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Emergency Regulation and Notice of Intended Regulatory Action (NOIRA) Agency Background Document

Agency name	Department of Historic Resources
Virginia Administrative Code (VAC) citation(s)	17VAC5-30
Regulation title(s)	Evaluation Criteria for Procedures and Designations by the Board of Historic Resources
Action title	Amend the Owner Objection Process
Date this document prepared	March 23, 2015

This form is used when an agency wishes to promulgate an emergency regulation (to be effective for up to eighteen months), as well as publish a Notice of Intended Regulatory Action (NOIRA) to begin the process of promulgating a permanent replacement regulation. This information is required for executive branch review and the Virginia Registrar of Regulations, pursuant to the Virginia Administrative Process Act (APA), Executive Orders 17 (2014) and 58 (1999), and the *Virginia Register Form, Style, and Procedure Manual*.

Brief summary

Please provide a brief summary of the proposed new regulation, proposed amendments to the existing regulation, or the regulation proposed to be repealed. Alert the reader to all substantive matters or changes. If applicable, generally describe the existing regulation.

The amendments to the existing regulations add clarifying language that written notification of the nomination and written notification of the public hearing will be sent to property owners as shown on "current" real estate tax assessments books. In addition, property owners who wish to object to a designation must submit their formal objection 7 business days prior to the board meeting. The amendments also add that in addition to the letter being notarized, it must also be attested and reference the property by address and/or parcel number. Also, in order to be counted by the director as a property owner, if the objecting party was not listed on the real estate tax assessment list, then a copy of the

recorded deed evidencing transfer of ownership must be submitted along with the attested and notarized statement. Lastly, formal designations may be reconsidered at a subsequent board meeting if the director receives, at least 30 days prior to the next scheduled board meeting, written, attested and notarized statements stating that there is no longer an objection.

In current regulations, there is no time restriction/deadline on the director receiving formal letters of objection to a property being considered for designation on the VLR. Also, property owners are not required to state the subject property address or parcel number in a formal objection letter nor is it required that the letter be attested. Current regulations do not require that a copy of the recorded deed evidencing ownership transferred to the objecting party. Lastly, in the current regulations, there is no time restriction/deadline for the director to receive letters for reconsideration.

Acronyms and Definitions

Please define all acronyms used in the Agency Background Document. Also, please define any technical terms that are used in the document that are not also defined in the "Definition" section of the regulations.

DHR: Department of Historic Resources

VLR: Virginia Landmarks Register

Emergency Authority

The APA (Code of Virginia § 2.2-4011) states that agencies may adopt emergency regulations in situations in which Virginia statutory law or the appropriation act or federal law or federal regulation requires that a regulation be effective in 280 days or less from its enactment, and the regulation is not exempt under the provisions of subdivision A. 4. of § 2.2-4006. Please explain why this is an emergency situation as described above, and provide specific citations to the Code of Virginia or the Appropriation Act, if applicable.

An emergency exists because the process for property owners objecting to a designation to the Virginia Landmarks Register is unclear. Confusion has resulted from the current regulations about the time frames in which to operate and the amount of detail and formality necessary in owner objection letters. This confusion has negatively affected both DHR staffs' ability to perform their duties and property owners' ability to exercise their rights. Staff should have clear rules, regulations and processes to state to property owners; likewise, property owners should have a firm and detailed set of guidelines and procedures with which to follow in order to exercise their rights as property owners.

Legal basis

Other than the emergency authority described above, please identify the state and/or federal legal authority to promulgate this proposed regulation, including: 1) the most relevant law and/or regulation, including Code of Virginia citation and General Assembly chapter number(s), if applicable, and 2) the promulgating entity, i.e., agency, board, or person.

The Department of Historic Resources (DHR) has specific statutory authority under Va. Code § 58.1-339.2 to promulgate regulations necessary to implement the program. The regulation is mandated in whole by the state statute. The statute provides that the Director of the Department of Historic Resources

shall establish by regulation the requirements needed for the program, including the process and procedures by which properties are nominated to the Virginia Landmarks Register by the Board of Historic Resources.

Purpose

Please describe the subject matter and intent of the planned regulatory action. Also include a brief explanation of the need for and the goals of the new or amended regulation.

The subject matter addressed is the owner objection process to properties nominated for designation by the Board of Historic Resources for inclusion in the Virginia Landmarks Register. The intent of the planned regulatory action is to clarify and detail the process and requirements necessary for formal objection. Amendment and clarification of the existing procedures are necessary to more clearly set out the objection letter requirements, for both property owners and DHR staff, and what is required in order for an owner objection to be considered formal and valid. By clarifying and detailing existing language, these amendments will make the objection process and requirements easier to understand for property owners. Creating specific deadlines and attestation requirements as well as requiring proof of ownership on the part of objecting owners are intended to prevent any confusions or assumptions about the formal objection process and will benefit both property owners and DHR staff.

Need

Please describe the specific reasons why the agency has determined that the proposed regulatory action is essential to protect the health, safety, or welfare of citizens. In addition, delineate any potential issues that may need to be addressed as the regulation is developed.

