



COUNTY COMMISSIONERS

John Hutchings
District One
Gary Edwards
District Two
Bud Blake
District Three

**COMMUNITY PLANNING &
ECONOMIC DEVELOPMENT DEPARTMENT**

Creating Solutions for Our Future

Joshua Cummings, Director

MEMORANDUM

TO: Thurston County Planning Commission
FROM: Community Planning Department
DATE: November 7, 2018
SUBJECT: Shoreline Master Program Update – Permits and Exemptions

In addition to the Inventory and Characterization and Shoreline Designation Reports, one additional way Shoreline Master Programs meet no-net loss of shoreline ecological functions is with the implementation of a permit system to administer and enforce the Shoreline Management Act (RCW 90.58.140(3)). The SMP is also unique in that a state agency has review authority over local permit decisions before they are deemed “final”.

RCW 90.58.050, states that SMP’s are intended to establish a cooperative program between local jurisdictions and the State. That means Thurston County shall have the primary responsibility for administering the regulatory program, and Ecology shall act primarily in a supportive and review capacity. The applicable provisions of Titles 14, 20, 21, 22, and 23 TCC shall govern the processing of permit applications required under the SMP. If any conflict should exist between Title 14, 20, 21, 22, and 23 TCC and the SMP, the provisions of the SMP will be followed.

Currently Thurston County has a four-tier permitting review process, those review processes are the following:

A. A Type I process involves:

1. An application that is subject to clear, objective and nondiscretionary standards or standards that require the exercise of professional judgment about technical issues; and
2. Is exempt from State Environmental Policy Act (SEPA) review.

B. A Type II process involves an application that is subject to objective and subjective standards which require the exercise of limited discretion about nontechnical issues and about which there may be limited public interest. (Requires SEPA)

C. A Type III process involves an application that is subject to standards which require the exercise of substantial discretion and about which there may be broad public interest. (Requires Hearing Examiner decision)

D. A Type IV process involves the adoption or amendment of critical areas policies or regulations. It also includes critical areas analysis that would be required for a site-specific comprehensive plan or zoning amendment.

With the SMP update it is proposed to add an additional permit review process, a Type V process, for permits that must go to Ecology for review. A Type V process is:

E. A Type V process is similar to a Type III process except that the local permit decision is not final until the permit has been reviewed, and either approved, denied, or approved with conditions, by Ecology within their 30-day permit decision review period pursuant to WAC 173-27-130 and 173-27-200.

Local permit review is proposed to follow the steps as lined out in Section 19.500.100, *Permit Application Review and Permits* in the proposed SMP.

19.500.100 Permit Application Review and Permits

A. Permit Application Review

1. No authorization to undertake use or development on shorelines of the state shall be granted by Thurston County unless upon review the use or development is determined to be consistent with the policy and provisions of the Act and this Program.
2. Per WAC 173-27-140(2), no permit shall be issued for any structure of more than thirty-five (35) feet above average grade level on shorelines of the state that will obstruct the view of a substantial number of residences on areas adjoining such shorelines, except where allowed through a variance, and then only when overriding considerations of the public interest will be served.
3. Consolidated Permit Review shall occur pursuant to the procedures in Chapter 20.60.025 TCC.
4. State Environmental Policy Act (SEPA) compliance shall be required for non-SEPA exempt projects, pursuant to the procedures in Title 17.09 TCC.
5. A permit or written approval is required from Thurston County for all development within shoreland jurisdiction. Written approval from Thurston County is required prior to conducting any and all exempt activities, unless otherwise stated in this Program.
6. All Shoreline permits and shoreline exemptions may be conditioned to ensure compliance with the SMP and the Shoreline Management Act.
7. Each permit for a substantial development, conditional use or variance, issued by Thurston County shall contain a provision that construction pursuant to the permit shall

not begin and is not authorized until twenty-one days from the date of filing as defined in RCW [90.58.140](#)(6) and WAC [173-27-130](#), or until all review proceedings initiated within twenty-one days from the date of such filing have been terminated; except as provided in RCW [90.58.140](#) (5)(a) and (b).

