



Flood Control District

of Maricopa County

AGENDA

Enhanced Regulatory Outreach Program Notice of Stakeholder Workshop

FCD 2016-02 Draft Board of Hearing Review Procedures

Wednesday, March 9, 2016 9:30 am – 10:30 am

Flood Control District of Maricopa County

2801 West Durango Street

Adobe & Harquahala Conference Rooms

1. Welcome and Introductions – Communities and Organizations
2. Purpose and Introduction – Kelli Sertich, AICP, CFM
3. Maricopa County Enhanced Regulatory Outreach Program Website
4. Proposed Draft Board of Hearing Review Procedures
5. Discuss Issues and Next Steps

Exhibit A

Board of Hearing Review Procedures

- A. The review shall be limited to the record of proceedings before the Hearing Officer and no new evidence shall be introduced. The record of proceedings shall include all pleadings and orders in the Hearing Officer's file, copies of all evidence submitted at the hearing, a copy of the audiotape of the hearing and a copy of the Chief Engineer's final decision and order, and any prior orders of the Board of Hearing Review or a reviewing court. If the Board of Hearing Review determines that a transcript of the audiotape is necessary, a transcript shall be prepared at the District's expense. A trial *de novo* is not permitted.
- B. The written request for review by the Board of Hearing Review of the Chief Engineer's decision and order ~~by the Board of Hearing Review~~ shall be delivered to the Clerk of the Board of Directors within fifteen (15) days after the date of the ~~final~~ Chief Engineer's decision and order.
- C. Within thirty (30) calendar days of ~~Upon~~ receipt of the written request for review, the Chief Engineer shall, ~~within thirty (30) calendar days~~, prepare and transmit the complete record to the clerk of the Board of Hearing Review and schedule the request for review to be heard by the Board.
- D. Not fewer than ten (10) working days prior to the date of the hearing, the ~~The~~ clerk of the Board of Hearing Review shall notify all parties of the date, time, and place of the ~~request for review~~ hearing by certified mail to the last known address of the parties. ~~at least ten (10) working days prior to the date of the hearing.~~
- E. The Chairperson of the Board of Hearing Review, or designee, shall preside at all ~~request for review~~ hearings and shall decide on all questions pertaining to procedure. When appropriate, the Chairperson may issue a prehearing order providing guidance to the parties on the conduct of the hearing.
- F. Each party shall be allowed ~~ten~~ five minutes to present oral arguments. Time limits may be extended at the discretion of the Chairperson or Board.
- G. ~~Each~~ All members of the Board and Board counsel may question all parties appearing before them.
- H. The findings of fact of the Hearing Officer and conclusions of law accepted by the Chief Engineer shall carry with them a rebuttable presumption of validity. The party requesting review before the Board of Hearing Review shall bear the burden of demonstrating by a preponderance of the evidence that either these findings of fact or conclusions of law are arbitrary, capricious, unreasonable or unsubstantiated by the record established before the Hearing Officer. As to any penalty imposed by the Chief Engineer, the Chief Engineer shall bear the burden of persuasion that the penalty is just and equitable under the circumstances. Once that initial burden is met,

the party requesting review before the Board of Hearing Review shall bear the burden of demonstrating that the penalty imposed is unjust and/or inequitable under the circumstances or is inconsistent with the law.

- I.H. Based on the record before the Board of Hearing Review, the Board of Hearing Review may deny, approve, modify or return to the Chief Engineer for further consideration, the order of the Chief Engineer or the order of the Hearing Officer. The Board of Hearing Review shall issue a written order of its decision including findings of fact and conclusions of law, and shall submit its final written order on the matter to the Chief Engineer within thirty days after completion of the hearing. The decision of the Board of Hearing Review shall be decided by majority vote of the participating members. Copies of the order shall be served on all parties to the hearing.~~The decision to uphold or deny the Chief Engineer's final decision and order shall be decided upon by motion and a majority vote of the members of the Board of Hearing Review.~~
- I.F. The final decision of the Board of Hearing Review is subject to judicial review pursuant to A.R.S. Title 12, Chapter 7, Article 6.

Appendix

Typical Order of Argument Before the Board

Except as otherwise provided by order of the Chairperson under Section E or by the Board, the order of argument before the Board of Hearing Review shall be as follows:

Representatives of each party may submit a brief, not to exceed 10 pages in length, to the clerk of the Board of Hearing Review not less than five days before the hearing to assist the Board in understanding their arguments. The clerk will promptly distribute copies to the Board and Board counsel.

The representative of the party seeking review of the decision and order of the Chief Engineer or Hearing Officer shall speak first and present argument as to why the decision and order of the Chief Engineer or Hearing Officer is in error and should be denied or modified. The representative of the party requesting review may, with the approval of the Chairperson, reserve time for rebuttal. Board members or Board counsel may ask questions.

The representative of any other party properly admitted to the hearing shall speak next and present argument as to why the decision and order of the Chief Engineer or Hearing Officer should be approved, denied, or modified. If there are multiple such parties, they shall speak in an order determined by the Chairperson. Board members or Board counsel may ask questions.

The representative of the flood control district shall speak after all other parties and present argument as to why the decision and order of the Chief Engineer or Hearing Officer should be approved. Board members or Board counsel may ask questions.

The representative of the party requesting review may, if time was reserved for rebuttal, present rebuttal solely to argument presented by another party. Board members or Board counsel may ask questions.

Following presentation of all argument, the Board Chairperson, or designee, will enquire of Board members and Board counsel whether there are any additional questions. When appropriate, all parties may be invited to provide responses to questions.

The Chairperson, or designee, will ask the Board members and Board counsel if executive session is needed. If so, the Board will retire to hear advice of counsel.

Following executive session, if any, the Board will deliberate. The Board may make a decision, ask Board counsel to research and/or draft a decision, or take the matter under advisement or any combination of the above. Upon deciding what action it is taking, the Board will adjourn until it is ready to complete its deliberations and adopt an order. Notice will be provided of such time to the parties at least 10 days in advance, unless the parties agree on the record to a different schedule.

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