

Title 26 - Environment Safety and Land Management Chapter 02 - Coastal Management  
Chapter 02 - Coastal Management

Chapter 02 - Coastal Management

26.0201 Adoption authority.

The American Samoa Coastal Management Program administrative code is adopted pursuant to authority granted the Department of Commerce under Public Law 21-35, the American Samoa Coastal Management Act of 1990, ASCA §§ 24.0501 et. seq.

26.0202 Purpose.

The provisions of this chapter govern the administration of the American Samoa Coastal Management Program. The Act mandates the establishment of a system of environmental review, along with economic and technical considerations, at the territorial level intended to ensure that environmental concerns are given appropriate consideration in the land use decision-making process. The provisions of this chapter establish a consolidated land use permitting process, known as the Project Notification and Review System, including development standards, procedures for the designation, planning and management of Special Management Areas, procedures for environmental assessments, and procedures for determination of federal consistency. The provisions of this chapter are not intended to negate or otherwise limit the authority of any agency of the Territory, provided that actions by agencies shall be consistent with the provisions contained herein. The provisions of this chapter are consistent with the Coastal Zone Management Act of 1972, as amended, 16 USC §§ 1451 et. seq.

26.0203 Construction.

The provisions of this chapter shall be construed to secure the just and efficient administration of the Act. In any conflict between a general provision and a specific provision, the specific shall control over the general.

26.0204 Definitions.

The following definitions shall apply:

A. Act means the American Samoa Coastal Management Act of 1990, ASCA §§ 24.0501 et. seq.

B. Agency means any executive, autonomous, or legislative board, department, office, commission, committee, or other instrumentality created by the Revised Constitution of American Samoa of 1967, the American Samoa Code Annotated, the American Samoa Administrative Code, or by executive order of the Governor.

C. Applicant means any person or agency of the territorial or federal government who, pursuant to the Act and provisions of this chapter, files an application for a land use permit.

D. Best management practices means economically achievable measures through the application of the best available practices, technologies, processes, siting criteria, operating methods, or other alternatives that will reduce, limit, or improve developmental impacts within the coastal zone.

E. Board means the Project Notification and Review System Board.

F. Chair means the Chair of the Project Notification and Review System Board.

G. Coastal resource means the land, air, water, minerals, flora, fauna, and objects of historic or aesthetic significance of the Territorial coastal zone. Coastal resources include, but are not limited to, submerged lands, reef systems, groundwater recharge areas, archaeological/cultural/historic resource sites and properties, Special Management Areas, pristine ecosystems, mangroves, wetlands, beaches, areas of scientific interest, recreational areas, undisturbed native vegetation, and critical habitat.

H. Container means a single rigid, intermodal dry cargo, insulated refrigerated, flat rack, liquid tank, or open door container, demountable, without wheels or chassis attached, furnished or approved by ocean carriers for transportation of commodities aboard ocean going vessels.

Modules are generally known as 20-footers and 40-footers, even though they may be less than twenty (20) or forty (40) feet in length. Sean vans (types used for household goods) or other similar shipping container or cargo boxes are excluded from this definition.

I. Days mean normal calendar days, including holidays, unless otherwise indicated “business days.”

J. Director means the Director of the Department of Commerce or his designee.

K. Environment means humanity’s surroundings, inclusive of all the physical, economic, and social conditions that exist within the area affected by a proposed action, including land, human, and animal communities, air, water, minerals, flora, fauna, and objects of historic or aesthetic significance.

L. Feasible means capable of being accomplished in a reasonable period of time, taking into account economic, social, technological, and environmental factors. Use of this word includes, but is not limited to, the concept of reasonableness and likelihood of success in achieving the project goal or purpose.

M. Feasible alternatives means alternatives to the proposed project, use or activity, and applies both to locations or sites, to methods of design or construction, and includes a “no action” alternative.

N. Federal government means the government of the United States of America.

O. Manager means the American Samoa Coastal Management Program Manager who is responsible for the overall implementation and administration of the American Samoa Coastal Management Program.