There are three types of permits associated with the SMP; Substantial Development permits, Conditional Use permits, and Variance permits. In addition to the different types of permits there are a number of activities, developments, and uses that are exempt from the permit requirements of the Shoreline Management Act and the provisions of the proposed SMP. The exemptions are listed in WAC 173-27-040 and are discussed in Section 19.500.100 (C) *Exemptions from Substantial Development Permits*.

Exempt activities may also require variance permits, conditional use permits, and other local, state, and federal permits. For example, construction of a single-family residence by an owner, lessee, or contract purchaser for their own use or for the use of their family is exempt from requirements for an SDP. However, a residence proposed to be built within the shoreline buffer would require a variance. Construction cannot legally begin on a structure exempted from Substantial Development Permit requirements under the Shoreline Management Act until all other permits have been obtained.

Shoreline planners and reviewers have more questions about the exemption provisions than any other single section of the Shoreline Management Act. Most activities that are exempt from requirements for an SDP must still comply with all development standards (for example, setbacks and other regulations in the local SMP). The decision if an activity, development, or use is exempt is made during project review. Exemptions should only be granted after meaningful review under SEPA, unless the proposed project is categorically exempt under SEPA.

Ecology recommends that all proposals for activities that are [exempt](#) from the SDP process be documented with an exemption letter that spells out what is included as part of the exemption. Site plans should be included. Local governments are encouraged to send all exemptions to Ecology.

Local governments are **required** to send exemption letters to Ecology and the applicant if one or both of the following federal permits are required:

- A U.S. Army Corps of Engineers **Section 10 permit** under the Rivers and Harbors Act (projects on or over navigable waters).
- A **Section 404 permit** under the Clean Water Act (projects involving discharge of dredge or fill material to water or wetlands).

Ecology reviews these exemptions and must concur that the exemption is appropriate prior to granting Coastal Zone Management consistency in the 15 Western Washington counties that fall under the Coastal Zone Management Act.

The exemption letter must indicate the specific exemption provision from WAC 173-27-040(2) that is being applied to the development and provide a summary of the local government's analysis of the consistency of the project with the master program and the SMP.

For more information:

- [WAC 173-27-040\(2\)](#)
- [WAC 173-27-050](#)

The following sections are from the proposed SMP update. Section **19.500.100 (B)** pertains to Substantial Development permits:

B. Substantial Development Permit

1. The Act provides that no substantial development shall be undertaken on the shoreline of the state without first obtaining a Substantial Development Permit (SDP).
2. A SDP shall be classified as a Type III permit review under Chapter 20.60.020 TCC.
3. A SDP shall be granted only when the applicant can demonstrate that the proposed development is consistent with the policies and procedures of the Act and this Program, as well as criteria in WAC 173-27-150.
4. The Act provides a limited number of exceptions to the definition of substantial development. Those exceptions are contained in RCW 90.58.030 and in the section below, and do not require an SDP. Whether or not a development constitutes a substantial development, all development must comply with the requirements contained in the Act and this Program and may require other permits or approvals under this Master Program. Permits may be issued with limitations or conditions to assure consistency with the Act and this Program.
5. All applications for Shoreline Substantial Development Permits or permit revisions shall be submitted to the Department of Ecology upon a final decision by local government pursuant to WAC 173-27-130. Final decision by local government shall mean the order of ruling, whether it be an approval or denial, that is established after all local administrative appeals related to the permit have concluded or the opportunity to initiate such appeals have lapsed.

C. Exemptions from Substantial Development Permits

1. Certain activities, developments or uses are exempt from the Substantial Development Permit requirements of the Act and this Program. These developments are those set forth in WAC 173-27-040 (or as amended), and do not meet the definition of substantial development under RCW 90.58.030(3)(e). A summary of exempt developments is listed in sub-section 3 below, the application of which shall be guided by WAC 173-27-040 (or as amended).
2. Application and interpretation of exemptions.

