

## 5.0 CHAPTER FIVE ENFORCEABLE POLICIES

### 5.1 AUTHORIZATION FOR ENFORCEABLE POLICIES

The designation of the entire MOA coastal zone boundary as Recreation Use, and the designation of a smaller sub-area as Important Habitat, provides the MOA with the legal authority to address the prioritization of uses and activities on non-marine waters and to address access to, from, and along marine and non-marine waters within the MOA coastal zone boundary.

### 5.2 DESIGNATION

The Recreation Use designation has been developed in accord with the state requirements described in 11 AAC 114.250 (c) below. The Important Habitat designation has been developed in accord with the state requirements in 11 AAC 114.250 (h) below.

**11 AAC 114.250. Subject uses, activities, and designations.** (c) A district shall consider and may designate areas of **recreational use**. Criteria for designation of areas of recreational use are

- (1) the area receives significant use by persons engaging in recreational pursuits; or
- (2) the area has potential for recreational use because of physical, biological, or cultural features.

(Eff. 7/1/2004, Register 170; am 10/29/2004, Register 172)

and

**11 AAC 114.250 Subject uses, activities, and designations.** (h) A district shall consider and may designate portions of habitat areas listed in 11 AAC 112.300(a)(1) – (8) and other habitats in the coastal area as **important habitat** if

- (1) the use of those designated portions have a direct and significant impact on coastal water; and,
- (2) are shown by written scientific evidence to be biologically significantly productive.

(Eff. 7/1/2004, Register 170; am 10/29/2004 Register 172; am 6/25/2005, Register 174)

Authority: AS 46.39.010 AS 46.39.040

A designation for the purposes of coastal management does not imply that all areas within the Designation are in public ownership, or used for public recreational purposes. Rather, the Designation relates to, and encompasses actively used areas, those areas that have the potential to be used, and those areas that are setbacks or buffers needed to protect the adjacent recreational resource. A Designation is not a zoning district.

These designations are also described in Chapter Three, Boundary and on Maps A, B, and C.

### 5.3 APPLICABILITY OF ENFORCEABLE POLICIES

Pursuant to the regulations for designating for recreation, the lands and waters within the existing coastal zone, defined as the Designated Recreation Use area, are currently used, and have the

potential to be used, for recreational purposes. There are physical, biological, and cultural features upon which recreational use depends. Recreation uses in the area designated includes existing and planned features for trails, organized sports, and for passive activities such as tourism and wildlife viewing.

Pursuant to the regulations for designating for important habitat, land and water uses in the Designated Important Habitat area have the potential to have a direct and significant impact on coastal waters and documented to be biologically significantly productive. These important habitats are directly and indirectly linked to and support coastal waters because of the local terrain, surface and subsurface hydrology, parks and greenbelts, and plant communities.

## **5.4 PROPER AND IMPROPER USES**

All land and water uses and activities are considered proper as long as they comply with the enforceable policies of the MOA CMP, ACMP standards, and applicable federal and state regulations, and municipal regulations.

A land or water use or activity will be considered improper if it is inconsistent with ACMP standards or the policies of the MOA CMP, or it does not comply with or cannot be made to comply with the applicable federal and state regulations. See Chapter Six, Implementation, for details.

## **5.5 ENFORCEABLE POLICIES**

This section is divided into two policy groups. The first section includes the enforceable policies (EP) that apply throughout the MOA coastal zone, which is a Designated Recreation Use area. The second section includes enforceable policies that only apply within the Designated Important Habitat (IH) Area.

### **5.5.1 Policies Applicable Throughout the Coastal Zone/Designated Recreation Use Area**

#### ***EP-1 Uses and Activities Adjacent to Streams***

- (A) All uses and activities, including but not limited to, structures, land clearing, and impervious surfaces, are allowed with the Designated Recreation Area, provided these uses and activities are set back 50-feet from the Ordinary High Water (OHW) of streams or waterbodies, as defined and/or mapped by the MOA, unless there is no practicable alternative location for the use or activity. For streams and waterbodies with contiguous wetlands, setback distances shall follow those defined in Table 2 of the *Anchorage Wetlands Management Plan*.
- (B) When the primary purpose of the structure, clearing, or activity is to provide access to the stream or lake, it may be allowed within the 50-foot setback.
- (C) When the primary purpose of the structure, clearing, or activity requires it to cross or parallel the waterbody, it may be allowed within the 50-foot setback.

#### ***EP-2 Clearing of Native Vegetation***

- (A) Clearing of native vegetation within the setback from waterbodies described in **EP-1 (A), (B), and (C)** will be allowed for the following purposes:
  - (1) Removal of select or dead or decaying trees that threaten public property, public health or safety, or are necessary for fire hazard prevention; or

- (2) Removal of the vegetation is necessary to accommodate water-dependent uses, and/or the placement of access features such as paths, boat ramps, landings, trails, and permitted water-dependent accessory structures.