P. Matai means the titled head of a Samoan extended family, the Sa’o.

Q. Person means any individual, partnership, firm, association, trust, estate, private corporation, an agency of the territorial or federal government or other legal entity.

R. Public need means a need of the people of the Territory as opposed to the needs of an individual or group of individuals. In assessing whether there is a public need, one must look at the basic service provided and to whom the service is provided. The basic purpose must be one for which a village, group of villages, county, district, or the Territory, has a demonstrated need.

S. Pulenu'u means the official representing central government in a village; the village mayor.

T. Sami means shoreline and refers directionally towards the ocean or away from the mountains.

U. Sustained yield means resource management used to achieve a balance between the rates of renewable resource consumption and renewal, recruitment, or productivity.

V. Territory means the United States Territory of American Samoa.

W. Water-dependent means a project, use or action, which can be carried out only on, in, or adjacent to water areas because it requires access to water.

X. Water-related means a project, use or action which is not directly dependent upon access to a water body, but which provides goods or services that are directly associated with a water-dependent use.

26.0205 Interagency coordination.

A. All territorial agencies and their employees shall conform to the provisions of this chapter. These agencies shall ensure that their activities, or any possible indirect result of their activities, shall further the purposes, objectives and policies of the Act.

B. The Director shall schedule periodic meetings or workshops with the Board member agencies in order to ensure that practices and procedures under the provisions of this chapter are fully understood to maximize coordination, thoroughness, and attainment of the purposes, objectives and policies of the Act and the provisions of this chapter.

26.0206 Establishment of the Project Notification and Review System: jurisdiction, members, conduct of meetings, voting.

A. There is established and consolidated within the Department of Commerce a streamlined land use permit system that integrates the permitting requirements of each of the territorial agencies concerned with environmental management and shall be known as the Project Notification and Review System.

B. The jurisdiction of the Project Notification and Review System shall be the coastal zone of American Samoa.

1. Coastal zone or coastal zone area means the coastal waters, including the waters therein and thereunder, in proximity to the shorelines of the Territory, and includes islands, transitional and intertidal areas, salt marshes, wetlands, and beaches. The coastal zone extends inland from the shorelines to the extent necessary to control the shore, the use of which has a direct and significant impact on the coastal waters. Excluded from the coastal zone are lands the use of which is by law subject solely to the discretion of or which is held in trust by the federal government, its officers or agents, and to control those geographical areas which are likely to be affected by or vulnerable to sea level rise.

2. The American Samoa coastal zone includes the entire island of Tutuila, the Manu'a Islands, Aunu'u Island, Rose Island, and Swains Island in the Territory of American Samoa and all coastal waters and submerged lands for a distance of three (3) nautical miles seaward in all directions therefrom.

C. Members of the Project Notification and Review System:

1. The Project Notification and Review System shall be administered by the Project Notification and Review System Board.

2. Members of the Board shall be the directors or their designee of the Territory agencies which have permitting or regulatory authority on land use development and environmental matters in the coastal zone.

3. The Board includes the following:

a. Department of Commerce; American Samoa Coastal Management Programs;

b. American Samoa Environmental Protection Agency;

c. American Samoa Historic Preservation Office;

d. American Samoa Power Authority;

e. Department of Health;

f. Department of Marine and Wildlife Resources;

g. Department of Parks and Recreation; and

h. Department of Public Works.

4. The Director shall appoint an ex-officio Chair who shall chair regular and special meetings and public hearing, but who shall not vote, provided that if the Board is evenly divided, then the Chair shall cast the deciding vote.

5. The American Samoa Coastal Management Program shall provide support staff for the Board and all necessary supplies.

## D. Meetings

1. The Board shall convene regular meetings or special meetings at times and places as determined by the Chair. Minutes of all meetings shall be kept and shall be reviewed and approved by the Board and made available to the public upon request. Board proceedings shall be informal and presided over by the Chair. The presence of five (5) members shall constitute a quorum.

a. Regular meetings shall be scheduled for the first and third Wednesday of each month, unless the Director determines that rescheduling is appropriate due to a public holiday or a government function.

b. Special meetings may be scheduled by the Director upon receiving a written request from a land use permit applicant that the Board's review of a project, use or activity is necessary rather than at the regular meeting dates. All procedures and policies shall be applied to special meetings.

