

**Chapter 463-28 WAC
STATE PREEMPTION**

Last Update: 10/11/04

WAC

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**DISPOSITION OF SECTIONS FORMERLY
CODIFIED IN THIS CHAPTER**

- 463-28-090 Governing rules. [Statutory Authority: RCW 80.50.040(1). 78-07-036 (Order 78-3), § 463-28-090, filed 6/23/78.] Repealed by 04-21-013, filed 10/11/04, effective 11/11/04. Statutory Authority: RCW 80.50.040 (1) and (12).

WAC 463-28-010 Purpose. This chapter sets forth procedures to be followed by the council in determining whether to recommend to the governor that the state preempt local land use plans, ~~or~~ zoning ordinances, or development regulations for a site or portions of a site for an energy facility, or alternative energy facility.

[Statutory Authority: RCW 80.50.040 (1) and (12). 04-21-013, § 463-28-010, filed 10/11/04, effective 11/11/04. Statutory Authority: RCW 80.50.040(1). 78-07-036 (Order 78-3), § 463-28-010, filed 6/23/78.]

WAC 463-28-020 Authority of council--Preemption by state. The authority of the council is contained in RCW 80.50.040(1) and 80.50.110(2) which provide that the state preempts the regulation and certification of the location, construction, and operational conditions of certification of energy facilities.

[Statutory Authority: RCW 80.50.040(1). 78-07-036 (Order 78-3), § 463-28-020, filed 6/23/78.]

~~**WAC 463-28-030 Determination of non-compliance--Procedures.** If the council determines during the hearing required by RCW 80.50.090 that the site of a proposed energy facility or any portion of a site is not consistent and in compliance with land use plans or zoning ordinances in effect at the date of~~

~~the application, the following procedures shall be observed:~~

~~—(1) As a condition necessary to continue processing the application, it shall be the responsibility of the applicant to make the necessary application for change in, or permission under, such land use plans or zoning ordinances, and make all reasonable efforts to resolve the noncompliance.~~

~~—(2) All council proceedings on the application for certification may be stayed at the request of the applicant during the period when the plea for resolution of noncompliance is being processed by local authorities.~~

~~—(3) The applicant shall submit regular reports to the council regarding the status of negotiations with local authorities on noncompliance issues.~~

~~[Statutory Authority: RCW 80.50.040 (1) and (12). 04-21-013, § 463-28-030, filed 10/11/04, effective 11/11/04. Statutory Authority: RCW 80.50.040(1). 78-07-036 (Order 78-3), § 463-28-030, filed 6/23/78.]~~

~~**WAC 463-28-040 Inability to resolve non-compliance.** Should the applicant report that efforts to resolve noncompliance issues with local authorities have not been successful, then, if applicant elects to continue processing the application, the applicant shall file a written request for state preemption as authorized in WAC 463-28-020 within ninety days after completion of the public hearing required by RCW 80.50.090, or later if mutually agreed by the applicant and the council. The request shall address the following:~~

~~—(1) That the applicant has demonstrated a good faith effort to resolve the noncompliance issues.~~

~~—(2) That the applicant and the local authorities are unable to reach an agreement which will resolve the issues.~~

~~—(3) That alternate locations which are within the same county and city have been reviewed and have been found unacceptable.~~

~~—(4) Interests of the state as delineated in RCW 80.50.010.~~

~~[Statutory Authority: RCW 80.50.040(1). 78-07-036 (Order 78-3), § 463-28-040, filed 6/23/78.]~~

~~**WAC 463-28-050 Failure to request preemption.**~~

~~Where noncompliance is at issue, failure of the applicant to file the written request as required in WAC 463-28-040 within the time permitted shall be sufficient grounds for the council to recommend to the governor denial of certification.~~

~~[Statutory Authority: RCW 80.50.040(1). 78-07-036 (Order 78-3), § 463-28-050, filed 6/23/78.]~~

WAC 463-28-060 ~~Request for preemption--~~Adjudicative proceeding. ~~(1) Should an applicant elect to continue processing the application and file a request with the council for state preemption, the council determine under WAC 463-26-110 a site or portion of a site is inconsistent it will schedule an adjudicative proceeding hearing on the application as specified under chapter 463-30 WAC to consider preemption.~~

~~(2) The proceeding for preemption may be combined or scheduled concurrent with the adjudicative proceeding for application review held under RCW 80.50.090(3).~~

~~(3) The council shall determine during the adjudicative proceeding whether to recommend to the governor that the state should preempt the local land use plans, or zoning ordinances, or other development regulations for a site or portions of a site for the energy facility or alternative energy resource proposed by the applicant. The factors to be evidenced under this issue are those set forth in WAC 463-28-040. The determination of preemption shall be by council order, and shall be included in its recommendation to the governor pursuant to RCW 80.50.100.~~

~~[Statutory Authority: RCW 80.50.040. 91-03-090, § 463-28-060, filed 1/18/91, effective 2/18/91. Statutory Authority: RCW 80.50.040(1). 83-08-031 (Order 83-2), § 463-28-060, filed 3/31/83; 78-07-036 (Order 78-3), § 463-28-060, filed 6/23/78.]~~

WAC 463-28-070 Certification--Conditions--State/local interests. If the council approves the request for preemption it shall include conditions in the draft certification agreement which ~~give due consideration to~~ state or local governmental or community interests affected by the construction or operation of the energy facility or alternative energy resource and the purposes of laws or ordinances, or rules or regulations promulgated thereunder that are preempted ~~or superseded~~ pursuant to RCW 80.50.110(2).

~~[Statutory Authority: RCW 80.50.040(1). 78-07-036 (Order 78-3), § 463-28-070, filed 6/23/78.]~~

WAC 463-28-080 Preemption--Failure to justify Recommendation. ~~During the adjudicative proceeding, if the council determines that the applicant has failed to justify the request for state preemption, the council shall do so by issuance of an order accompanied by findings of fact and conclusions of law. Concurrent with the issuance of its order, the council shall report to the governor its recommendation for rejection of certification of the energy facility proposed by the applicant. The council's determination on a request for preemption shall be part of its recommendation to the governor pursuant to RCW 80.50.100.~~

~~[Statutory Authority: RCW 80.50.040. 91-03-090, § 463-28-080, filed 1/18/91, effective 2/18/91. Statutory Authority: RCW 80.50.040(1). 78-07-036 (Order 78-3), § 463-28-080, filed 6/23/78.]~~