- a. Exemptions shall be construed narrowly. Only those developments that meet the precise terms of one or more of the listed exemptions may be granted exemption from the Substantial Development Permit process.
 - b. An exemption from the SDP process is not an exemption from compliance with the Act or this Master Program, or from any other regulatory requirements. To be authorized, all uses and developments must be consistent with the policies and provisions of this Master Program and the Act. A development or use that is listed as a conditional use pursuant to this Master Program or is an unlisted use, must obtain a CUP even though the development or use does not require a SDP. When a development or use is proposed that does not comply with the bulk, dimensional and performance standards found in Chapters 5 and 7 of this Master Program, such development or use can only be authorized by approval of a Shoreline Variance (see Section 19.500.100(E)).
 - c. The burden of proof that a development or use is exempt from the permit process is on the applicant.
 - d. If any part of a proposed development is not eligible for exemption, then a SDP is required for the entire proposed development project.
 - e. The County may attach conditions to the approval of exempted developments and/or uses as necessary to assure consistency of the project with the Act and this Master Program.
3. The following list of developments, summarized from WAC 173-27-040 (see chapter for complete language), shall not require SDPs:
- a. Any development of which the total cost or fair market value, whichever is higher, does not exceed sixty four hundred dollars (as amended), if such development does not materially interfere with the normal public use of the water or shorelines of the state. The dollar threshold established in this subsection is adjusted for inflation by the Washington State Office of Financial Management every five years. The total cost or fair market value of the development shall include the fair market value of any donated, contributed or found labor, equipment or materials;
 - b. Normal maintenance or repair of existing structures or developments, including damage by accident, fire or elements;
 - c. Construction of the normal protective bulkhead common to single-family residences. A "normal protective" bulkhead includes those structural and nonstructural developments installed at or near, and parallel to, the OHWM for the sole purpose of protecting an existing single-family residence and appurtenant structures from loss or damage by erosion;
 - d. Emergency construction necessary to protect property from damage by the elements;
 - e. Construction and practices normal or necessary for existing farming, irrigation, and ranching activities;
 - f. Construction or modification of navigational aids such as channel markers and anchor buoys;

- g. Construction on shorelands by an owner, lessee or contract purchaser of a single-family residence for their own use or for the use of their family, which residence does not exceed a height of thirty-five feet above average grade level and which meets all requirements of Thurston County or a state agency having jurisdiction thereof, other than requirements imposed pursuant to Chapter 90.58 RCW. "Single-family residence" means a detached dwelling designed for and occupied by one family including those structures and developments within a contiguous ownership which are a normal appurtenance. An "appurtenance" is necessarily connected to the use and enjoyment of a single-family residence and is located landward of the ordinary high water mark and the perimeter of a wetland. On a statewide basis, normal appurtenances include a garage; deck; driveway; utilities; fences; installation of a septic tank and drainfield and grading which does not exceed two hundred fifty cubic yards and which does not involve placement of fill in any wetland or waterward of the ordinary high water mark. Construction authorized under this exemption shall be located landward of the ordinary high water mark.
- h. Construction of a dock, including a community dock, designed for pleasure craft only, for the private noncommercial use of the owner, lessee, or contract purchaser of single-family and multiple-family residences. This exception applies if either:
 - i. In salt waters, the fair market value of the dock does not exceed two thousand five hundred dollars; or
 - ii. In fresh waters, the fair market value of the dock does not exceed ten thousand dollars, but if subsequent construction having a fair market value exceeding two thousand five hundred dollars occurs within five years of completion of the prior construction, the subsequent construction shall be considered a substantial development for the purpose of this Program;
- i. Operation, maintenance, or construction of canals, waterways, drains, reservoirs, or other facilities that now exist or are hereafter created or developed as a part of an irrigation system;
- j. The marking of property lines or corners on state-owned lands, when such marking does not significantly interfere with normal public use of the surface of the water;
- k. Operation and maintenance of any system of dikes, ditches, drains, or other facilities existing on September 8, 1975, which were created, developed or utilized primarily as a part of an agricultural drainage or diking system;
- l. Any project with a certification from the governor pursuant to Chapter 80.50 RCW;
- m. Site exploration and investigation activities that are prerequisite to preparation of an application for development authorization under the Act and this Program;
- n. The process of removing or controlling aquatic noxious weeds, as defined in RCW 17.26.020, through the use of an herbicide or other treatment methods applicable to weed control that are recommended by a final environmental impact statement published by the Washington Department of Agriculture or Ecology jointly with other state agencies under Chapter 43.21C RCW;
- o. Watershed restoration projects as defined at WAC 173-27-040(2)(o). Thurston County shall review watershed restoration projects for consistency with this

