

SENATE BILL NO. 186

IN THE LEGISLATURE OF THE STATE OF ALASKA

TWENTIETH LEGISLATURE - FIRST SESSION

BY THE SENATE RULES COMMITTEE BY REQUEST OF THE GOVERNOR

Introduced: 4/25/97

Referred: CRA, Resources, Finance

A BILL

FOR AN ACT ENTITLED

1 "An Act relating to coordination of the application, review, decision, and appeal
2 process for certain project permits; relating to the Alaska Coastal Policy Council
3 and the Alaska Coastal Management Program; relocating certain functions of the
4 office of management and budget to a statutorily created division of project
5 assistance in the Office of the Governor; repealing the Environmental Procedures
6 Coordination Act; and providing for an effective date."

7 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF ALASKA:

8 * Section 1. PURPOSE. It is the purpose of this Act to

9 (1) assist those who, to satisfy the requirements of state law, must obtain
10 a permit from one or more state agencies by establishing a procedure to coordinate the
11 administrative decision-making process;

12 (2) provide to the members of the public the opportunity to present their
13 views on proposed uses of the state's natural resources and related environmental

1 concerns before state agencies decide on applications for permits;

2 (3) provide to applicants for the use of the natural resources of the state
3 a greater degree of certainty on permit requirements of the state government;

4 (4) increase the coordination and efficiency of state agencies in their
5 administration of programs affecting the state's natural resources; and

6 (5) establish an opportunity for members of the public to obtain
7 information pertaining to requirements of state law that must be satisfied before
8 undertaking a project in this state.

9 * **Sec. 2.** AS 46 is amended by adding a new chapter to read:

10 **Chapter 41. Permit Coordination and Appeals.**

11 **Sec. 46.41.010. Applicability.** (a) Notwithstanding any other provisions of
12 regulation or statute relating to the processing of applications for permits
13 described in (d) of this section, the procedures set out in this chapter and in
14 regulations adopted under this chapter are exclusive for the processing of an
15 application for one of those permits, including an application for the renewal or
16 modification of one of those permits. AS 46.41.050 - 46.41.090 do not apply to
17 a permit modification that does not significantly change the scope of a project, or
18 its impact to coastal resources or uses or to public resources, as determined by the
19 permitting agency.

20 (b) If a proposed project, other than one described in (a) of this section,
21 requires a consistency review under AS 46.40.096(a)(1) or (3), the procedures set
22 out in this chapter and in regulations adopted under this chapter are exclusive for
23 making the consistency review.

24 (c) Each state agency having jurisdiction to approve or deny an application
25 for a permit has the authority vested in it by law to make that determination.
26 Nothing in this chapter lessens or reduces that authority; the provisions of this
27 chapter modify only the procedures to be followed in the carrying out of that
28 authority.

29 (d) This chapter applies to the following licenses, permits, and other
30 authorizations required to be obtained from a state agency before constructing or
31 operating a project in the state, and to other licenses, permits, or authorizations

1 designated by the division by regulation, if needed for a particular project:

- 2 (1) air quality control construction permit - AS 46.14.130(a);
- 3 (2) air quality control operating permit - AS 46.14.130(b);
- 4 (3) open burning approval - AS 46.03.020;
- 5 (4) burning permit during fire season - AS 41.15.050;
- 6 (5) oil discharge prevention and contingency plan - AS 46.04.030;
- 7 (6) wastewater disposal permit, including a Clean Water Act (33
- 8 U.S.C. 1341) sec. 401 certification of a federal permit - AS 46.03.100;
- 9 (7) solid waste disposal permit - AS 46.03.100;
- 10 (8) brine or other salt water waste disposal permit - AS 31.05.030;
- 11 (9) tidelands permit - AS 38.05.820;
- 12 (10) tidelands right-of-way or easement permit - AS 38.05.820;
- 13 (11) authorization for tidelands transportation - AS 38.05.110;
- 14 (12) tide and submerged lands prospecting permit - AS 38.05.250;
- 15 (13) mineral and geothermal prospecting permits - AS 38.05.145;
- 16 (14) coal development permit - AS 27.20.010;
- 17 (15) dam construction permit - AS 46.15.040;
- 18 (16) water well permit - AS 31.05.030;
- 19 (17) permit to appropriate water - AS 46.15.040;
- 20 (18) permit for use of timber or materials - AS 38.05.110;
- 21 (19) special material use permit - AS 38.05.115;
- 22 (20) limited personal use permit - AS 38.05.820;
- 23 (21) preferred use permit - AS 46.15.040;
- 24 (22) trapping cabin permit - AS 38.95;
- 25 (23) preference right - AS 38.05.035(b)(2), (3), (5), and (9);
- 26 (24) USFS permit preference sale - AS 38.05.068;
- 27 (25) USFS permit preference lease - AS 38.05.087;
- 28 (26) aquatic farm permit - AS 38.05.856;
- 29 (27) aquatic farm lease - AS 38.05.083;
- 30 (28) surface or land-use permit - AS 38.05.020, AS 38.05.850;
- 31 (29) material use permit - AS 38.05.110;