DHR has determined that the proposed regulatory action is essential for two reasons: 1. To maintain the integrity of one of our core programs, the Virginia Landmarks Register and 2. To make the owner objection process more clear and detailed for property owners.

Substance

Please describe any changes that are proposed. Please outline new substantive provisions, all substantive changes to existing sections, or both where appropriate. Set forth the specific reasons the agency has determined that the proposed regulatory action is essential to protect the healthy, safety, or welfare of Virginians.

For changes to existing regulations, use this chart:

Current section number	Proposed new section number, if applicable	Current requirement	Proposed change, intent, and likely impact of proposed requirements
17VAC5-30-100		The department shall give written notice to affected property owners of a proposal to designate.	The proposed changes add clarifying language that current real estate tax assessment books must be used in determining ownership.

17VAC5-30-120		The department shall send notice to property owners as shown on current real estate tax assessment books.	The proposed change adds the word “then” to clarify which real estate tax assessment books.
17VAC5-30-160		i. Property owners objecting to a designation shall submit a notarized statement certifying the objection ii. In order to be counted, property owners not listed on current real estate tax assessment lists shall certify in a written and notarized statement their objection. iii. Objections must be received prior to the board meeting at which the property is being considered for designation. iv. The board may reconsider the designation when a notarized statement has been received stating that the owner no longer objects to the designation.	i. Property owners objecting to a designation shall submit within 7 business days prior to the board meeting at which the property is being considered for nomination a written, attested and notarized letter that references the subject property by address and/or parcel number. ii. In order to be counted, property owners not listed on current real estate tax assessment lists shall submit a written attested and notarized statement along with a copy of the recorded deed evidencing the transfer of ownership to the objecting party. iii. For properties to be reconsidered by the board, written, attested and notarized statements indicating that the owner no longer objects must be received at least 30 days prior to the next scheduled board meeting.

Alternatives

Please describe all viable alternatives to the proposed regulatory action that have been or will be considered to meet the essential purpose of the action. Also describe the process by which the agency has considered or will consider other alternatives for achieving the need in the most cost-effective manner.

The alternative to these amended regulations is to keep the regulations as they are. Doing this, however, will continue to allow the owner objection process to remain unclear, which puts staff at a disadvantage because they cannot fully provide property owners with detailed and clear information. This lack of clarity and detail negatively affects property owners as well because they do not have a clear set of rules and procedures to follow in order to exercise their right to object to VLR designation.

Public participation

Please indicate whether the agency is seeking comments on the intended regulatory action, to include ideas to assist the agency in the development of the proposal and the costs and benefits of the alternatives stated in this notice or other alternatives. Also, indicate whether a public meeting is to be held to receive comments. Please also indicate whether a Regulatory Advisory Panel or a Negotiated Rulemaking Panel has been used in the development of the emergency regulation and whether it will also be used in the development of the permanent regulation.

The agency is seeking comments on this regulatory action, including but not limited to: ideas to be considered in the development of this proposal, the costs and benefits of the alternatives stated in this background document or other alternatives, and the potential impacts of the regulation.

The agency is also seeking information on impacts on small businesses as defined in § 2.2-4007.1 of the *Code of Virginia*. Information may include: projected reporting, recordkeeping, and other administrative costs; the probable effect of the regulation on affected small businesses; and the description of less intrusive or costly alternatives for achieving the purpose of the regulation.

Anyone wishing to submit comments may do so via the Regulatory Town Hall website (<http://www.townhall.virginia.gov>), or by mail, email, or fax to Stephanie Williams, 2801 Kensington Avenue, Richmond, Virginia 23221, phone (804) 482-6082, fax (804) 367-2391 or stephanie.williams@dhr.virginia.gov. Written comments must include the name and address of the commenter. In order to be considered, comments must be received by midnight on the last day of the public comment period.

A public hearing will not be held following the publication of the proposed stage of this regulatory action.

Family impact

Please assess the impact of this regulatory action on the institution of the family and family stability including to what extent the regulatory action will: 1) strengthen or erode the authority and rights of parents in the education, nurturing, and supervision of their children; 2) encourage or discourage economic self-sufficiency, self-pride, and the assumption of responsibility for oneself, one's spouse, and one's children and/or elderly parents; 3) strengthen or erode the marital commitment; and 4) increase or decrease disposable family income.

These amendments will have no impact on the family.

Periodic review/small business impact review announcement

If you wish to use this emergency/NOIRA to announce a periodic review (§ 2.2-4017 & EO-17 (2014)) and a small business impact review (§ 2.2-4007.1) of this regulation, keep the following text. Modify as necessary for your agency. Otherwise, delete this section.

In addition, pursuant to Executive Order 17 (2014) and § 2.2-4007.1 of the Code of Virginia, the agency is conducting a periodic review and small business impact review of this regulation to determine whether this regulation should be terminated, amended, or retained in its current form. Public comment is sought on the review of any issue relating to this regulation, including whether the regulation (i) is necessary for the protection of public health, safety, and welfare or for the economical performance of important governmental functions; (ii) minimizes the economic impact on small businesses in a manner consistent with the stated objectives of applicable law; and (iii) is clearly written and easily understandable.