Program in an expeditious manner and shall issue its decision along with any conditions within forty-five days of receiving all materials necessary to review the request for exemption from the applicant. No fee may be charged for accepting and processing requests for exemption for watershed restoration projects as used in this section;

- p. A public or private project that is designed to improve fish or wildlife habitat or fish passage, when all of the following apply. The County may not require permits or charge fees for fish habitat enhancement projects that meet the criteria and that are reviewed and approved according to the WAC provisions cited herein:
 - i. The project has been approved in writing by WDFW;
 - ii. The project has received Hydraulic Project Approval (HPA) from WDFW pursuant to Chapter 77.55 RCW;
 - iii. The County has determined that the project is substantially consistent with this Shoreline Master Program. The County shall make such determination in a timely manner and provide it by letter to the project proponent; and
 - iv. Fish habitat enhancement projects that conform to the provisions of RCW 77.55.181 are determined to be consistent with this Program.
4. Documentation of exemptions. For any project qualifying for a permit exemption that requires Federal Rivers & Harbors Act §10 permits, Federal Clean Water Act §404 permits, or State Hydraulic Project Approval, a permit exemption letter must be prepared. The County shall also prepare permit exemption letters for other types of exemptions, generally for activities at or below the OHWM, including but not limited to single-use buoys and floats. Permit exemption requests may be obtained through the County permit assistance center. The County shall document exemptions in the permit system.

Section **19.500.100 (D)** pertains to Conditional Use permits:

D. Conditional Use Permits, including Administrative Conditional Use Permits

1. The purpose of a Conditional Use Permit (CUP) is to provide flexibility in authorizing uses in a manner consistent with RCW 90.58.020. Accordingly, special conditions may be imposed to prevent undesirable effects of the proposed use and/or to assure consistency of the project with the Act and this Program.
2. CUPs shall be classified as a Type V permit review under Chapter 20.60.020TCC. Where Administrative CUPs are allowed, they shall be classified as a Type I permit review under Chapter 20.60.020TCC. Unless specified otherwise in this Program, the CUP criteria apply in addition to the applicable SDP criteria, and shall be combined into a single review process.
3. Shoreline CUPs shall be granted only after the applicant can demonstrate compliance with WAC 173-27-160 and this section as follows:
 - a. That the proposed use is consistent with the policies of RCW 90.58.020 and this Program;

- b. That the proposed use will not interfere with the normal public use of public shorelines and does not conflict with existing water dependent uses;
 - c. That the proposed use of the site and design of the project is compatible with other authorized uses within the area and with uses planned for the area under the Comprehensive Plan and this Program;
 - d. That the proposed use will not result in significant adverse effects or a net loss to the shoreline ecosystem functions in which it is to be located;
 - e. That the public interest suffers no substantial detrimental effect;
 - f. That consideration has been given to the cumulative impact of additional requests for like actions in the area and shall not result in substantial adverse effects or net loss of shoreline ecosystem functions. For example, if CUPs were granted for other developments in the area where similar circumstances exist, the total of the conditional uses shall also remain consistent with the use preference policies and shall not produce substantial adverse impacts to the shoreline environment. Consideration shall be demonstrated through preparation of a Cumulative Impacts Report, if requested, that substantially conforms to the applicable provisions of Chapter 19.700 (Special Reports).
 - g. Other uses which are not classified or set forth in this Program may be authorized as conditional uses provided the applicant can demonstrate consistency with the requirements of this section and the applicable requirements of the SMP.
 - h. Uses which are specifically prohibited by this Master Program may not be authorized pursuant to this section.
4. All applications for Shoreline CUPs, including Administrative CUPs, approved by the County shall be forwarded to Ecology pursuant to WAC 173-27-200, for final approval, approval with conditions, or denial. No approval shall be considered final until it has been acted upon by Ecology. No action shall be taken pursuant to a Conditional Use Permit until at least 21 days from the date the Department of Ecology sends Thurston County their determination on the CUP.

