct or support activities affecting a certified heritage area shall:

- (1) Consult, cooperate, and, to the maximum extent feasible, coordinate their activities with the unit or entity responsible for the management of each certified heritage area;
- (2) To the maximum extent practicable, carry out the activities of the unit in a manner that is consistent with the approved management plan for the certified heritage area.

### **Financial Institutions Article, § 13-1112(b) (1) and (2)**

When a proposed activity entails any State Unit involvement (including financial assistance, permits, licenses, or other activities that may affect a certified heritage area), the heritage areas statute requires consultation between the agency (or its designee) and the heritage area management entity to evaluate whether the activity is consistent with the approved management plan for the CHA and to develop measures to avoid, reduce, or mitigate any adverse effects the activity is expected to have on the goals and strategies outlined in the management plan.

The State Unit conducting the activities must assure that those activities are consistent with the heritage area goals or strategies provided that it is practicable to do so. In this case, "practicable" is defined as capable of being done with currently available or reasonably obtainable means, resources, methods, technologies, and practices. Given a range of options, a State Unit must select an alternative that is consistent with a CHA's management plan unless no alternative is practicable.

When the State Unit concludes that an action may affect a CHA management plan, the State Unit should contact the CHA management entity and provide written notification and description of the proposed action. The State Unit should also offer its assessment of how the action may affect the CHA's goals and strategies and the extent to which the action is consistent with the CHA's approved management plan, and request input from the CHA management entity. The CHA management entity should provide the State Unit with its comments regarding the effect State Unit action may have on heritage area goals and strategies.

When the State Unit and the heritage area management entity determine that an action may be inconsistent with the heritage area management plan, both parties will consult to develop measures to resolve the inconsistency. Consultation may include other invited parties (such as local governments, owners of affected properties, or affected groups) who have a legitimate interest in the implementation of the heritage area management plan. Through the consultation process, the parties should seek to resolve issues of concern and ensure consistency of the action with the approved management plan.

The resolution of inconsistencies of the proposed action with the approved management plan may result in the negotiation and execution of a Memorandum of Agreement (MOA) that specifies the measures the State Unit will ensure are carried out in order to resolve issues of concern and ensure consistency of the action with the approved management plan. Each MOA is developed on a project specific basis.

Project Review Under Article 83B: A third requirement of the heritage areas statute requires that:

(b) Units of State Government that conduct or support activities affecting a certified heritage area shall:

- 3) When conducting a review of activities under Article 83B, §§ 5-617 and 5-618 of the Code, assure that the activities will not have an adverse effect on the historic and cultural resources of the certified heritage area, unless there is no prudent and feasible alternative.

Financial Institutions Article, § 13-1112(b)(3)

When a proposed project entails any State Unit involvement (including financial assistance, permits, or licenses), it is subject to review under Article 83B, §§ 5-617 through 5-619. This historic preservation law requires the involved State Unit to consider the effects of the proposed project on significant historic properties, including architectural and archeological resources. Part of the review process involves consultation between the agency (or its designee) and the Maryland Historical Trust (Trust) to identify and evaluate historic properties that may be affected by the project and to develop measures to avoid, reduce, or mitigate any adverse effects on significant historic properties. When the project may affect historic properties located within a

CHA, the review process should also involve the relevant CHA management entity as an invited party in the consultation efforts.

The Trust annually reviews approximately 1500 actions of State Units for their effects on historic properties. These projects comprise a wide range of activities including actions undertaken by State Units (such as transportation and park improvements or other state facilities) and actions that are funded, permitted, or licensed by State Units (such as housing rehabilitation, community development activities, sewer and water improvements, school facilities, and more). While the Trust typically finds that the vast majority of projects have no effect or at least no adverse effect on historic properties, adverse effects are sometimes unavoidable given project needs, priorities, and constraints. Through the State project review process, the Trust works with State Units and other involved parties to seek solutions that balance project needs and historic preservation objectives in the best interests of the State and affected historical and cultural resources.

The State Unit conducting the activities must assure that those activities will not adversely affect resources located within a CHA that are eligible for listing in the Maryland Register of Historic Properties<sup>1</sup> unless there is no prudent and feasible alternative to carrying out the activity as proposed. In this case, “feasible” refers to the constructability of a project – whether or not it can be built using currently known construction methods, technologies, and practices. The term “prudent” refers to how reasonable the alternative is – in essence, whether or not it makes sense in terms of cost, public safety, community disruption, and other factors. Given a range of options, a State Unit must select an alternative that avoids impacts on a CHA’s historical and cultural resources unless there is no alternative that is prudent and feasible. This review only applies to historic and cultural resources in the CHA but does not apply to natural resources and other resources within the CHA.

When the State Unit and the Trust determine that an action may adversely affect Maryland Register-eligible resources, both parties will consult to develop measures that will avoid, reduce, or mitigate the adverse effect. Consultation may include other invited parties (such as local governments, owners of affected properties, or affected groups) who have a legitimate interest in the project or affected resources. The State Unit should invite the heritage area management entity to be a consulting party in the resolution process. However, it is up to the CHA management entity to decide whether it chooses to participate.

