

## **6.0 CHAPTER SIX IMPLEMENTATION**

### **6.1 INTRODUCTION**

### **6.2 COASTAL MANAGEMENT PROGRAM PARTICIPANT DUTIES AND RESPONSIBILITIES**

The MOA is a Unified Home Rule Municipality and is eligible to be a coastal district in accordance with state law at Alaska Statute (AS) 46.40.210(2)(B). As a home rule municipality, the MOA may exercise all legislative powers not otherwise prohibited by its Municipal Charter. According to MOA Title 21, Section 21.05.030, Comprehensive Plan, the coastal management plan is considered an element of the comprehensive plan, referenced in Title 21 at Section 21.05.030.

The Planning Department, through the CMP Coordinator implements the MOA CMP. The Planning Department has traditionally worked to integrate elements of its CMP into various sections of its Land Use Code, local permit reviews, and policies of other local planning documents. Integration of the CMP implementation measures into other local planning documents requires coordination and approval of the Planning and Zoning Commission and the Municipal Assembly. Consistency reviews are handled internally, and do not go to the Planning and Zoning Commission.

The point of contact for local consistency reviews, involving the MOA coastal zone is the Planning Director, who can be reached at:

Municipality of Anchorage  
Planning Department  
P.O. Box 196650  
Anchorage, AK 99519  
(907) 343-7921  
(907) 343-7927

### **6.3 GENERAL COASTAL CONSISTENCY INFORMATION**

#### **6.3.1 Consistency Review Definition**

According to AS 46.40.210 (5), definitions:

*“consistency review” means the evaluation of a proposed project, the scope of which is determined under AS 46.40.094 and 46.40.096, against the state standards adopted under AS 46.40.040 for those evaluations and the enforceable policies in an applicable district coastal management plan approved under AS 46.40.060.*

#### **6.3.2 Subject Uses**

In accordance with 11 AAC 100.010, land and water uses and activities in the coastal zone, that are subject to consistency review and enforceable policies, include the following:

- Federal activities affecting coastal uses or resources;
- Land and water uses and activities requiring federal permits or authorizations (see 11 AAC

- 110.400); and
- Land and water uses and activities requiring state permits or authorizations.

In addition, outside of the state consistency review process, there may be a local consistency review for land and water uses in the MOA coastal zone for land and water uses and activities requiring local permits or authorizations.

### **6.3.3 Proper and Improper Uses**

In accordance with 11 AAC 114.260, the MOA CMP is required to identify uses and activities, including uses of state concern, that are considered proper and improper within the coastal zone.

The MOA has not identified any uses that are categorically prohibited within its coastal zone. Proper and improper uses are determined by their compliance with enforceable policy requirements.

All land or water uses or activities within the MOA are considered to be proper as long as they comply with the policies of MOA CMP, the ACMP standards under 11 AAC 112, and applicable municipal, state, and federal regulations. All other land or water uses or activities are considered to be improper if they are inconsistent with ACMP standards, or the policies of this CMP, or if they do not comply, or cannot be made to comply, with applicable federal and state regulations. Designated areas included in this CMP identify specific land or water uses and activities that will be allowed or not allowed.

### **6.3.4 Uses of State Concern**

Uses of state concern are uses and activities that are considered to be of state or national interest. The MOA cannot restrict or exclude uses of state concern unless they provide ample justification for the exclusion or restriction within the MOA CMP.

Uses of State Concern are defined in AS 46.40.210(12). In addition, the former Coastal Policy Council issued Resolution Number 13 that specifies more categories and criteria for uses of state concern. This resolution remains in effect until statutes or regulations replace it, or until it is formally rescinded by ADNR.

## **6.4 COASTAL CONSISTENCY REVIEW PROCESS**

Because the State of Alaska has adopted the MOA CMP as an amendment to the ACMP, the MOA is one of several reviewers that concurs or objects to an applicant's consistency certification, or a federal agency's consistency determination to the coordinating agency during consistency review. Based on these comments, and on the policies and procedures of the ACMP, the coordinating agency issues a consistency finding.