- 1 (30) material sale - AS 38.05.110;
- 2 (31) negotiated lease - AS 38.05.070;
- 3 (32) recreation facilities development lease - AS 38.05.073;
- 4 (33) lease - AS 38.05.075;
- 5 (34) remote cabin permit - AS 38.05.079;
- 6 (35) shore fishery lease - AS 38.05.082;
- 7 (36) public and charitable lease - AS 38.05.810;
- 8 (37) public and charitable sale - AS 38.05.810;
- 9 (38) tideland preference - AS 38.05.820;
- 10 (39) conveyance of tide and submerged land - AS 38.05.825;
- 11 (40) natural disaster grant - AS 38.05.870;
- 12 (41) flood control authorization - AS 38.05.872;
- 13 (42) lessee preference sale/lease - AS 38.05.102;
- 14 (43) plan of operation (mineral extraction) - AS 38.05.020;
- 15 (44) reclamation plan - AS 27.19.030;
- 16 (45) upland mining lease - AS 38.05.135 -- 38.05.181, 38.05.205;
- 17 (46) surface coal mining permit - AS 27.21.060;
- 18 (47) surface coal mining permit renewal - AS 27.21.190;
- 19 (48) surface coal mining permit revision and transfer -
- 20 AS 27.21.190;
- 21 (49) notice of intent to explore for coal mining - AS 27.21.200;
- 22 (50) coal exploration permit - AS 27.21.200;
- 23 (51) offshore mining lease - AS 38.05.250;
- 24 (52) offshore prospecting permit - AS 38.05.255;
- 25 (53) millsite or surface use permit - AS 38.05.255;
- 26 (54) permit to appropriate water - AS 46.15.030;
- 27 (55) certificate of appropriation - AS 46.15.120;
- 28 (56) reservation of water - AS 46.15.120;
- 29 (57) certificate to construct or operate a dam - AS 46.17.010 -
- 30 46.17.070;
- 31 (58) reservation of water when water is to be removed from a

- 1 hydrologic unit - AS 46.15.035 - 35.15.037;
- 2 (59) lease operations approval (oil and gas) - AS 38.05.020;
- 3 (60) unit plan of operations (oil and gas) - AS 38.05.020;
- 4 (61) beach log salvage license - AS 45.50.235;
- 5 (62) less than ten acre timber sale - AS 38.05.110 - .115;
- 6 (63) fish access permit - AS 16.05.840;
- 7 (64) anadromous fish protection permit - AS 16.05.870
- 8 (65) critical habitat area permit - AS 16.20.520 - 16.20.530;
- 9 (66) state game refuge land permit - AS 16.20.050 - 16.20.060;
- 10 (67) state park incompatible use permit - AS 41.21.020;
- 11 (68) pesticides permit - AS 46.03.320;
- 12 (69) surface oiling permit - AS 46.03.740;
- 13 (70) encroachment permit - AS 19.25.200;
- 14 (71) utility permit - AS 19.25.010;
- 15 (72) driveway permit - AS 19.05.020;
- 16 (73) access roads permit - AS 41.21.020;
- 17 (74) right-of-way and easement permits - AS 38.05.850;
- 18 (75) right-of-way permit - AS 38.05.850;
- 19 (76) right-of-way lease - AS 38.35;
- 20 (77) aquatic farm product permit - AS 03.05.011(a)(10);
- 21 (78) salmon hatchery permit - AS 16.10.400;
- 22 (79) aquatic farm permit - AS 16.40.100;
- 23 (80) anadromous fish permit - AS 16.05.870;
- 24 (81) fish access permit - AS 16.05.840;
- 25 (82) state game refuge permit - AS 16.05;
- 26 (83) state game sanctuary permit - AS 16.05;
- 27 (84) critical habitat area permit - AS 16.20.

28 **Sec. 46.41.020. Expedited review.** (a) If a project, or all of the state and
 29 federal permits required by a project, appear on a list adopted by the division by
 30 regulation under (b) of this section, and if the project can meet any conditions
 31 specified in the list for such a project or for the permits required for the project,

1 that project is exempt from AS 46.41.050 - 46.41.090 and from the need for
 2 further review, including Alaska coastal management consistency review under
 3 AS 46.40.096(a)(1) or (3). A permit application for an exempt project shall be
 4 submitted to the appropriate permitting agency. A permit issued by a permitting
 5 agency for an exempt project is subject to any conditions specified in the list
 6 adopted by regulation.

7 (b) State agencies shall propose to the division for adoption in regulation
 8 a list of projects and permits that are to be exempt under this section, and any
 9 conditions that must be met in order for the project or permit to be exempt. A
 10 project or permit may be placed on the list if

11 (1) the project or the activity authorized by the permit, as limited
 12 by any specified conditions, is unlikely to have a significant impact on coastal
 13 resources or uses or on public resources; or

14 (2) the project or the activity authorized by the permit, as limited
 15 by any specified conditions, is of a type that is routinely approved by the
 16 permitting agency and found to be consistent with any applicable coastal
 17 management requirements.

18 **Sec. 46.41.030. Permit information centers.** The division shall establish
 19 permit information centers in its regional locations and may enter into agreements
 20 with other organizations and state agencies to establish and maintain permit
 21 information centers in other locations to provide information to the public, in
 22 readily understandable form, regarding the requirements of permits for projects
 23 in the state. The division shall advise a permit applicant as to the proper
 24 coordinating agency under AS 46.41.040.

