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Final Regulation Agency Background Document

Agency name	Department of Historic Resources
Virginia Administrative Code (VAC) citation(s)	17 VAC10-20
Regulation title(s)	Evaluation Criteria and Procedures for Nominations of Property to the National Register or for Designation as a National Historic Landmark
Action title	Amend the Owner Objection Process
Date this document prepared	June 20, 2016

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of the proposed new regulation, proposed amendments to the existing regulation, or the regulation proposed to be repealed.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 listed, within 90 days prior to the notification, in official land recordation records or tax records. 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.

In current regulations, it is unclear as to what "current real estate tax assessment books" really meant so amending it to specifically state the official land recordation records or tax records makes certain what records are to be consulted to determine property ownership within nominated district boundaries. Also, there is no time restriction/deadline for the director to receive the formal objections. Lastly, in current

regulations, 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.

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
NRHP: National Register of Historic Places
NHL: National Historic Landmark

Statement of final agency action

Please provide a statement of the final action taken by the agency including: 1) the date the action was taken; 2) the name of the agency taking the action; and 3) the title of the regulation.

On June 16, 2016, the State Review Board and the Director of the Department of Historic Resources approved the promulgation of 17VAC10-20, Evaluation Criteria and Procedures for Nominations of Property to the National Register or for Designation as a National Historic Landmark.

Legal basis

Please identify the state and/or federal legal authority to promulgate this proposed regulation, including: 1) the most relevant citations to the Code of Virginia or General Assembly chapter number(s), if applicable; and 2) promulgating entity, i.e., agency, board, or person. Your citation should include a specific provision authorizing the promulgating entity to regulate this specific subject or program, as well as a reference to the agency/board/person's overall regulatory authority.

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 DHR shall establish by regulation the requirements needed for the program, including the process and procedures by which nominations and designations of properties are approved by the State Review Board for forwarding to the National Park Service, which manages both the NRHP and the NHL programs.

Purpose

Please explain the need for the new or amended regulation. Describe the rationale or justification of the proposed regulatory action. Describe the specific reasons the regulation is essential to protect the health, safety or welfare of citizens. Discuss the goals of the proposal and the problems the proposal is intended to solve.

The subject matter addressed is the owner objection process to properties nominated for designation by the State Review Board for inclusion in the National Register of Historic Places or designation as a National Historic Landmark. 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 therein easier to understand for property owners and staff. Making specific the records to be consulted and the time frame in which they should be consulted in addition to creating specific deadlines and attestation requirements are all intended to prevent any confusions or assumptions about the formal objection process and will benefit both property owners and DHR staff.

Substance

Please briefly identify and explain the new substantive provisions, the substantive changes to existing sections, or both.

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 listed, within 90 days prior to the notification, in official land recordation records or tax records. 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.

In current regulations, it is unclear as to what “current real estate tax assessment books” really meant so amending it to specifically state the official land recordation records or tax records makes certain what records are to be consulted to determine property ownership within nominated district boundaries. Also, there is no time restriction/deadline for the director to receive the formal objections. Lastly, in current regulations, 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.

Issues

Please identify the issues associated with the proposed regulatory action, including: 1) the primary advantages and disadvantages to the public, such as individual private citizens or businesses, of implementing the new or amended provisions; 2) the primary advantages and disadvantages to the agency or the Commonwealth; and 3) other pertinent matters of interest to the regulated community, government officials, and the public. If there are no disadvantages to the public or the Commonwealth, please indicate.

The primary advantage to the public that is offered by the changed regulation is a clear time frame within which private property owners may participate in the NRHP nomination process and to submit comments or objections to the proposed listing, and the changed regulation clearly defines what local government records will be used and when for the purpose of identifying property owners within a nominated historic boundary.

The opportunity to object to NRHP listing will not be affected by the changed regulation.

DHR staff will continue to receive property owner objections to NRHP listing as required under Federal regulations and will continue to process and forward such objections to the National Park Service even if the objections are received after the State Review Board has recommended the nomination to be listed in the NRHP, as the National Park Service has the final authority to approve a nomination for listing in the NRHP. The changed regulation offers no disadvantage to DHR or the Commonwealth.

The changed regulation offers advantages to local governments and to nomination authors by clearly explaining the types of local government records that will be consulted to identify property owners within a nominated historic boundary, the time frame within which the records are to be consulted, and a deadline at least 7 business days prior to a joint Board meeting for DHR staff to notify them of any property owner objections. The changed regulation offers no disadvantage to local governments or to nomination authors.

Requirements more restrictive than federal

Please identify and describe any requirement of the proposal which is more restrictive than applicable federal requirements. Include a rationale for the need for the more restrictive requirements. If there are no applicable federal requirements or no requirements that exceed applicable federal requirements, include a statement to that effect.

The proposed regulation does not conflict with the National Park Service’s regulations and procedures. The National Park Service continues to accept objections by private property owners to a NRHP listing for the duration of their review period. The National Park Service also publishes nominations for a two-week period of public review and comment.

The proposed regulation creates a clear schedule according to which private property owners may object to a proposed NRHP listing prior to a meeting of the State Review Board, and provides private property owners with a set time frame within which to submit property owner objections prior to the joint Board meeting and provides DHR staff a set time frame within which to process property owner objections prior to the joint Board meeting. DHR staff will continue to be required to include objections by private property owners with the NRHP submission to the National Park Service.

Localities particularly affected

Please identify any locality particularly affected by the proposed regulation. Locality particularly affected means any locality which bears any identified disproportionate material impact which would not be experienced by other localities.

No locality is particularly affected by the proposed regulation.

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.

Changes made since the proposed stage

Please list all changes that made to the text of the proposed regulation and the rationale for the changes; explain the new requirements and what they mean rather than merely quoting the proposed text of the regulation. *Please put an asterisk next to any substantive changes.

Section number	Requirement at proposed stage	What has changed	Rationale for change

No changes have been made since the Proposed Stage.

Public comment

Please summarize all comments received during the public comment period following the publication of the proposed stage, and provide the agency response. If no comment was received, please so indicate. Please distinguish between comments received on Town Hall versus those made in a public hearing or submitted directly to the agency or board.

Commenter	Comment	Agency response

No public comment was received in the Proposed Stage.

All changes made in this regulatory action

Please list all changes that are being proposed and the consequences of the proposed changes. Describe new provisions and/or all changes to existing sections. Explain the new requirements and what they mean rather than merely quoting the proposed text of the regulation

Current section number	Proposed new section number, if applicable	Current requirement	Proposed change, intent, and likely impact of proposed requirements
17VAC10-20-130		The department shall give written notice to affected property owners of a proposal to designate.	The proposed change adds clarifying language that official land recordation records or tax records must be used in determining ownership within 90 days of notification.
17VAC10-20-140		Prior to historic district nomination, the department shall hold a public hearing and give written notice of said hearing to all property owners.	The proposed change adds, by reference, clarifying language that official land recordation records or tax records must be used in determining ownership within 90 days of notification.
17VAC10-20-150		The department shall send notice to property owners as shown on current real estate tax assessment books.	The proposed change adds, by reference, clarifying language that official land recordation records or tax records must be used in determining ownership within

<p>17VAC10-20-200</p>		<p>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.</p>	<p>90 days of notification. 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 official land recordation records or tax records within 90 days of notification shall submit a written, attested and notarized statement.</p>
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