### **6.4.1 How to Use the CZM Plan Maps and Model**

The MOA has designated its entire coastal zone boundary as a Recreation Use Area. There are resources within the designation that have important physical, biological, and cultural attributes upon which existing recreation uses and potential recreation uses depend.

Within the Designated Recreation Use Area, there is a sub-area that has been delineated as a Designated Important Habitat Area. This area was designated as such because it has been demonstrated to have a high sensitivity to development using the ASIDDSS Model.

Maps A, B, and C describe the coastal zone boundary and the designated areas.

The MOA will upload the sensitivity map information to its interactive map applications website so that individuals can determine if their project falls within, or touches, either of the plan designations. Hard copies of the maps will be available at the Planning Department Public Counter. Ideally, the public will have the capability to use the MOA map application website to highlight a project site boundary on a parcel-level basis and compare that parcel on any scale to the coastal zone boundary and designation boundary. If a project site is within or touches either of the designations, then the project is subject to the plans enforceable policies.

### **6.4.2 Two Types of Consistency Reviews**

The enforceable components of this CMP form the basis for a determination of consistency with the MOA CMP. There are two types of reviews: (1) state-coordinated consistency reviews, and (2) locally coordinated consistency reviews. When a project is proposed, State ACMP project reviewers determine which authorizations are needed. If the project is a federal activity, or needs state or federal authorization, the State of Alaska reviews the project for consistency with the ACMP. The MOA also participates in the state-coordinated review. If only local authorization is required (but not state or federal authorization), then the MOA itself reviews the project for consistency with the ACMP.

### **6.4.3 Determination of Consistency in Connection with Other Permits and Approvals**

In addition to consistency, an applicant is required to obtain all other necessary permits and approvals required in connection with a proposed project. A determination of consistency does not guarantee, or presume, approval of any other federal, state, or local permit.

### **6.4.4 ADEC Jurisdiction**

In accordance with AS 46.40.040(b), a district may not address a matter regulated by the Alaska Department of Environmental Conservation (ADEC) under AS 46.03, AS 46.04, and AS 46.14 and the regulations adopted under those statutes. ADEC air, land, and water quality standards are the exclusive standards of the ACMP for those purposes. Issuance of ADEC permits, certification, approvals, and authorizations establishes consistency with the ACMP program for those activities of a proposed project subject to those permits, certifications, approvals, or authorizations. A project that includes an activity subject to an ADEC authorization on the C List (see ABC List next) may require a coordinated review if the project includes a different activity that is not subject to an ADEC authorization, but is the subject of an enforceable policy or another C-listed authorization. However, the specific activities subject to ADEC authorization are not within the scope of those project activities to be reviewed.

In the case of an ADEC single agency review, the scope of review is limited to an activity that is the subject of an enforceable policy. ADEC Policy Guidance No. 2003-001, January 7, 2004, contains the actual procedure by which ADEC will participate and coordinate in ACMP consistency reviews. This document is titled, "DEC Single Agency Coastal Management Consistency Review Procedures," and sets forth the Uniform Procedures for Conducting a Coastal Management Consistency Review for Projects that Only Require a [ADEC] Permit or Contingency Plan Approval to Operate.

#### 6.4.5 "ABC" List

The ABC List is a classification system of state and federal approvals that can streamline the consistency review portion of the state permitting process for a proposed project. The intent of the ABC List (specifically the "A" and "B" portions of the list) is to reduce the amount of time reviewers must spend on reviewing routine individual projects. The ABC List allows them to concentrate on those projects requiring a more involved consistency review.

The ABC List actually breaks down into three lists:

- The "A" List represents categorically consistent determinations – approvals of activities requiring a resource agency authorization, when such activities have been determined to have minimal impact on coastal uses or resources;
- The "B" List has been broken into two sections: Section I of the "B" List represents generally consistent determinations – approvals for routine activities that require resource agency authorization(s), when such activities can be made consistent with the ACMP through the application of standard measures; and Section II of the "B" List includes nationwide permits and general permits that have been found to be consistent with the ACMP.
- The "C" List represents a comprehensive listing of those state permits that may trigger consistency review.