2. All meetings of the Board shall be open to the public and public notice shall be given. The Board may adjourn and reconvene in executive session for the purpose of consulting with staff regarding legal, technical, and personnel matters. Minutes of the executive session are confidential and shall be stored in such a manner to protect confidentiality.

## E. Voting

1. All sections by the Board shall be by vote and publicly cast.

2. Each member agency shall have one vote.

3. Unless otherwise provided by the provisions of this chapter all actions taken by the Board shall be by majority vote of those present.

4. All Board members participating in decisions regarding land use permits shall do so in a fair and impartial manner.

a. Board members shall not participate in decisions on land use permit where there exists and appearance or an actual conflict of interest.

b. If any member agency of the Board submits a land use permit application, that member agency shall be recused from voting on the proposed project.

c. A representative of a Board member agency who is recused hereunder shall be counted for purposes of determining a quorum.

F. Pursuant to ASCA § 24.0506, any agency of the Territory may be called upon by the Board to advise on projects relevant to their particular authority or jurisdiction.

#### 26.0207 Land use permit application procedures, fees, and penalties

A. Applicability. All persons proposing to undertake any action which may cause or threaten an adverse impact to coastal resources shall apply for a land use permit, except where specifically exempted by law.

1. A land use permit means a written authorization signed by the Director on an approved form that authorizes a specified party to undertake a specified project, use or action.

2. A land use permit application is necessary for all physical project work, including, but not limited to, site preparation, filling, grading, dredging, excavation, and erection or siting of structures.

B. Burden on applicant. In all cases, the burden is on the applicant to obtain the proper permits and signatures required for the project prior to commencement of the work. Federal permits may also be necessary for certain projects. The American Samoa Coastal Management Program will make reasonable attempts to assist a land use permit applicant with

federal permit application requirements; however obtaining federal and territorial permits and approvals, such as from the Zoning Board and the Territorial Planning Commission, remains the responsibility of the applicant.

C. Preapplication consultation. A preapplication consultation may be held between prospective land use permit applicants and the American Samoa Coastal Management Program to determine the likelihood of the project, use or action being proposed having an adverse impact on coastal resources requiring a land use permit. If so determined, the American Samoa Coastal Management Program shall make a preliminary determination whether the project constitutes a major or minor project and shall assist the applicant in identifying the information required to submit a land use permit application. The American Samoa Coastal Management Program shall also assist the applicant in understanding the applicable provisions and procedures of the Act and the provisions of this chapter and shall assist the applicant in scheduling any necessary subsequent meetings.

D. Scoping meetings for major projects. For those projects, uses or activities of sufficient complexity that benefits might be derived from preliminary assessment by several agencies, a scoping meeting of the Board, and other invited agency and members of the public, may be requested by the prospective applicant or any member of the Board. Such scoping meetings shall be solely for the purpose of discussing conceptually the proposed project, in order to obtain preliminary feedback as to the type and degree of impact analysis that may be required, and to determine, if possible, any other local and federal permits that may be required.

E. When to file. Land use permit application forms shall be made available at the Department of Commerce. The completed land use permit application shall be filed with the Department of Commerce for review at any time during normal business hours.

F. Application package.

1. The land use permit application shall be accompanied by the following documents:

a. a vicinity map;

b. a fully dimensioned site plan that shall include topographic data at a scale appropriate to discern the principal features of the site, a functional floor plan, a container plan, and a parking plan;

c. an erosion control plan necessary to reduce non-point source pollution that includes existing contours and proposed final grading of the site, existing and proposed drainage, a description of adjacent and down slope sites, and a narrative of how the proposed drainage plan will impact those sites;

d. a federal consistency certification (or if a federal agency, a consistency determination) and an environmental assessment, if applicable; and

e. any other supporting documentation that may be required by law or by the provisions of the chapter.

