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Proposed Regulation Agency Background Document

Agency name	Department of Historic Resources
Virginia Administrative Code (VAC) citation(s)	17 VAC5-30
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	November 10, 2015

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 (preferably no more than 2 or 3 paragraphs) of the proposed new regulation, proposed amendments to the existing regulation, or the regulation proposed to be repealed.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 in official land recordation records or tax records within 90 days of notification. 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 official land recordation records or tax records within 90 days of notification, then a copy of the recorded deed evidencing transfer of ownership must be submitted along with the written, 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, 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, currently, 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 be submitted along with the objection letter. Lastly, in 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

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 properties are nominated to the VLR by the Board of Historic Resources.

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 historic district designation by the Board of Historic Resources for inclusion in the VLR. 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 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.

Substance

Please briefly identify and explain the new substantive provisions, the substantive changes to existing sections, or both. A more detailed discussion is provided in the "Detail of changes" section below.

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 in official land recordation records or tax records within 90 days of notification. 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 official land recordation records or tax records within 90 days of notification, then a copy of the recorded deed evidencing transfer of ownership must be submitted along with the written, 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, 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, currently, 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 be submitted along with the objection letter. Lastly, in current regulations, there is no time restriction/deadline for the director to receive letters for reconsideration.

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 VLR 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 primary disadvantage to the public is that the changed regulation introduces a new requirement to provide a copy of a recorded deed showing evidence of a transfer of property if the transfer occurred after the date that then-current local government records were used to gather property owner information.

Under the current regulation, such a situation does not require a property owner to provide a copy of a recorded deed with their written objection. Under the changed regulation, to object to VLR listing, a property owner must provide written notice no less than 7 business days prior to a meeting of the Board of Historic Resources, but the property owner will retain a minimum of 30 days from notice of a proposed nomination to the deadline to object.

The primary advantage to DHR and the Commonwealth is that DHR staff will have a clear definition of the local government records to be consulted for a proposed nomination, the time frame within which they may be consulted, the time frame within which property owner objections to VLR listings will be received prior to a joint Board meeting, and a minimum of 7 business days within which to process and verify the property owner's objection. Under the current regulation, property owner objections to a VLR listing may be received up to the day of a joint Board meeting, leaving no opportunity for DHR staff to process the objection and keep Board of Historic Resources members informed of property owner objections. 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 of 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 VLR is not subject to Federal regulation and therefore the regulation change cannot be more restrictive than any applicable Federal regulatory requirement.

The proposed regulation creates a clear schedule according to which private property owners may object to a proposed VLR listing prior to a meeting of the Board of Historic Resources 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.

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.

Public participation

Please include a statement that in addition to any other comments on the proposal, the agency is seeking comments on the costs and benefits of the proposal and the impacts of the regulated community.

In addition to any other comments, the Department of Historic Resources is seeking comments on the costs and benefits of the proposal and the potential impacts of this regulatory proposal. Also, the agency/board is seeking information on impacts on small businesses as defined in § 2.2-4007.1 of the Code of Virginia. Information may include 1) projected reporting, recordkeeping and other administrative costs, 2) probable effect of the regulation on affected small businesses, and 3) description of less intrusive or costly alternative methods of achieving the purpose of the regulation.

Anyone wishing to submit written comments for the public comment file may do so by mail, email or fax to Stephanie Williams, Deputy Director, 2801 Kensington Avenue, Richmond, VA 23221, 804-482-6082, 804-367-2391 (FAX), Stephanie.williams@dhr.virginia.gov. Comments may also be submitted through the Public Forum feature of the Virginia Regulatory Town Hall web site at: <http://www.townhall.virginia.gov>. Written comments must include the name and address of the commenter. In order to be considered, comments must be received by 11:59 pm on the last day of the public comment period.

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

Economic impact

Please identify the anticipated economic impact of the proposed new regulations or amendments to the existing regulation. When describing a particular economic impact, please specify which new requirement or change in requirement creates the anticipated economic impact.