And Section **19.500.100 (E)** pertains to Variance permits:

E. Variances and Administrative Variances

1. The purpose of a Variance Permit (VAR) is strictly limited to granting relief from specific bulk, dimensional, or performance standards (not uses) set forth in this Program where there are extraordinary or unique circumstances relating to the property such that the strict implementation of this Master Program will impose unnecessary hardships on the applicant or thwart the policies set forth in RCW 90.58.020.
2. Variances shall be classified as a Type V permit review under Chapter 24.05.020(A)(3) TCC. Administrative Variances shall be a Type I permit and may be granted where allowed under the Use and Modifications Matrix or applicable permit requirements.
3. Variance permits should be granted in circumstances where denial of the permit would result in a thwarting of the policy enumerated in RCW 90.58.020. In all instances, extraordinary circumstances shall be shown and the public interest shall suffer no substantial detrimental effect.

4. Variance permits for development that will be located landward of the OHWM, except within those areas designated as wetlands pursuant to Chapter 173-22 WAC, may be authorized provided the applicant can demonstrate all of the following:
 - a. That the strict application of the bulk, dimensional or performance standards set forth in Chapters 19.400 and 19.600 of this Program preclude, or significantly interfere with, reasonable use of the property;
 - b. That the hardship described in subsection 1 above is specifically related to the property, and is the result of unique conditions such as irregular lot shape, size, or natural features and the application of this Program, and for example, not from deed restrictions or from the actions of the applicant or a predecessor in title;
 - c. That the design of the project is compatible with other authorized uses within the area and with uses planned for the area under the Comprehensive Plan and this Program, will not cause net loss to shoreline ecological functions and does not conflict with existing water dependent uses;
 - d. That the variance will not constitute a grant of special privilege not enjoyed by the other properties in the area;
 - e. That the variance requested is the minimum necessary to afford relief; and
 - f. That the public interest will suffer no substantial detrimental effect.
5. Variance permits for development and/or uses that will be located waterward of the OHWM or within any wetland as defined in RCW 90.58.030(2)(h), may be authorized provided the applicant can demonstrate all of the following:
 - a. That the strict application of the bulk, dimensional or performance standards set forth in Chapters 19.400 and 19.600 of this Program preclude all reasonable use of the property;
 - b. That the proposal is consistent with the criteria established under subsection 4(a) and 4(b) of this section; and
 - c. That the public rights of navigation and use of the shorelines will not be adversely affected.
6. In the granting of all Variance permits, consideration shall be given to the cumulative impact of additional requests for like actions in the area. For example, if variances were granted to other developments and/or uses in the area where similar circumstances exist, the total of the variances shall remain consistent with the policies of RCW 90.58.020 and shall not cause substantial adverse effects to the shoreline environment. The applicant shall demonstrate such consideration through submittal of a Cumulative Impacts Report, where required (Section 19.700.130).
7. Variances from the Shoreline Use and Modifications Matrix in Section 19.600.105 may be prohibited per WAC 173-27-170(5).
8. All applications for shoreline Variances approved by the County, including Administrative Variances, shall be forwarded to Ecology pursuant to WAC 173-27-200, for final approval, approval with conditions, or denial. No approval shall be considered final until it has been acted upon by Ecology. No action shall be taken pursuant to a

Variance Permit until at least 21 days from the date the Department of Ecology sends Thurston County their determination on the VAR.

