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November 20, 2009

TO: Barbara Adkins, Community Development
RE: Regulation of chemical treatment of aquatic plants

Barbara,

Per your request, I have reviewed the Shoreline Management Act (SMA) and the County's Shoreline Master Program (SMP) concerning the use of chemicals for the treatment of aquatic plants in waters of the state.

As an unspecified use in the County's SMP, the use of chemicals in waters of the state would require a Conditional Use Permit per SMP §17.50.034:

> *Unspecified Uses. These regulations and the Master Program in its entirety do not attempt to identify or foresee all conceivable shoreline uses or types of development. When a use or development is proposed which is not readily classified within an existing use or development category, the unspecified use must be reviewed as a Conditional Use and Performance Standards relating to the most relevant category shall be used.*

The use of chemicals in waters of the state would also require a Substantial Development Permit unless the proposal is exempt under WAC 173-27-040 as removing or controlling noxious aquatic weeds:

> *(2) The following developments shall not require substantial development permits:*
> *(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 department of agriculture or the department of ecology jointly with other state agencies under chapter 43.21C RCW;*

In summary, any proposal to apply chemical treatment to aquatic plants within waters of Mason County will require both Substantial Development (except as to removing or controlling noxious weeds), and Conditional Use Permits (as to all applications). Failure to comply with these permitting requirements falls under the County's enforcement regulations, as specified at MCC §15.03.005(2); and includes civil and criminal sanctions pursuant, to MCC ch. 15.13.

Monty Cobb
Chief DPA