Projected cost to the state to implement and enforce the proposed regulation, including: a) fund source / fund detail; and b) a delineation of one-time versus on-going expenditures	No change in cost for a or b.
Projected cost of the new regulations or changes to existing regulations on localities.	No change in cost.
Description of the individuals, businesses, or other entities likely to be affected by the new regulations or changes to existing regulations.	No individuals, businesses, or other entities will be economically affected by the changes to the regulations.
Agency’s best estimate of the number of such entities that will be affected. Please include an estimate of the number of small businesses affected. Small business means a business entity, including its affiliates, that: a) is independently owned and operated and; b) employs fewer than 500 full-time employees or has gross annual sales of less than \$6 million.	None.
All projected costs of the new regulations or changes to existing regulations for affected individuals, businesses, or other entities. Please be specific and include all costs including: a) the projected reporting, recordkeeping, and other administrative costs required for compliance by small businesses; and b) specify any costs related to the development of real estate for commercial or residential purposes that are a consequence	None.

of the proposed regulatory changes or new regulations.	
Beneficial impact the regulation is designed to produce.	The regulation change will have no economic impact.

Alternatives

Please describe any viable alternatives to the proposal considered and the rationale used by the agency to select the least burdensome or intrusive alternative that meets the essential purpose of the action. Also, include discussion of less intrusive or less costly alternatives for small businesses, as defined in § 2.2-4007.1 of the Code of Virginia, of achieving the purpose of the regulation.

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 DHR staff at a disadvantage because they cannot fully provide property owners with detailed and clear information. The 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 designations.

Regulatory flexibility analysis

Pursuant to § 2.2-4007.1B of the Code of Virginia, please describe the agency’s analysis of alternative regulatory methods, consistent with health, safety, environmental, and economic welfare, that will accomplish the objectives of applicable law while minimizing the adverse impact on small business. Alternative regulatory methods include, at a minimum: 1) the establishment of less stringent compliance or reporting requirements; 2) the establishment of less stringent schedules or deadlines for compliance or reporting requirements; 3) the consolidation or simplification of compliance or reporting requirements; 4) the establishment of performance standards for small businesses to replace design or operational standards required in the proposed regulation; and 5) the exemption of small businesses from all or any part of the requirements contained in the proposed regulation.

The changed regulation will not have an adverse impact on small businesses in terms of health, safety, environmental, and economic welfare because 1) no reporting requirements by small businesses are imposed by the current regulation nor introduced with the changed regulation; 2) no change in schedules or deadlines for compliance or reporting requirements are imposed on small businesses; 3) neither the current regulation or the changed regulation includes a compliance or reporting requirement; 4) performance standards for small business are not imposed by the current regulation and will not be imposed by the changed regulation; and 5) it is not necessary to exempt small businesses from the proposed regulation because a small business is treated the same as any other private property owner, such as an individual or a trust, that owns a property proposed for listing in the VLR.

Periodic review and small business impact review report of findings

If you are using this form to report the result of a periodic review/small business impact review that was announced during the NOIRA stage, please indicate whether the regulation meets the criteria set out in Executive Order 17 (2014), e.g., is necessary for the protection of public health, safety, and welfare, and is clearly written and easily understandable. In addition, as required by 2.2-4007.1 E and F, please include a discussion of the agency’s consideration of: (1) the continued need for the regulation; (2) the nature of complaints or comments received concerning the regulation from the public; (3) the complexity of the regulation; (4) the extent to the which the regulation overlaps, duplicates, or conflicts with federal or state law or regulation; and (5) the length of time since the regulation has been evaluated or the degree to

which technology, economic conditions, or other factors have changed in the area affected by the regulation.

No comments were received in this periodic review/small business impact review, and these regulations meet the criteria set out in EO 17.

Public comment

Please summarize all comments received during the public comment period following the publication of the NOIRA, and provide the agency response.

Commenter	Comment	Agency response

NO COMMENTS WERE RECEIVED.

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.

Detail of changes

Please list all changes that are being proposed and the consequences of the proposed changes; explain the new requirements and what they mean rather than merely quoting the proposed text of the regulation. If the proposed regulation is a new chapter, describe the intent of the language and the expected impact. Please describe the difference between existing regulation(s) and/or agency practice(s) and what is being proposed in this regulatory action. If the proposed regulation is intended to replace an emergency regulation, please follow the instructions in the text following the three chart templates below.

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 change adds clarifying language that official land recordation records or tax records must be used in determining ownership within 90 days of notification.

<p>17VAC5-30-110</p>		<p>Prior to historic district nomination, the department shall hold a public hearing and give written notice of said hearing to all property owners.</p>	<p>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.</p>
<p>17VAC5-30-120</p>		<p>The department shall send notice to property owners as shown on current real estate tax assessment books.</p>	<p>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.</p>
<p>17VAC5-30-160</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. iv. The board may reconsider the designation when a notarized statement has been received stating that the owner no longer objects to the designation.</p>	<p>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 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.</p>