

WAC 25-46-144 Brief adjudicative proceedings. (1) Pursuant to RCW 34.05.482, the department will use brief adjudicative proceedings where permitted by law and where protection of the public interest does not require the department to give notice and an opportunity to participate to persons other than the parties. A brief adjudicative proceeding is intended to serve as an inexpensive and efficient alternative where the issues can be decided by reference to writings and other documents without a full, formal hearing.

(2) A brief adjudicative proceeding may be used to review the following actions taken under this chapter:

(a) Denying an application for registration under WAC 25-46-120;

(b) Extinguishing a right of first refusal under WAC 25-46-160.

(3) An application for brief adjudicative proceeding shall include a written explanation of the applicant's view of the matter and a copy of any other documents the applicant wishes to have the presiding officer consider. Any response by the department shall be filed with the presiding officer and served on the applicant within fourteen days of receiving an application for a brief adjudicative proceeding.

(4) If the applicant desires an opportunity to make an oral statement to the presiding officer, a request to make an oral statement must be included in the application for a brief adjudicative proceeding. The presiding officer may grant a request to make an oral statement if the presiding officer believes the statement would benefit him or her in reaching a decision. The presiding officer shall notify the parties within a reasonable time of his or her decision to grant or deny a request to make an oral statement. If the presiding officer grants any request to make an oral statement, all parties shall be entitled to make oral statements, and the presiding officer shall notify all parties of the time and place for hearing oral statements.

(5) At the time any unfavorable action is taken, the presiding officer shall serve upon each party a brief statement of the reasons for the decision. Within ten days of the decision, the presiding officer shall serve upon each party a brief written statement of the reasons for the decision and information about any internal administrative review available.

(6) The presiding officer's brief written statement is an initial order. The initial order shall be the final order without further action unless within twenty-one days of the date of service a party requests administrative review of the initial order or the director initiates review of the initial order.

(7) If the presiding officer determines a more comprehensive hearing is warranted, or on the motion of any party, he or she may convert the proceeding to a full adjudicative proceeding by requesting in writing, with findings supporting the request, that the proceeding be so converted and that the director designate as presiding officer an administrative law judge assigned by the office of administrative hearings under chapter 34.12 RCW. The director will act as soon as possible on the request.

(8) (a) A party may request review of the initial order by filing a written request with the director at the following address: Director, Department of Archaeology and Historic Preservation, P.O. Box 48343, Olympia, WA 98504-8343. A request for review of an initial order shall contain an explanation of the requester's view of the matter and a statement of reasons why the initial order is incorrect. The request must be received by the director and served on all other parties within twenty-one days of the date the initial order was served on the

parties. A copy of the request must be served on the state archaeologist or the assistant state archaeologist.

(b) Any response to the request for review of an initial order shall be filed with the director and served on the requester within ten days after receiving the request.

(c) In response to a request for review of an initial order, the director shall immediately obtain the record compiled by the presiding officer. The director, at his or her sole discretion, may act as the reviewing officer or designate a reviewing officer who is authorized to grant appropriate relief upon review.

(d) The reviewing officer may issue an order on review, which shall include a brief statement of the reasons for the decision and include a notice that judicial review may be available.

(e) A request for review of an initial order is deemed to have been denied if the reviewing officer does not issue an order on review within twenty days of the date the request for review of the initial order was filed with the director.

(9)(a) The director may initiate review of the initial order on his or her own motion, without notifying the parties. The director, at his or her sole discretion, may act as the reviewing officer or designate a reviewing officer who is authorized to grant appropriate relief upon review.

(b) The reviewing officer shall obtain and review the record compiled by the presiding officer before taking action.

(c) The reviewing officer may not take any action on review less favorable to any party than in the initial order without giving that party notice and an opportunity to provide a written explanation of its view of the matter. The notice shall specify the deadline for that party to submit its written explanation.

(d) Any order on review shall be issued and served on the parties within twenty days of the date the initial order was served on the parties or within twenty days of the date a request for review of the initial order was filed with the director, whichever occurs later. If an order on review is not issued and served by the applicable deadline in this paragraph, the initial order becomes the final order.

[Statutory Authority: RCW 27.34.220, 27.53.140, 43.21C.120. WSR 06-06-001, § 25-46-144, filed 2/15/06, effective 3/18/06.]