25 **Sec. 46.41.040. Coordinating agency.** (a) Each proposed project subject
 26 to this chapter has a coordinating agency as provided in (c) of this section.

27 (b) The coordinating agency shall facilitate the permit process. In carrying
 28 out its coordination role, the coordinating agency shall seek to minimize delays
 29 and costs to the permitting agencies and the applicant, and to provide the public
 30 with a meaningful opportunity to participate. A state agency acting as the
 31 coordinating agency under this chapter may not make a permit decision. A state

1 agency acting as a permitting agency shall make the decisions relevant to its
2 individual jurisdiction.

3 (c) The division is the coordinating agency under this chapter except that

4 (1) at the request of the head of a permitting agency, and with the
5 concurrence of the division and the resource agencies, that permitting agency shall
6 act as the coordinating agency for a specific project or category of project;

7 (2) if a project requires one or more permits from only a single
8 permitting agency, that permitting agency shall act as the coordinating agency;

9 (3) for matters subject to AS 27.05.010, the Department of Natural
10 Resources shall act as the coordinating agency, except that with the concurrence
11 of the division and the resource agencies, the division or a permitting agency shall
12 act as the coordinating agency for a specific project.

13 (d) The coordinating agency shall provide a project application to any
14 person requesting one. The coordinating agency shall provide information, forms,
15 instructions, and assistance in the completion of a project application under this
16 chapter to a person requesting assistance.

17 (e) The coordinating agency shall act as the public point of contact for the
18 processing of applications under this chapter and, with the concurrence of the
19 permitting agencies and in consultation with the applicant, shall establish a target
20 time line for review of a project for which a project application is submitted under
21 AS 46.41.050.

22 **Sec. 46.41.050. Project application.** (a) A person proposing a project that
23 requires the issuance of a state permit or a consistency review under
24 AS 46.40.096(a)(1) or (3) shall submit a project application to the coordinating
25 agency. The project application must be on a form established by the division or
26 in another format agreed upon by the applicant and the permitting agencies. The
27 project application must contain sufficient information as to the location and the
28 nature of the project to enable a permitting agency to make its determination.

29 (b) Upon receipt of a completed project application, the coordinating
30 agency shall immediately forward a copy of the completed application to

31 (1) the permitting agencies;

- 1 (2) the resource agencies;
 2 (3) the division;
 3 (4) affected coastal resource districts if the project is subject to a
 4 consistency review under AS 46.40.096(a)(1) or (3); and
 5 (5) at the discretion of the coordinating agency, other governmental
 6 entities with independent decision-making authority over the project.

7 (c) Upon receipt of a project application under (b) of this section, a
 8 permitting agency shall determine whether adequate information has been
 9 submitted to initiate review and shall inform the applicant, through the
 10 coordinating agency, if more information is needed to initiate review of the
 11 application.

12 **Sec. 46.41.060. Withholding final permit.** If it appears that the applicant
 13 does not own or control the land or water necessary for the siting of the project
 14 that is the subject of the project application, and if an application for ownership
 15 or control of the land or water is not part of the project application, the
 16 permitting agencies may proceed with review of the application under this chapter
 17 but may withhold any final permit until the applicant has obtained ownership or
 18 control of the land or water necessary for the siting of the project. In deciding
 19 whether to continue to process a project application under this section, the
 20 permitting agencies shall determine whether continuation would serve the fair and
 21 efficient administration of government.

22 **Sec. 46.41.070. Public notice and comment.** (a) When the permitting
 23 agencies determine that a project application is adequate to initiate review, the
 24 coordinating agency will arrange for a consolidated public notice of the project.
 25 The timing and manner of public notice and comment shall be reasonable
 26 considering the circumstances of the project application, and consistent with
 27 regulations adopted by the division.

- 28 (b) The notice must
 29 (1) contain a brief general description of the proposed subject of
 30 agency action;
 31 (2) explain how more detailed information may be obtained;

1 (3) provide the name of the contact person for the coordinating
2 agency;

3 (4) explain how the public may comment on the proposed project;
4 and

5 (5) state the deadline for receipt of public comments.

6 **Sec. 46.41.080. Public meeting or hearing.** The coordinating agency, or a
7 permitting agency designated by the coordinating agency, may hold a public
8 meeting or hearing if considered appropriate by the coordinating agency or a
9 permitting agency. The public meeting or hearing may be held jointly with local
10 and federal permitting entities with independent decision-making authority over
11 the project. The coordinating agency or designated permitting agency may
12 structure the meeting or hearing in any manner that would facilitate meaningful
13 public comment. The meeting or hearing shall be conducted for the purpose of
14 obtaining information for the assistance of the state agencies in their review of the
15 project and not as a trial or adversarial proceeding.

16 **Sec 46.41.090. Decision.** (a) A permitting agency, in the performance of
17 its responsibilities of decision-making under this chapter, may request or receive
18 additional information from an applicant and others before or after the public
19 hearing.

20 (b) Each permitting agency shall review the project application and any
21 public comments concerning its permits and shall forward to the coordinating
22 agency a draft decision regarding its permits as described in AS 46.40.010(d) or
23 in AS 46.40.096(a)(3), requested in or related to the application. The draft permit
24 decision shall include a copy of any draft permits and related stipulations and a
25 brief justification for the agency's draft decision.