Projects do not always fit neatly into just one of the three lists ("A," "B," or "C"). Some projects need authorizations that fall under more than one list or include activities that are not found in the "B" List. For these projects, OPMP will determine how much review the project requires.

### 6.5 FEDERAL AUTHORITY AND CONSISTENCY DETERMINATION

In accordance with federal law, the MOA coastal zone excludes all federal lands and waters within its boundaries. Federal lands and waters are those lands and waters managed, owned, or held in trust by the federal government.

Federal law requires "federal agencies, whenever legally permissible, to consider State management programs as supplemental requirements to be adhered to in addition to existing agency mandates" per Code of Federal Regulations (CFR), 15 CFR 930.32(a). Federally licensed or permitted activities proposed within the coastal area and affecting coastal uses or resources must be **consistent** with the ACMP, including the MOA CMP (15 CFR 930.50). Federal license and permit activities described in detail in Outer Continental Shelf plans and affecting coastal uses or resources must be **consistent** with the ACMP, including the MOA CMP (15 CFR 930.70).

**All federally conducted or supported activities, including development projects** directly affecting the coastal zone, must be **consistent to the maximum extent practicable** with the ACMP, including the MOA CMP. Federal activities are "any functions performed by, or on behalf of, a federal agency in the exercise of its statutory responsibilities." This does not include the issuance of a federal license

or permit. Federal development projects are those federal activities "involving the construction, modification, or removal of public works, facilities, or other structures, and the acquisition, utilization, or disposal of land or water resources" per 15 CFR 931.31. The phrase "consistent to the maximum extent practicable" means that such activities and projects must be "fully consistent with such programs unless compliance is prohibited based upon the requirements of existing law applicable to the federal agency's operations" per 15 CFR 930.32(a).

## **6.6 MOA PARTICIPATION IN STATE-COORDINATED CONSISTENCY REVIEW**

### **6.6.1 Procedures**

The point of contact for state and federal consistency reviews involving the MOA CMP is OPMP. OPMP addresses are:

Southcentral Regional Office  
550 West 7th Avenue, Suite 1660  
Anchorage, Alaska 99501  
Phone: (907) 269-7470  
Fax: (907) 269-3981

Central Office  
302 Gold Street, Suite 202  
Juneau, Alaska 99801-0030  
Phone: (907) 465-3562  
Fax: (907) 465-3075

The state-coordinated consistency review process is contained in state regulations at 11 AAC 110. The MOA seeks to work with applicants to initiate early communication and facilitate an expedient and informed consistency review.

### **6.6.2 Permit Pre-Application Meeting**

During a consistency review, the CMP Coordinator may contact the coordinating agency to request a meeting to resolve issues. The purpose of the meeting is to discuss the coastal management and permitting issues of the proposed activity, and to work toward resolution of issues of local concern and potential conflicts. Scheduling a permit pre-application meeting does not change the final consistency review deadline of 90 days as directed in 11 AAC 100.265.

### **6.6.3 Consistency Comments**

During the period allowed to review and consider the proposed use, the MOA will prepare written comments on the applicant's consistency certification. In preparing a consistency review comment, the MOA will comment on consistency with state standards. In order to be considered by the coordinating agency, MOA comments must be in writing and must:

- (1) State that the MOA concurs with the applicant's consistency certification and explain why, or
- (2) Identify that the MOA objects to the applicant's consistency certification.

If the MOA objects, then it must:

- (1) Identify and explain why the proposed project is inconsistent with specific state standards or the MOA CMP enforceable policies; and
- (2) Identify any alternative measure that, if adopted by the applicant, would achieve consistency with the specific state standard or MOA CMP enforceable policy.

Alternative measures are project conditions proposed by a state resource agency or the MOA that, if adopted by the applicant, would make the project consistent with either state standards or MOA CMP enforceable policies. If alternative measures are proposed, the MOA must explain how the alternative measure would achieve consistency with the specific enforceable policies in question.