2. All information submitted with the application or at any other time in the review process shall be public information, provided that certain proprietary information, not material to a review of project compliance, may be withheld if requested in writing to the Chair and such request is approved.

G. Information requirements. The land use permit application shall contain at a minimum the following information:

1. applicant's name, mailing address, and telephone number;

2. applicant's representative, if any, and architect, engineer or contractor, if any, including their mailing address and telephone number;

3. applicant's interest in the project site, e.g., owner, lessee;

4. name of the landowner or the matai for the project site;

5. signature of the matai, if communal land;
6. signature of the pulenu'u, if communal land;
7. signature of the secretary of Samoan Affairs if, communal land;
8. signature of the Governor, if government land;
9. copy of the legal title to the land, if privately owned land;
10. copy of lease or license agreement, if title is held under such agreement;
11. project name and description;
12. concise written narrative describing the project and its function;
13. site description and location;
14. construction methods, including dredge, fill or excavation requirements, if any;
15. total project cost for all projects and, if federal funds are involved, funding source;
16. distance of project from the shoreline, if project is located within two hundred feet (200') of the shoreline;
17. current and projected utility requirements and connections, including streets, sewer, water, electricity, fuel (including storage on site) and all existing and proposed line locations, including size and engineering requirements;

18. statement of compliance with the policy objectives of the American Samoa Coastal Management Program

19. copies of all correspondence on the project with the Board member agencies or any other governmental agency; and

20. copies of all federal permits or applications or documentation from the appropriate agency showing that the project is being carried out pursuant to an existing federal permit, license, or grant.

H. Declaration of applicant. A land use permit application shall include a signed declaration by the applicant that the information supplied in the land use permit application, including all exhibits and attachments, is true and correct, under penalty of law.

I. Administrative fees and penalties. At the time of filing a land use permit application, payment of an administrative fee is required. The “Cost of Project” shall be determined in accordance with the Uniform Building Code as adopted in the Territory, and shall include all improvements associated with the project. There shall be no administrative fee for government agency-funded projects or projects of not-for-profit U.S. Internal Revenue Code § 501(c)(3) corporations; however, penalties shall be assessed for government and not-for-profit projects that commence prior to the Director issuing a land use permit.

1. Administrative fees shall be set in accordance with the following fee schedule:

a. Exempt and grandfathered projects requesting certification for utility connection: no administrative fee.

b. Minor and major projects: fees shall be determined by the actual cost of the project or the anticipated value of the project, whichever is greater.

(i) Less than \$10,000

\$10

(ii) \$10,000 to \$29,999

\$25

(iii) \$30,000 to \$49,999

\$50

(iv) \$50,000 to \$249,999

\$150

(v) \$250,000 to \$499,999

\$300

(vi) \$500,000 to \$1,000,000

\$500

(vii) For each additional \$1,000,000 increment or portion thereof, there shall be assessed an additional fee of \$500.

2. After-the-fact penalty for filing a land use permit application after work commenced.

a. In addition to the land use permit fee and other penalties provided by law or the provisions of this chapter, a penalty of \$100 or 200% of the land use permit fee, whichever is greater, shall be assessed for a project for which physical work has been commenced prior to receiving a valid land use permit.

(i) Less than \$10,000

\$100

(ii) \$10,000 to \$29,999

\$100

(iii) \$30,000 to \$49,999

\$100

(iv) \$50,000 to \$249,999

\$300

(v) \$250,000 to \$499,999

\$600

(vi) \$500,000 to \$1,000,000

\$1,000

(vii) For each additional \$1,000,000 increment or portion thereof, there shall be assessed an additional penalty of \$1,000.

b. The Board shall not issue a land use permit until all administrative fees, after-the-fact penalties, stop work orders, or citations, as consistent with this chapter, are resolved.

J. In the case of work commenced without a land use permit, should the Board determine that the applicant is not eligible for a land use permit, the applicant shall restore the site to its pre-work condition.