26 (c) Each resource agency and affected coastal resource district shall
27 forward to the coordinating agency its opinion as to whether the project is
28 consistent with any applicable Alaska coastal management program requirements.
29 The opinions of consistency may be predicated upon adoption of specific
30 stipulations, which must be contained in one or more of the draft permit decisions,
31 and must include a brief justification for the stipulation.

1 (d) The coordinating agency shall provide copies of all draft permit
2 decisions and opinions of consistency to each resource agency, permitting agency,
3 and affected coastal resource district. The permitting agencies that are also
4 resource agencies, in consultation with the other resource agencies and the
5 affected coastal districts, shall determine whether the project is consistent with any
6 applicable Alaska coastal management program requirements. The coordinating
7 agency shall facilitate the agencies' determination as necessary.

8 (e) Each permitting agency shall prepare, and shall forward to the
9 coordinating agency, its final permit decision. The final permit decision shall
10 include a copy of any draft permits and related stipulations and a brief justification
11 for the agency's final permit decision.

12 (f) The coordinating agency shall issue the final project decision of the
13 permitting agencies in one document that contains

14 (1) a statement of intent to either deny or issue any permits
15 requested in the application;

16 (2) copies of the final permit decisions;

17 (3) a statement as to whether the proposed project is consistent or
18 inconsistent with the Alaska coastal management program, if applicable; if the
19 Alaska coastal management program consistency statement is predicated on a
20 stipulation, that stipulation must be specifically described in the consistency
21 statement by reference to the related permit for a proposed project described in
22 AS 46.40.096(a)(1) or (3);

23 (4) if the application is denied, a statement of reasons for the
24 denial;

25 (5) an explanation of how to file an appeal and the deadline for
26 filing the appeal.

27 (g) The coordinating agency shall send a summary of the final project
28 decision to each person who participated in the process and shall publish a notice
29 of the final project decision in the Alaska Administrative Journal (AS 44.62.175).
30 The summary of decision shall indicate where a complete copy of the decision may
31 be reviewed and shall explain how to file an appeal and the deadline for filing the

1 appeal.

2 (h) If applicable, any permits or consistency statement requested in the
3 project application shall be issued not less than five working days after publication
4 in the Alaska Administrative Journal of the notice of the final project decision.

5 (i) An aggrieved person may, in writing, request a stay pending appeal
6 (1) of the issuance of a permit from the head of the permitting
7 agency; or

8 (2) of the issuance of a consistency statement from the heads of the
9 permitting agencies that are also resource agencies.

10 **Sec. 46.41.100. Administrative appeal.** (a) A person, including an affected
11 coastal resource district, aggrieved by a final project decision under AS 46.41.090
12 or by a final agency decision as defined in (o) of this section, may appeal the
13 decision by filing a notice of appeal with the coordinating agency within 30 days
14 after (1) publication of the notice of the final project decision in the Alaska
15 Administrative Journal; or (2) issuance of the final agency decision. A failure to
16 timely file a notice of appeal constitutes a waiver of the person's right to a review
17 of the final project decision or final agency decision.

18 (b) The notice of appeal must specify the decision being appealed and
19 contain a clear and concise statement of the basis for the appeal, including the
20 specific provisions of the permits or consistency statement being challenged, and
21 the name and mailing address of the appellant.

22 (c) The coordinating agency shall distribute the notice of appeal to the
23 appropriate agency representatives as determined under (g) of this section. The
24 agency representatives for each point on appeal shall decide whether the point
25 raises a reasonable issue of fact or law material to the final project decision or
26 final agency decision. If a timely notice of appeal raises an issue of fact or law
27 material to the final project decision or final agency decision, the agency
28 representatives shall notify the coordinating agency and the coordinating agency
29 shall accept the appeal for consideration.

30 (d) The appellant, permittee, permitting agency staff and, if the appeal
31 involves a consistency review, an affected coastal resource district and the staff of

1 a permitting agency that is also a resource agency, are parties as of right in the
2 appeal. Other persons may seek to intervene by motion to the coordinating
3 agency.

4 (e) Notwithstanding AS 44.62.330, procedures for an appeal under this
5 chapter need not conform to AS 44.62.330 - 44.62.630 (Administrative Procedure
6 Act). The agency representatives for an appeal shall structure the proceedings in
7 a manner that facilitates fair and efficient decision-making and that is consistent
8 with general appeal procedures adopted by the division in regulation. An agency
9 representative shall allow submission of new information as part of the record on
10 appeal if relevant to that agency's decision.

11 (f) The coordinating agency shall prepare the record on appeal, with the
12 assistance of the permitting agencies whose decisions are being appealed. The
13 record on appeal shall consist of the

- 14 (1) project application or permit application;
- 15 (2) public comments;
- 16 (3) material supplied to the coordinating, permitting, and resource
17 agencies by the applicant;
- 18 (4) other information used by the permitting agency as a basis for
19 its decision; and
- 20 (5) final project decision or final agency decision.