***EP-3 Buffering and Screening***

- (A) Natural or landscaped vegetative buffers or other screening measures shall be required for commercial, industrial, or institutional development where the development site parallels or abuts, but lies outside, the 50-foot waterbody setback required in ***EP-1***.
- (B) Requirements for the size and extent of buffers or other screening measures shall be determined on a case-by-case basis and shall be commensurate with the reasonably foreseeable impacts of the development on recreational uses and activities.
- (B) Non-invasive species shall be used for all new vegetative buffers.

***EP-4 Waterfront Development***

- (A) All uses and activities that are economically or physically dependent on a waterfront location are allowed, and will be given higher priority when compared to uses and activities that do not economically or physically require a waterfront location.

Priority for uses and activities shall be given in the following order:

- (1) water-dependent uses and activities;
  - (2) water-related uses and activities;
  - (3) uses and activities that are neither water-dependent nor water-related, for which there is no practicable inland alternative to meet the public need for the use or activity; and
  - (4) uses and activities that include a public coastal access component.
- (B) Water-Dependent Uses and Activities include docks, boat ramps and launches; marinas including wet-boat storage and boathouses, haulout facilities, permanent or transient docking spaces and dry storage; boat fueling facilities; piers, wharfs, and mooring pilings; fish processing facilities and hatcheries; water-based tourism facilities and accessory attached housing; and transportation-related structures dependent on water access.
  - (C) Water-Related Uses and Activities include retail stores and commercial activities such as hotels, restaurants, pedestrian-oriented access, and other similar uses that provide access to the shoreline and views from the shoreline.
  - (D) Non-Water-Dependent and Non-Water-Related Uses and Activities shall be permitted when it is not practicable to develop a site with a water-dependent or water-related use or activity, due to shallow bathymetry or unusual lot characteristics, such as substandard size, frontage, or steep topography, or such uses would be inconsistent with zoning.

***EP-5 Coastal Access***

- (A) Development shall not interfere with existing legal public access to, or use of, the waterfront where such access or use has been established through acquisition, donation, dedication, or prescriptive easement.
- (B) New subdivisions shall be designed to maintain or enhance public access to, from, and along the lands and waters within the coastal zone where practicable.

## ***EP-6 Capital Improvements***

- (A) Capital improvements on publicly owned property shall incorporate walkways, shelters, viewing platforms, and landscaping whenever practicable to enhance public access and to facilitate public enjoyment of recreational waters.

## **5.5.2 Policies Applicable Within the Designated Important Habitat (IH) Area**

### ***IH-1 Revegetation Requirements***

Post-construction re-vegetation within 50-feet of the waterbody, with non-invasive species and at a density similar to pre-construction, shall be required in order to protect bare soil surfaces and to minimize and treat runoff from impervious surfaces (roads, driveways), lawns, and roofs entering directly into the waterbody in order to protect the biological productivity of the waterbody.

### ***IH-2 Stream Channel Restoration and Enhancement***

Fish habitat and stream channel restoration and enhancement activities are allowed in the stream channel and/or within the above-required setback areas, provided the restoration or enhancement activity matches or exceeds the existing habitat or stream function and uses only non-invasive species.

### ***IH-3 Wetlands***

- (A) Unless otherwise permitted in Table 2 of the *Anchorage Wetland Management Plan*, “A” wetlands within IHA shall be maintained in their natural state to the maximum extent practicable.
- (B) Except as permitted by a U.S. Army Corps of Engineers action, all development and disturbances are allowed provided they are setback 15-feet horizontally from the delineated or mapped edge of “A” wetlands and areas of “B” or “C” wetlands not authorized for development.

### ***IH-4 Stream Crossings***

- (A) Where a transportation project, trail, or utility project requires a stream crossing and there is no practicable or less-damaging alternative, crossings are allowed provided:
  - (1) Crossings are co-located to the extent practicable;
  - (2) Impervious surfaces are situated so that the biological productivity of the adjacent waterbody is protected;
  - (3) The crossing does not interfere with wildlife corridors or impede wildlife transit; and,
  - (4) Vegetation removal, bank erosion, and streamside degradation due to construction activities associated with the crossing is kept to a minimum.
- (B) Where a transportation or utility project crosses or impacts the stream, the existing surface and subsurface drainage patterns of the stream and floodplains shall be retained or restored, to the extent practicable.

### ***IH-5 Impervious Surface Thresholds***

- (A) The Municipality shall establish thresholds for impervious surface coverage within the Designated Important Habitat Area for each watershed. The threshold shall be determined and administered through the MOA grading, fill, building, and land use permit reviews.
  
- (B) Through monitoring of new projects, the placement of impervious surfaces, while allowable on an individual basis, when calculated on a cumulative basis would result in an adverse effect to the biological productivity of the Important Habitat Area. The MOA will determine if and where mitigation is necessary in order to offset these impacts and shall include these requirements for new projects that propose new impervious fills.