

# Chapter 463-28 WAC

## STATE PREEMPTION

### WAC

463-28-010	Purpose.
463-28-020	Authority of council—Preemption by state.
463-28-060	Adjudicative proceeding.
463-28-070	Certification—Conditions—State/local interests.
463-28-080	Preemption—Recommendation.

### DISPOSITION OF SECTIONS FORMERLY CODIFIED IN THIS CHAPTER

463-28-030	Determination of noncompliance—Procedures. [Statutory Authority: RCW 80.50.040 (1) and (12). WSR 04-21-013, § 463-28-030, filed 10/11/04, effective 11/11/04. Statutory Authority: RCW 80.50.040(1). WSR 78-07-036 (Order 78-3), § 463-28-030, filed 6/23/78.] Repealed by WSR 07-21-035, filed 10/9/07, effective 11/9/07. Statutory Authority: RCW 80.50.040 (1).
463-28-040	Inability to resolve noncompliance. [Statutory Authority: RCW 80.50.040(1). WSR 78-07-036 (Order 78-3), § 463-28-040, filed 6/23/78.] Repealed by WSR 07-21-035, filed 10/9/07, effective 11/9/07. Statutory Authority: RCW 80.50.040(1).
463-28-050	Failure to request preemption. [Statutory Authority: RCW 80.50.040(1). WSR 78-07-036 (Order 78-3), § 463-28-050, filed 6/23/78.] Repealed by WSR 07-21-035, filed 10/9/07, effective 11/9/07. Statutory Authority: RCW 80.50.040(1).
463-28-090	Governing rules. [Statutory Authority: RCW 80.50.040 (1). WSR 78-07-036 (Order 78-3), § 463-28-090, filed 6/23/78.] Repealed by WSR 04-21-013, filed 10/11/04, effective 11/11/04.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 land use plans, zoning ordinances, or other 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). WSR 07-21-035, § 463-28-010, filed 10/9/07, effective 11/9/07. Statutory Authority: RCW 80.50.040 (1) and (12). WSR 04-21-013, § 463-28-010, filed 10/11/04, effective 11/11/04. Statutory Authority: RCW 80.50.040(1). WSR 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 provides 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). WSR 78-07-036 (Order 78-3), § 463-28-020, filed 6/23/78.]

**WAC 463-28-060 Adjudicative proceeding.** (1) Should the council determine under WAC 463-26-110 a site or any portions of a site is inconsistent it will schedule an adjudicative proceeding under chapter 463-30 WAC to consider preemption.

(10/9/07)

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

(3) The council shall determine whether to recommend to the governor that the state preempt the land use plans, 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.

[Statutory Authority: RCW 80.50.040(1). WSR 07-21-035, § 463-28-060, filed 10/9/07, effective 11/9/07. Statutory Authority: RCW 80.50.040. WSR 91-03-090, § 463-28-060, filed 1/18/91, effective 2/18/91. Statutory Authority: RCW 80.50.040(1). WSR 83-08-031 (Order 83-2), § 463-28-060, filed 3/31/83; WSR 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 consider 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 pursuant to RCW 80.50.110(2).

[Statutory Authority: RCW 80.50.040(1). WSR 07-21-035, § 463-28-070, filed 10/9/07, effective 11/9/07; WSR 78-07-036 (Order 78-3), § 463-28-070, filed 6/23/78.]

**WAC 463-28-080 Preemption—Recommendation.** 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(1). WSR 07-21-035, § 463-28-080, filed 10/9/07, effective 11/9/07. Statutory Authority: RCW 80.50.040. WSR 91-03-090, § 463-28-080, filed 1/18/91, effective 2/18/91. Statutory Authority: RCW 80.50.040(1). WSR 78-07-036 (Order 78-3), § 463-28-080, filed 6/23/78.]