Typically, the resolution of adverse effects results in the negotiation and execution of a Memorandum of Agreement (MOA) that specifies the measures the State Unit will ensure are carried out in order to avoid, reduce, or mitigate the project’s adverse effects on Maryland Register-eligible resources. Mitigation measures may include actions such

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<sup>1</sup> Properties are eligible for listing in the Maryland Register of Historic Properties if they are listed in or eligible for listing in the National Register of Historic Properties.

as recordation and documentation of important resources, rehabilitation and preservation of resources in accordance with professional standards, public education and interpretation, recovery of data from archeological sites, or other steps. Each MOA is developed on a project specific basis. The State Unit should invite the CHA management entity to participate in the consultation process when the project may adversely affect historic properties in the CHA, and may invite the entity to be a signatory party to the MOA if the entity has defined roles and responsibilities under the agreement.

When the State Unit concludes that an action may adversely affect Maryland Register-eligible resources within a CHA, the State Unit should contact the CHA management entity and provide written notification and description of the proposed action. The State Unit should also offer its assessment of how the action may affect the CHA's Maryland Register-eligible resources. The CHA management entity should provide the State Unit with its comments regarding Maryland Register-eligible resources that may be relevant to the project. Through the consultation process, the parties should seek to resolve issues of concern. The CHA management entity may be invited to be a signatory or concurring party to any Memorandum of Agreement developed to resolve the adverse effects of an action on Maryland Register-eligible resources in the CHA.

### **Resolving Disputes and Appeal Mechanism**

The Maryland Heritage Areas Authority is required to resolve any disputes that are submitted to the Authority by the affected CHA management entity in connection with the consultation process under the heritage areas statute. Disputes arising as a result of the Trust's review of State activities should be resolved through the consultation and resolution process specified in Article 83B. The management entity of the CHA may not request Authority involvement in such disputes until either consultation under Article 83B is satisfactorily resolved and a Memorandum of Agreement is executed, or consultation is terminated.

Examples of disputes that may arise and be brought by the CHA management entity to the Authority for resolution include:

- failure of a State Unit to comply with the procedures required under Article 83B, including failure of a State Unit to consult with a CHA management entity, and failure of a State Unit to consult, cooperate, and coordinate their activities with a CHA management entity;
- lack of agreement between a State Unit and a CHA management entity that the proposed State Unit activity will have adverse effects on a heritage area management plan;
- lack of agreement between a State Unit and a CHA management entity that there are practicable means to carry out a State Unit activity in a manner consistent with a heritage area management plan;

- lack of agreement between a State Unit and a CHA management entity that there are prudent and feasible alternatives to the proposed State Unit activity.

The heritage areas statute empowers the Authority to review and resolve such disputes and outlines in the broadest terms how the Authority shall exercise this power. The Authority by regulation has adopted procedures to manage the dispute resolution process (COMAR Title 14, Subtitle 29, Chapter 5). These procedures permit, but do not require, the Authority to delegate conduct of the initial hearing to an Administrative Law Judge (ALJ) at the Office of Administrative Hearings (OAH), who then submits to the Authority proposed findings of fact, proposed conclusions of law, and a proposed decision. Based on these submittals, the Authority then decides whether to accept, reject, or accept with modification those findings, conclusions, and decision.

The heritage areas statute also identifies a limited appeals process through the Office of Administrative Hearings should the CHA management entity or the State Unit involved in the dispute be dissatisfied with the Authority's resolution. Third parties have no formal standing in either the initial hearing or appeals process. The Authority's dispute resolution procedures authorize OAH to decide appeals of the Authority's decision.

Alternatively, in specific cases and at the Authority's discretion, the Authority may consult directly with State Units involved in a dispute with a heritage area management entity to clarify the responsibilities of State Units under the heritage areas statute. The Authority may also consult directly with a State Unit when the Authority has questions or concerns about a State Unit action that appears to be inconsistent with heritage area management plans. This consultation may include a meeting with the Authority to allow the Authority to hear from interested local parties as well as State Unit representatives.

### **Conclusion**

This Program Guidance recommends a framework for cooperation, coordination, and consultation between State Units and CHA management entities to meet their respective roles and responsibilities under the heritage areas statute. The consultation process should be based on flexibility, good faith effort, and the open exchange of information and ideas. For project-specific coordination, State Units should incorporate relevant heritage area responsibilities into the historic preservation review process under Article 83B. State Units and CHA management entities should work to develop more specific procedures for consultation that meet their respective program needs and interests. Through coordinated planning efforts, State Units and CHA management entities can help ensure that actions and programs are developed and implemented in an appropriate manner that not only meets the needs and goals of the State Unit activity but also are consistent with the strategies and interests of the affected CHA.