When the consistency review is routine in nature and the Planning and Zoning Commission does not need to take action, the CMP Coordinator will issue the consistency comments on behalf of the MOA.

#### **6.6.4 Public Hearing During a State-Coordinated Consistency Review**

Any person or affected party may request that the coordinating agency hold a public hearing on a project or activity undergoing a consistency determination, by providing adequate justification for the request as specified in 11 AAC 110. During the initial consistency review, the CMP Coordinator, in consultation with the Planning Director and affected parties, may decide if the scope of a project will require a public hearing. If a public hearing is needed, the CMP Coordinator will submit a written request to the coordinating agency that a public hearing be held and outline the need for such a hearing. The coordinating agency will review the request to determine if it is based on concerns not already adequately addressed in the review. If a public hearing is held, the 90-day deadline in 11 AAC 110.265 for the completing the consistency review is unchanged. The coordinating agency should be consulted for the exact schedule.

#### **6.6.5 Changes in the Nature of a Permitted or Approved Activity**

Per 11 AAC 110.280, an applicant that proposes a modification to an activity, for which a final consistency has been issued, must submit a new coastal project questionnaire to the agency that coordinated the consistency review. The modification is subject to another consistency review if the modification will have significantly different effects than the existing use on the resources of the MOA coastal zone, and if a new authorization or change in authorization is required.

#### **6.6.6 Due Deference**

Due deference is a concept and practice within the consistency review process that affords the commenting review participants the opportunity to include, review, or refine the alternative measures or consistency concurrence if they have expertise in the resource, or the responsibility for managing the resource. The MOA and resource agencies are provided deference in interpretation of policies and standards in their area of expertise or area of responsibility. First, in order to be afforded due deference, the MOA must have an approved coastal management plan and have commented during the consistency review. Then, the MOA may be afforded due deference if no resource agency has specific authority or expertise, and if the MOA can demonstrate expertise in the field.

A district does not have to have a specific policy that applies to the proposed project under review. The MOA may comment on the consistency of the proposed project within the state standards.

If the coordinating agency rejects the MOA comments, or any alternative measures that the MOA might seek to have imposed on the application in connection with a consistency determination, the coordinating agency must provide a brief, written explanation stating the reasons for rejecting or modifying the alternative measure. *Note: this requirement only applies when the coordinating agency disagrees with the MOA on issues involving the interpretation and application of the MOA CMP.*

AS 46.40.090(b) requires coastal districts that have and exercise zoning or other land use controls to implement their plans. While there is no specific guidance in statute or regulations on how to

implement the district plan, the preferred method is through the performance of local consistency review.

### **6.6.7 Uses Subject to Local Consistency Review**

All uses that are proposed in the MOA coastal zone that do not require federal or state authorization, or that are not a federal activity, will require a determination of consistency from the MOA if they are land and water uses requiring a permit or approval in accordance with MOA Code, Title 21. When a project does not require a state or federal permit or authorization, and only requires local approval, the MOA will determine how the policies will be applied to the proposed project.

### **6.6.8 Application Procedure and Time Line**

There is no separate application for a local consistency determination under the MOA CMP. Rather, the applicant desiring to undertake a subject use applies to the MOA (depending on where the use is to be located) for the required land-use permit or approval. Platting and zoning actions also undergo internal consistency reviews during their respective public process.

### **6.6.9 Local Consistency Determinations Inside the MOA**

The point of contact for local consistency reviews is the MOA CMP Coordinator, a staff position in the MOA Department of Planning. The address of the CMP Coordinator is:

Municipality of Anchorage  
Planning Department  
P.O. Box 196650  
Anchorage, AK 99519  
(907) 343-7921 (phone)  
(907) 343-7927 (fax)

The MOA Title 21 Regulations and land development ordinances detail the review process and schedule for each specific local permit or approval required. The MOA will conduct its consistency review concurrently with its permit or approval review process. Final permits will include conditions or changes as necessary for consistency with the MOA CMP.