21 (g) An appeal of a final project decision or final agency decision shall be
22 heard and decided by agency representatives as follows:

- 23 (1) regarding a permit, the head of the relevant permitting agency;
24 and
- 25 (2) regarding a consistency statement, the heads of the relevant
26 permitting agencies that are also resource agencies.

27 (h) An agency representative for an appeal may appoint a hearing officer
28 as the agency representative's designee. The hearing officer may be an
29 independent hearing officer, a subordinate of the agency representative within the
30 relevant agency, or, with the approval of the head of another state agency, an
31 employee of that other state agency. A hearing officer may be appointed under

1 this section to serve as the designee for more than one agency representative.

2 (i) The costs of an independent hearing officer shall be borne by the state
3 agency whose head designated the hearing officer. The state agency may recover
4 the costs from an appellant if the appellant does not prevail regarding that
5 agency's permit decision or consistency statement, except that the agency may not
6 recover the costs if the appellant is indigent, or if the appeal was pursued in the
7 public interest, as determined under regulations adopted by the division.

8 (j) To facilitate joint appeal hearings, the coordinating agency may enter
9 into a cooperative agreement with another governmental entity that has
10 independent decision-making authority over the project that is the subject of the
11 appeal.

12 (k) Each agency representative, or hearing officer if one is appointed, for
13 an appeal shall rule on the admission of evidence or other procedural matters
14 relating to the point on appeal heard by that individual.

15 (l) The final decision on the merits of an appeal shall be made by the
16 agency representative or representatives for the appeal. If a hearing officer was
17 appointed under (h) of this section, the hearing officer shall make a
18 recommendation to the agency representative.

19 (m) The coordinating agency shall consolidate into one final decision all
20 of the decisions of the agency representatives for the appeal. The coordinating
21 agency shall distribute a copy of the final decision on appeal to each party to the
22 appeal and, if the appeal resulted in a change to an original final project decision
23 or final agency decision, shall publish a notice and summary of the final decision
24 on appeal in the Alaska Administrative Journal. Any permits or consistency
25 statements resulting from the appeal shall be issued within five working days after
26 distribution under this subsection of the final decision on appeal.

27 (n) A final decision on appeal under this section is a final administrative
28 order subject to AS 44.62.560 - 44.62.570.

29 (o) In this section, "final agency decision" means a permitting agency's
30 decision regarding a permit for a project exempted under AS 46.41.020.

31 **Sec. 46.41.110. Fees.** An applicant for a permit other than a permit for a

1 project exempted under AS 46.41.020 shall pay to the coordinating agency any
 2 fees, established by statute or regulation, that are applicable to application for or
 3 issuance of the permit. The coordinating agency shall collect the fees, account for
 4 and deposit the revenue, and forward all related records to the appropriate state
 5 agency.

6 **Sec. 46.41.120. Conflicts and compliance with federal requirements.** (a)
 7 If, regarding a project application, a provision of this chapter is found to be in
 8 conflict with an applicable federal requirement regarding the allocation of federal
 9 money to the state, the federal requirement controls, to the extent of the conflict,
 10 regarding that application.

11 (b) To the extent necessary to comply with procedural requirements of
 12 federal law relating to permit systems operated by the state, the coordinating
 13 agency, with the concurrence of the affected permitting agencies, may modify the
 14 notice, timing, hearing, and related procedural matters provided in this chapter.

15 (c) If necessary to comply with federal requirements regarding federal
 16 consistency determinations or certifications under 16 U.S.C. 1456(c), the division
 17 shall serve as the point of contact for federal consistency determinations or
 18 certifications for a particular proposed project. The coordinating agency, as
 19 determined under AS 46.41.040, remains responsible for all other aspects of the
 20 project's coordination.

21 **Sec. 46.41.130. Regulations.** After consultation with each resource agency,
 22 the division shall adopt regulations to implement the provisions of this chapter,
 23 including regulations that provide various general appeal procedures that allow the
 24 agency representatives for an appeal under this chapter to select and apply
 25 procedures appropriate to the particular appeal.

26 **Sec. 46.41.140. Consistency determinations for phased uses and activities.**

27 (a) The provisions of this section apply to a use or activity for which a
 28 consistency determination is required if

29 (1) at the time the proposed use or activity is initiated, there is
 30 insufficient information to evaluate and render a consistency determination for the
 31 entirety of the proposed use or activity;

1 (2) the proposed use or activity is capable of proceeding in discrete
2 phases based upon developing information obtained in the course of a phase; and

3 (3) each subsequent phase of the proposed use or activity is subject
4 to discretion to implement alternative decisions based upon the developing
5 information.

6 (b) When a use or activity is authorized or developed in discrete phases
7 and each phase will require decisions relating to a permit, lease, or authorization
8 for that particular phase, the agency responsible for the consistency determination
9 for the particular phase

10 (1) may, in its discretion, limit the consistency review to that
11 particular phase if, but only if,

12 (A) the agency or another state agency must carry out a
13 subsequent consistency review and make a consistency determination
14 before a later phase may proceed; and

15 (B) the agency responsible conditions its consistency
16 determination for that phase on a requirement that a use or activity
17 authorized in a subsequent phase be consistent with the Alaska coastal
18 management program; and

19 (2) shall, when the consistency review is limited under (1) of this
20 subsection, conduct the consistency review for the particular phase and make the
21 consistency determination based on

22 (A) applicable statutes and regulations;

23 (B) the facts pertaining to a use or activity for which the
24 consistency determination is sought that are

25 (i) known to the state agency responsible or made a
26 part of the record during the consistency review; and

27 (ii) material to the consistency determination; and

28 (C) the reasonably foreseeable, significant effects of the use
29 or activity for which the consistency determination is sought;

30 (3) shall, when the consistency review is limited under (1) of this
31 subsection, describe in the consistency determination the reasons for its decision

1 to make the consistency determination for the use or activity in phases.