1. If the applicant refuses or is unable to take the required remedial action, the American Samoa Government may perform the necessary remedial action, and

2. the applicant shall be financially responsible for all costs associated with the necessary remedial action to restore the site to its pre-work condition.

26.0208 Types of activities; grandfathered, exempt, minor and major projects.

A. Grandfathered use.

1. Grandfathered use means any non-conforming structure that was a previously lawful project, use or activity existing as of May 29, 1980, the date that the Act was enacted, but that is not in conformity with the current provisions.

2. Grandfathered uses may be continued, provided that any grandfathered use or building shall conform with the provisions of this chapter, if the project, use or activity:

a. Changes to another use.

b. Resumes after discontinuance for a period of one year or more.

c. Alters or extends the footprint of the structure.

3. The American Samoa Coastal Management Program shall certify that the structure is grandfathered under the provisions of this chapter for utility connection.

B. Exempt activity.

1. Exempt activities means projects which do not adversely impact coastal resources, and thus shall not require a land use permit.

2. Exempt activities include:

a. constructing and maintaining a Samoan umu or cook house, or a faleo'o or small guest house;

b. maintaining or repairing an existing single family home or other structure, that does not change the footprint, increase dimensions, or change the use of the structure;

c. connecting utilities, including water, sewer, and electricity, provided that a valid land use permit or a grandfather certificate exists for the structure for which the connection is requested;

d. siting intermodal containers or freezer containers for the purposes of loading and off-loading which does not exceed thirty (30) days; provided that if siting exceeds thirty (30) days, placement of containers shall be classified as a major project;

e. landscaping, including clearing and grading, that does not exceed ten (10) cubic yards of topsoil, provided that cider shall not be used;

f. erecting non-permanent structures for political campaign, public service or fund raising activities and government sponsored cultural celebrations, events or activities that do not exceed seventy-two [72] hours;

g. traditional Samoan uses which means low-intensity or low-density traditional subsistence or communal uses and practices, which use traditional methods and materials. Such uses may not surpass the sustained yield of any given resource; and

h. subsistence taking and gathering of animals, fish, sea creatures or vegetation historically used in the Samoan islands by traditional methods for the personal use of the immediate family; except that:

(1) animal husbandry, including piggeries, shall be classified as a major project;

(2) subsistence hunting, fishing, and agricultural activities do not include commercial, for profit or for barter activities.

(3) subsistence activities, while exempt from the need for a land use permit, are not exempt from compliance with other federal or territorial laws or regulations.

3. If a person assumes that the project, use or activity is exempt, and the American Samoa Coastal Management Program later determines that the project is not exempt, but rather that the project, use or activity is a minor or major project, the person is responsible for administrative fees, after-the-fact penalties for building without a valid land use permit, and any possible citations that may have been issued as consistent with this chapter.

#### C. Minor projects.

1. Minor projects means any project, use or action that may have an adverse impact on coastal resources, particularly when viewed within the context of the cumulative or secondary impacts; provided that, where the location of project has the potential for significant adverse impacts on coastal resources, the project, use or activity shall be deemed a major project.

2. Minor projects include:

a. constructing a single family home;

b. constructing Samoan cultural facilities including: fautasi boat houses, faletalimalo or guest house, and fale leoleo or guardhouses;

c. constructing structures or extensions to existing non-commercial structures that do not exceed one hundred twenty (120) square feet; and

d. erecting non-permanent structures that shall not exceed thirty (30) days, provided that this section shall not apply to the placement of intermodal containers or freezer containers.

D. Major projects.

1. Major projects means a proposed project, use or action which is likely to have significant adverse impact on coastal resources.