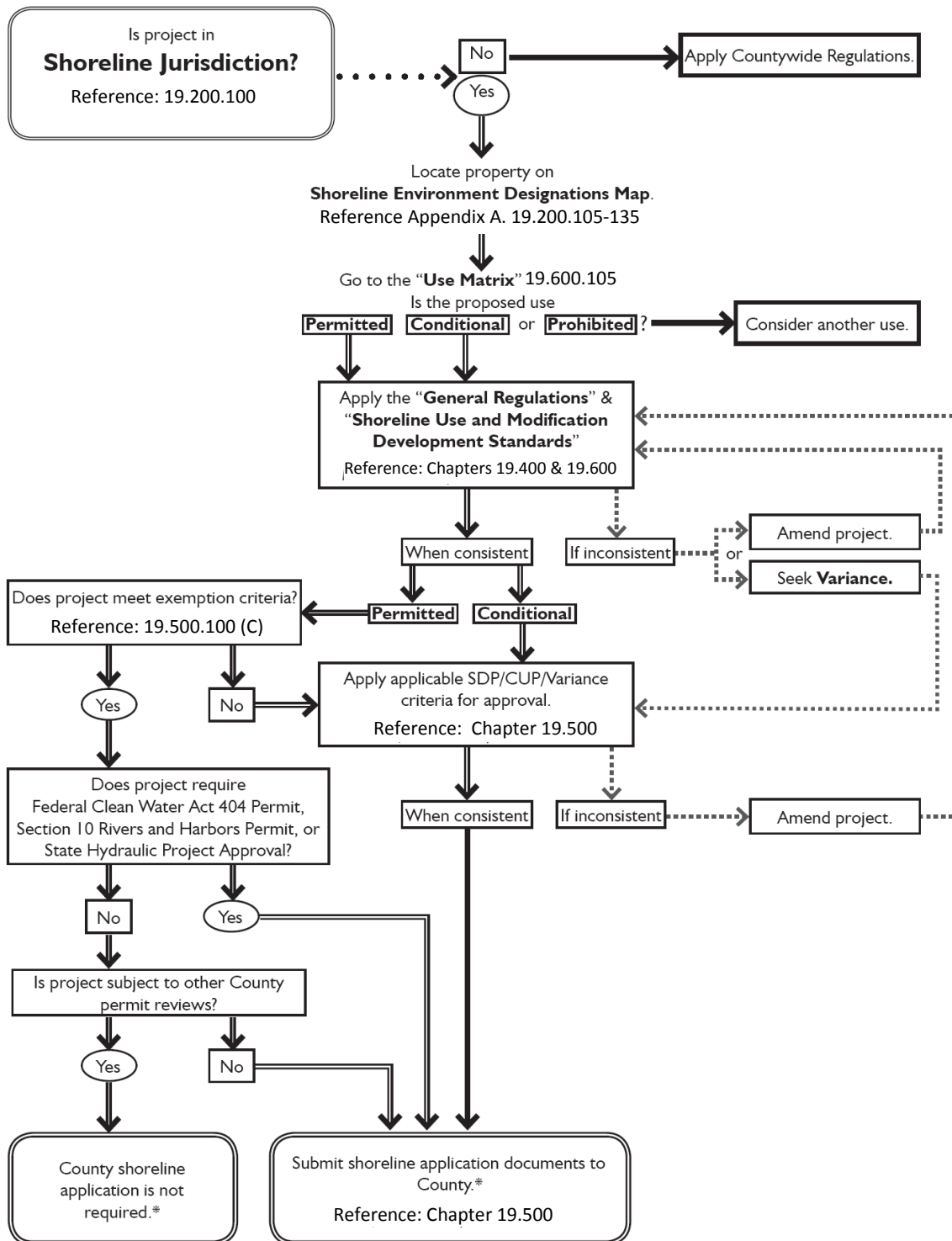
For informational purposes Section 19.500.105 contains a summary of the permit process and a **Shoreline Application Flow Chart (19.500.105(A)(7))** that characterizes the permit review process.

19.500.105 Procedure

A. Permit Process Summary

For informational purposes, a summary of the permit process described below follows and is illustrated on Figure 19.500.105(A):

1. An application for a permit or exemption shall be made on forms prescribed by Thurston County's permit procedures (20.60.020 & 030 TCC).
2. The application shall be made by the property owner, lessee, contract purchaser or other person entitled to possession of the property.
3. Where exempt, the permit shall be reviewed pursuant to exemption criteria at WAC 173-27-040 and Section 19.500.100(C) (Exemptions from Substantial Development Permits) above.
4. If not exempt, a pre-application or staff consultation meeting may be required as described below or for new dock proposals as described in Section 19.600.160(B)(1).
5. If the application involves state owned land, a pre-application conference with the Washington Department of Natural Resources land manager shall be held prior to submittal of the application. Confirmation of the pre-application conference shall be submitted as a requirement of the County's application process.
6. For non-exempt proposals, the County shall provide notice of application pursuant to Title 20.60 TCC.
7. A hearing date will be set before the hearing examiner. Notice of the hearing will be provided consistent with Chapter 20.60.TCC.
8. The public hearing will be conducted pursuant to Chapter 2.06 TCC.
9. Following a decision by the County, the application will be forwarded to Ecology in accordance with the filing procedures at WAC 173-27-130.



*Other County, state, or federal permits may be required.

Figure 19.500.105(A)(7). Shoreline Application Flow Chart.