Subject uses within the MOA that do not require a state or federal authorization, or that are not a federal activity, will have a local consistency determination made by the MOA. Rezoning, conditional uses, variances, and new subdivisions, are actions that require local consistency determinations by the MOA.

MOA zoning and subdivision ordinances are not part of the MOA CMP and are not subject to state review and approval. Therefore, amendments to the local zoning and subdivision ordinances will not require an amendment to the approved CMP. However, the local zoning and subdivision ordinances may not conflict with the MOA CMP. The Planning Department typically reviews changes to Title 21 and related zoning and platting ordinances for consistency with its CMP.

## **6.7 ELEVATION PROCESS AND APPEALS**

### **6.7.1 Elevation of State Consistency Determination**

Elevations of a consistency determination issued by a coordinating agency follow the procedures established under regulations at 11 AAC 110.600.

## **6.8 AMENDMENTS**

AS 11 AAC 365(b) requires that the MOA review and submit their plan to ADNR every 10 years for re-approval. The MOA may specify a shorter time frame to review its plan.

Every five years, the CMP Coordinator should initiate a local review of the approved coastal program. This formal review gives residents, developers, affected communities, and local landowners an opportunity to become familiar with the plan and its policies and to propose amendments. Changes can keep the CMP up-to-date and relevant. Some adjustments may be made to the MOA coastal zone boundaries or land-use districts based on new information. Policies may be further refined and standards adopted to facilitate the consistency review process. More detailed plans developed for special areas, such as AMSA plans, may be incorporated into the MOA CMP after state and federal approval.

In addition, after completing any regional planning efforts, the Planning and Zoning Commission may evaluate amending the MOA CMP to include pertinent policies, classifications, and resource data developed through the specific planning process. The MOA Assembly must approve all amendments to the MOA CMP. The Commissioner of ADNR and the federal Office of Ocean and Coastal Resource Management must also approve any amendment to the MOA CMP. The process for amending the MOA CMP is provided in regulations at 11 AAC 114.

Two processes are available to the MOA for amending its CMP. The minor amendment process quickly incorporates minor changes. The significant amendment process provides a more thorough review for important changes. Examples of changes that are a significant amendment to the MOA CMP are:

- New policies or changes to existing policies,
- Alteration to the coastal zone boundaries,
- AMSA or ACMP special management areas, and
- Restrictions or exclusions of a use of state concern not previously restricted or excluded.

## **6.9 MONITORING AND ENFORCEMENT**

State resource agencies and municipalities attain their enforcement responsibility from AS 46.40.100. If an applicant fails to implement an adopted alternative measure, or if the applicant undertakes a project modification not incorporated into the final determination, and not reviewed under 11 AAC 110.800-820, it is a violation of the ACMP. The responsibility for enforcing alternative measures carried on state and federal permits rests with the permitting agency. The MOA strongly encourages the state to enforce alternative measures and bring violators into compliance.

Enforceable policies and ACMP standards are implemented at the state level through alternative measures incorporated into the project description. The ACMP does not issue a separate coastal

permit, but relies on existing state authorities. Thus, state monitoring and enforcement of the ACMP occurs primarily through agency monitoring and enforcement of alternative measures on their permits. A district can assist in this process by monitoring projects and providing information to appropriate state agencies.

The CMP Coordinator and the Planning Department have first-hand knowledge of local concerns and issues related to development activities in the MOA coastal zone. The CMP Coordinator and the Planning Department may, within legal and logistical constraints, assist agencies and municipalities in their monitoring and compliance efforts. The intent is to ensure that alternative measures associated with the MOA CMP are carried out in the development process.

The CMP Coordinator will work with state and federal agencies in monitoring and enforcement, and provide responsible agencies with copies of local reports on noncompliance. This will include adherence to permit conditions, cooperative plans, and the policies of the CMP.

When a MOA permit or approval is required, the permit will include all conditions placed on the subject use during the consistency determination. The MOA shall do the same for subject uses, requiring a permit or approval from the MOA. In such instances, the permitting state and/or federal agency will share concurrent jurisdiction with the MOA, and either or both may seek to enforce the conditions placed on the subject use.