2. Major projects include, but are not limited to:

a. creating, expanding, or extending any commercial activity;

b. siting permanently or continually replacing intermodal containers or freezer container, including enclosing, connecting utilities, or any other permanent action which exceed thirty (30) days;

c. creating a new, or relocating an existing, discharge of pollutants to ocean, surface, or ground waters;

d. substantially increasing the volume of discharge or the loading of pollutants, including air pollution, from an existing source or from new facilities to receiving waters;

e. significantly impacting the quality of the human environment, either individually or cumulatively;

f. siting major facilities;

g. landfilling, excavating, disposing of dredged materials, mining, quarrying;

h. incinerating private, municipal or medicinal wastes;

i. dredging or filling marine or fresh waters, point source discharging of water or air pollutants, ocean dumping, or constructing artificial reefs;

j. establishing or expanding agriculture or livestock facilities, including:

(1) silviculture or timber operations;

(2) aquaculture facilities, which means the culture or commercial production of freshwater or marine plants or animals for research or food production; and

(3) subsistence animal husbandry, including piggeries.

k. contaminating ground water, including underground injection of hazardous wastes or fluids used for extraction of minerals or oil, or of certain other fluids with potential to contaminate ground water;

l. projects, uses or activities under the direct or indirect jurisdiction of a federal agency, including:

(1) those carried out by or on behalf of the agency;

(2) those carried out with federal financial assistance;

(3) those requiring a federal permit, license, or approval; and

(4) those subject to territorial or local regulation administered pursuant to a delegation or approval by a federal agency.

m. locating any project use or action within or adjacent to a Special Management Area, or any other designated resource management area of the Territory, including but not limited to the following;

(1) Fagatele Bay National Marine Sanctuary;

(2) American Samoa Tia Seu Lupe Monument;

(3) National Park of American Samoa; and

(4) Ofu-Vaota Marine Park.

n. project, uses or activities the cost of which is greater than \$250,000;

o. project, uses or activities that have the potential for significant adverse impacts on floodplains, coastal hazards areas or erosion prone sites; or

p. in the view of any single agency member of the Board, are found to have the potential for a significant adverse impact on coastal resources.

26.0209 Review of land use permit applications.

A. Acceptance for review. Acceptance for review means a formal determination that a document is sufficiently complete to commence its review.

1. Upon filing the application with the Department of Commerce, the Manager shall ensure that the application is complete, that the vicinity map and site plan are acceptable, and that all other necessary documents are attached.

2. If any additional information is required, the applicant will be notified; provided that, if the required information is not provided by the applicant within ninety (90) days of the notification, the land use permit application shall be considered void.

3. Once all necessary materials are submitted by the applicant, the Manager shall: make a determination of whether the project is a major or minor project; make a determination of acceptance for review; and notify the applicant.

#### B. Public notice.

1. Minor projects. Upon acceptance for review the American Samoa Coastal Management Program shall post notice of the application at the Department of Commerce. The notice shall remain posted for three (3) business days. No action on the permit can be taken during the notice period.

2. Major projects and project requesting federal consistency. Upon acceptance for review the American Samoa Coastal Management Program shall post notice in the Department of Commerce which shall remain posted until a final decision has been made. Additionally, the notice shall be published in a newspaper of general circulation in the Territory, at least one (1) week prior to the Board's review of any project, use or activity. The notice shall contain: the status of the project review; a statement that a record of the project proposal is available for public inspection; a statement that public comments will be considered; and information on the procedures by which the public may request a public hearing, and the date, time, and location of the Board's review of the land use permit application under consideration. The applicant shall be given at least seven (7) days written notice of the meeting.

#### C. Site visit.

1. The American Samoa Coastal Management Program shall conduct a site visit and prepare a report prior to taking action on any land use permit application. The report shall be maintained as part of the application record.

2. For major projects the American Samoa Coastal Management Program shall coordinate a site visit for the Board and prepare a report prior to taking action on my land use permit application.

D. Review standards.

1. The proposed project shall be reviewed in accordance with the Act and the provisions of this chapter.
2. The issuance of an approved land use permit does not relieve an applicant from complying with any other required territorial or federal permits, licenses, clearances, or approvals which may be required by law or regulation.
3. Reclassification of a project from minor to major. Any Board member may reclassify a minor project to a major project. The justification for the reclassification shall be stated in writing and added to the applicant's file. Upon reclassification, all provisions of this chapter applicable to major projects shall apply.