2 (c) In this section, "agency responsible for the consistency determination"
3 means the coordinating agency under AS 46.41.040.

4 **Sec. 46.41.990. Definitions.** Unless provided otherwise, in this chapter

5 (1) "affected coastal resource district" means a coastal resource
6 district, as defined in AS 46.40.210,

7 (A) in which a project is proposed to be located; or

8 (B) that may experience a direct and significant impact from
9 a proposed project;

10 (2) "appeal" means a request for appeal or reconsideration of an
11 agency permitting decision or consistency statement;

12 (3) "consistency review" has the meaning given in AS 46.40.210;

13 (4) "consistency statement" means

14 (A) the findings of the consistency review together with any
15 necessary stipulations, conditions, or modifications to the proposed project
16 specifically described by reference to the related permit as defined in this
17 section or described in AS 46.40.096(a)(3);

18 (B) a response to a federal consistency certification or
19 determination authorized under 16 U.S.C. 1456(c) (Coastal Zone
20 Management Act);

21 (5) "coordinating agency" means the agency designated under
22 AS 46.41.040;

23 (6) "division" means the division of project assistance in the Office
24 of the Governor (AS 44.19.153);

25 (7) "local government" means a city or borough, including a unified
26 municipality;

27 (8) "permit" means a license, permit, or other authorization
28 described in AS 46.41.010(d);

29 (9) "permitting agency" means a state agency with responsibility for
30 (A) issuance of a permit, as defined in this section, sought
31 for a particular proposed project;

1 (B) issuance of a permit described in AS 46.40.096(a)(3)
2 sought for a particular proposed project; or

3 (C) coordinating the review of a federal consistency
4 determination or certification under AS 46.40.096(a)(1) for a particular
5 proposed project;

6 (10) "person" means an individual, a municipal, public, or private
7 corporation, or other entity, and includes a state agency, a local government, and a
8 department, agency, or instrumentality of the executive, legislative, or judicial branches
9 of the federal government;

10 (11) "process," "processing" and "processing of applications" includes
11 all steps and procedures followed in the course of reviewing and making a decision
12 regarding a project application under this chapter and includes a best interest finding
13 required for a permit under AS 38.05.035(e);

14 (12) "project" means a use or activity for which one or more permits,
15 or a consistency determination under AS 46.40.096(a)(1) or (3), are required before
16 construction or operation, and includes a use or activity that may be authorized in
17 discrete phases for purposes of consistency review under AS 46.41.140;

18 (13) "resource agency" means the

19 (A) Department of Environmental Conservation;

20 (B) Department of Fish and Game; or

21 (C) Department of Natural Resources;

22 (14) "state agency" includes a local or regional air pollution control
23 authority established under AS 46.14.400;

24 (15) "working days" means all calendar days except Saturdays,
25 Sundays, and days on which state offices are closed.

26 **Sec. 46.41.995. Short title.** This chapter may be cited as the Permit
27 Procedures Coordination Act.

28 * **Sec. 3.** AS 41.21.492(b) is amended to read:

29 (b) Nothing in AS 41.21.491 - 41.21.495 affects the responsibilities of

30 (1) the Department of Fish and Game, the Board of Fisheries, or the
31 Board of Game under AS 16 and AS 41.99.010;

- 1 (2) the Department of Environmental Conservation under AS 46.03; or
 2 (3) state agencies and municipalities under AS 46.40.096
 3 [AS 44.19.145(a)(11)] and AS 46.40.100.

4 * **Sec. 4.** AS 41.21.504(b) is amended to read:

5 (b) Nothing in AS 41.21.500 - 41.21.514 affects the applicability of

6 (1) AS 41.99.010 and AS 16 regarding the responsibilities of the
 7 Department of Fish and Game or the Board of Fisheries or the Board of Game;

8 (2) AS 46.03 regarding the responsibilities of the Department of
 9 Environmental Conservation; or

10 (3) AS 46.40.096 [AS 44.19.145(a)(11)] and AS 46.40.100 regarding the
 11 responsibilities of state agencies and municipalities.

12 * **Sec. 5.** AS 41.23.420(d) is amended to read:

13 (d) The provisions of AS 41.23.400 - 41.23.510 do not affect the authority of

14 (1) the Department of Fish and Game, the Board of Fisheries, the Board
 15 of Game, or the Department of Commerce and Economic Development under
 16 AS 08.54, AS 16, or AS 41.99.010;

17 (2) the Department of Environmental Conservation under AS 46.03; or

18 (3) state agencies and municipalities under AS 46.40.096
 19 [AS 44.19.145(a)(11)] and AS 46.40.100.

20 * **Sec. 6.** AS 44.19 is amended by adding a new section to read:

21 **Article 6A. Division of Project Assistance.**

22 **Sec. 44.19.153. Division of project assistance.** (a) There is established in the
 23 Office of the Governor the division of project assistance.

24 (b) The division of project assistance is administered by a director who is
 25 appointed by, and serves at the pleasure of, the governor.

26 (c) The director of the division of project assistance shall employ personnel
 27 as necessary to carry out the relevant provisions of AS 44.19.155 - 44.19.162 and
 28 AS 46.41.

29 * **Sec. 7.** AS 44.19.155(a) is amended to read:

30 (a) There is created in the Office of the Governor the Alaska Coastal Policy
 31 Council. The council consists of the following:

1 (1) nine public members appointed by the governor from a list
 2 comprised of at least three names from each region, nominated by the municipalities
 3 of each region; the nominees shall be the mayor or member of the assembly or council
 4 of a municipality or a member of a coastal resource service area board
 5 (AS 46.40.140); one public member shall be appointed from each of the following
 6 general regions:

7 (A) northwest Alaska, including, generally, the area of the North
 8 Slope Borough and the Northwest Arctic regional educational attendance area;

9 (B) Bering Straits, including, generally, the area of the Bering
 10 Straits regional educational attendance area;

11 (C) southwest Alaska, including, generally, the area within the
 12 Lower Yukon, Lower Kuskokwim, Southwest, and Lake & Peninsula regional
 13 educational attendance areas and the Bristol Bay Borough;

14 (D) Kodiak-Aleutians, including the area of the Kodiak Island
 15 Borough and the Aleutian, Adak and Pribilof regional educational attendance
 16 areas;

17 (E) Upper Cook Inlet, including the Municipality of Anchorage
 18 and the Matanuska-Susitna Borough;

19 (F) Lower Cook Inlet, including, generally, the area within the
 20 Kenai Peninsula Borough;

21 (G) Prince William Sound, including, generally, the area east
 22 of the Kenai Peninsula Borough to 141° W. longitude;

23 (H) northern Southeast Alaska, including the area southeast
 24 of 141° W. longitude and north of 57° N. latitude, including the entirety
 25 of the City and Borough of Sitka; and

26 (I) southern Southeast Alaska, including that portion of
 27 southeastern Alaska not contained within the area described in (H) of this
 28 paragraph;

29 (2) each of the following:

30 (A) the director of the division of project assistance
 31 [OFFICE OF MANAGEMENT AND BUDGET];

- 1 (B) the commissioner of commerce and economic
 2 development;
- 3 (C) the commissioner of community and regional affairs;
 4 (D) the commissioner of environmental conservation;
 5 (E) the commissioner of fish and game;
 6 (F) the commissioner of natural resources; and
 7 (G) the commissioner of transportation and public facilities.

8 * **Sec. 8.** AS 44.19.162 is amended to read:

9 **Sec. 44.19.162. Council staff.** The council shall use the staff of the division
 10 of project assistance [OFFICE OF COASTAL MANAGEMENT WITHIN THE
 11 OFFICE OF MANAGEMENT AND BUDGET] in discharging its powers and
 12 duties. The director [COORDINATOR] of the division [OFFICE OF COASTAL
 13 MANAGEMENT, UNDER THE DIRECTION OF THE COUNCIL CO-CHAIR
 14 WHO IS SELECTED FROM AMONG THE MEMBERS DESIGNATED IN
 15 AS 44.19.155(a)(2),] may contract with or employ personnel or consultants as
 16 [THE COORDINATOR CONSIDERS] necessary to carry out the powers and
 17 duties of the council.

18 * **Sec. 9.** AS 44.62.175(a) is amended to read:

- 19 (a) The lieutenant governor shall publish or contract for the publication
 20 of the Alaska Administrative Journal. The journal shall be published weekly. The
 21 journal must include
- 22 (1) notices of proposed actions given under AS 44.62.190(a);
 23 (2) notices of state agency meetings required under AS
 24 44.62.310(e), even if the meeting has been held;
 25 (3) notices of solicitations to bid issued under AS 36.30.130;
 26 (4) notices of state agency requests for proposals issued under
 27 AS 18.55.255, 18.55.320; AS 36.30.210; AS 37.05.316; AS 38.05.120; and
 28 AS 43.40.010;
 29 (5) executive orders and administrative orders issued by the
 30 governor;
 31 (6) written delegations of authority made by the governor or the

1 head of a principal department under AS 44.17.010;

2 (7) the text or a summary of the text of a regulation or order of
3 repeal of a regulation for which notice is given under AS 44.62.190(a), including
4 an emergency regulation or repeal whether or not it has taken effect;

5 (8) a summary of the text of recently issued formal opinions and
6 memoranda of advice of the attorney general;

7 (9) a list of vacancies on boards, commissions, and other bodies
8 whose members are appointed by the governor; [AND]

9 (10) in accordance with AS 39.52.240(h), advisory opinions of the
10 attorney general; **and**

11 **(11) notices regarding project decisions under AS 46.41.090 and**
12 **46.41.100.**

13 * **Sec. 10.** AS 46.03.880 is amended to read:

14 **Sec. 46.03.880. Applicability of the Administrative Procedure Act.** Except
15 as otherwise specifically provided in this chapter, AS 44.62 (Administrative
16 Procedure Act) governs the activities and the proceedings of the department.
17 **Notwithstanding AS 44.62.330(a)(44), adjudicatory hearing procedures to review**
18 **permit decisions under AS 46.03, AS 46.04, or AS 46.14 need not conform to**
19 **AS 44.62.330 - 44.62.630.**

20 * **Sec. 11.** AS 46.40.096 is repealed and reenacted to read:

21 **Sec. 46.40.096. Consistency reviews and determinations.** (a) A consistency
22 review is required for any activity or use that will be located in the coastal zone
23 or that could affect land or water uses or natural resources of the coastal zone,
24 and that

25 (1) is subject to consistency review under sec. 307 of the Coastal
26 Zone Management Act (16 U.S.C. 1456);

27 (2) is a function performed by or on behalf of a state resource
28 agency in the exercise of its statutory responsibilities, other than those described
29 in (1) or (3) of this subsection; or

30 (3) requires one or more state resource agency permits.

31 (b) A consistency review of an activity or use subject to (a)(1) or (3) of

1 this section shall be coordinated as provided in AS 46.41.

2 (c) A consistency review of an activity or use subject to (a)(2) of this
3 section shall be conducted as part of the agency's implementation of its statutory
4 responsibilities.

5 * **Sec. 12.** AS 46.40.100 is repealed and reenacted to read:

6 **Sec. 46.40.100. Compliance and enforcement.** (a) Municipalities and state
7 agencies shall administer land and water use regulations or controls in conformity
8 with district coastal management programs approved by the council and the
9 legislature and in effect.

10 (b) In addition to existing remedies, a state agency whose permit contains
11 a stipulation added as a condition of a consistency determination has the authority
12 to enforce that stipulation through a request for injunctive relief to the superior
13 court.

14 (c) In order to carry out its authority under AS 46.40.010 to review district
15 coastal management programs, the council may hear petitions brought by affected
16 persons concerning the compatibility of enforceable policies of a district coastal
17 management program with other enforceable local requirements.

18 * **Sec. 13.** AS 46.40.210 is amended by adding new paragraphs to read:

19 (9) "division" means the division of project assistance in the Office
20 of the Governor (AS 44.19.153);

21 (10) "permit" means a permit, lease, or other authorization,
22 initiated by an applicant, that is necessary to conduct an activity or use that will
23 be located in the coastal zone or that could affect land or water uses or natural
24 resources of the coastal zone; "permit" does not include state-initiated lease sales,
25 resource disposal programs, planning or classification activities, or transfers of title
26 to land or an interest in land.

27 * **Sec. 14.** AS 44.19.145(a)(11); 44.19.152(3); 44.19.152(4); AS 46.35.010, 46.35.020,
28 46.35.030, 46.35.040, 46.35.050, 46.35.060, 46.35.070, 46.35.080, 46.35.090, 46.35.100,
29 46.35.110, 46.35.120, 46.35.130, 46.35.140, 46.35.150, 46.35.160, 46.35.170, 46.35.200,
30 46.35.210; AS 46.40.040(6), 46.40.094, and 46.40.210(6) are repealed.

31 * **Sec. 15.** TRANSITION: REGULATIONS. The division of project assistance,

1 established by sec. 6 of this Act, shall solicit from state agencies a list of projects and
2 permits described in AS 46.41.020(b), enacted by sec. 2 of this Act. Notwithstanding sec.
3 18 of this Act, and after consultation with the resource agencies as defined in
4 AS 46.41.990, enacted by sec. 2 of this Act, the division of project assistance may
5 immediately proceed to adopt regulations as described in AS 46.41.020 and 46.41.130,
6 enacted by sec. 2 of this Act. The regulations take effect as provided in AS 44.62
7 (Administrative Procedure Act). The lieutenant governor shall notify the revisor of
8 statutes of the effective date of the regulations.

9 * **Sec. 16.** TRANSITION: PENDING MATTERS; RECORDS. (a) Except as
10 provided in (b) of this section, matters that would be affected by a provision of this Act
11 and that are pending completion by or before a state agency on the effective date
12 established under sec. 18 of this Act shall continue to completion as though this Act had
13 not taken effect.

14 (b) Matters that would be affected by a provision of this Act and that are pending
15 completion by or before the office of management and budget on the effective date
16 established under sec. 18 of this Act shall be completed by the division of project
17 assistance, established by sec. 6 of this Act. Other than the change in responsible state
18 agency, the matters shall be completed in accordance with the applicable statutes and
19 regulations as they existed on the day before the effective date established under sec. 18
20 of this Act. In completing the matters, the division of project assistance may implement
21 and enforce applicable regulations adopted by the office of management and budget.

22 (c) Records of the administrative unit of the office of management and budget
23 assigned the responsibility for functions addressed by this Act shall be transferred to the
24 division of project assistance.

25 * **Sec. 17.** Sections 1, 6, and 15 of this Act take effect immediately under
26 AS 01.10.070(c).

27 * **Sec. 18.** Sections 2 - 5, 7 - 14, and 16 of this Act take effect on the effective date of
28 regulations adopted under sec. 15 of this Act to implement AS 46.41.020, enacted by
29 sec. 2 of this Act.