E. Minor project review.

1. Minor projects shall be reviewed by the American Samoa Coastal Management Program who may consult with diverse government agencies for technical assistance.
2. A decision shall be issued not less than five (5) business days from the close of the published notice, provided that any Board member has not reclassified the project, use or activity as a major project.

F. Major project review.

1. Major projects shall be reviewed, evaluated, and a decision made by the Board at a regular or special meeting.
2. A decision on a land use permit application for a major project shall be issued within forty-five (45) days from acceptance for review.

a. The forty-five (45) days review period shall be suspended if:

(1) The applicant or a designee fails to appear at a regular meeting, special meeting or public hearing on three occasions without giving twenty-four (24) hours notice requesting a continuance, the Board shall void the land use permit application;

(2) Additional information is requested by any Board member agency in order to properly evaluate the project, provided that if the required information is not provided by the applicant within ninety (90) days of the request, the Board shall void the land use permit application:

(3) A public hearing is held; or

(4) Any member of the Board determines that an environmental assessment is necessary to properly evaluate the project.

b. The forty-five (45) day period for review shall commence upon receipt of the additional information required, the date the public hearing is concluded, or the acceptance by the Board of an environmental assessment.

3. Public testimony shall be heard by the Board when the land use permit application is scheduled to be heard, as published in the public notice, and all public testimony shall become part of the land use permit applicant's permanent file.

4. Public hearings.

a. A public hearing on a major project shall be held in or near the village in which the project, use or activity is located, provided that a request is made in writing to the American Samoa Coastal Management Program by:

(1) any Board member agency;

(2) any other territorial or federal agency;

(3) any publicly funded organization representing no less than twenty-five (25) members;

(4) any landowner or occupier within two hundred (200) feet of the project site;

(5) no less than twenty-five (25) members of the public; or

(6) the project includes the construction of major facilities.

b. A public hearing shall be called as soon as practicable after the determination is made to hold a public hearing, but in no event shall a public hearing be held with less than fourteen (14) days notice posted at the Department of Commerce, and published at least once a week for two (2) consecutive weeks in a newspaper of general circulation in the Territory.

c. The Board may exempt from the public hearing requirements any major project which is funded by federal grants that has had a public hearing equivalent to the environmental review process of the Project Notification Review System, as provided by this chapter, as part of the grant process. In such case the record of the prior public hearing shall be filed with the Board.

5. Written technical findings shall be prepared by each Board member with jurisdiction.

a. If additional permits e.g., water quality certification, are required, those Board members with jurisdiction shall comment on the requirements.

b. If appropriate, project modifications, alternatives or mitigating conditions shall be proposed.

c. If a project is found by a Board member not to be in compliance, or capable of complying, with the requirements of the board member's agency, a written basis for such determination shall be provided to the Board.

d. Technical findings and recommendations of the Board and public comments shall be maintained as a part of the record.

6. Upon review of the entire record, the Board shall determine whether the proposed project, use or action complies, or reasonably can be conditioned to comply, with the Act, the provisions of this chapter, and with the respective jurisdiction of each member of the Board.

a. An approved or conditional land use permit requires a unanimous vote of the Board members present.

b. The Board's decision shall include written findings of fact and conclusions of law.

26.0210 Land use permits; issuance, duration, and contents.

A. Issuance and duration

1. Upon a determination by the Manager in the case of a minor project, or recommendation of the Board in the case of a major project, the Director shall approve, approve with conditions, or deny the land use permit application.

2. Physical development of the project which is approved under a land use permit shall commence within one (1) year of the date the land use permit is issued, and shall be completed within two (2) years of the date of issuance; except:

a. If physical development of the project is not commenced within one (1) year of the date the land use permit is issued, the land use permit shall be voidable by the Board;

b. If work is discontinued for a period of one (1) year or more, that land use permit is considered abandoned and a new land use permit application shall be required; and

c. If the project is not completed within two (2) years of the date the land use permit is issued, the Board may extend the permit duration upon request by the applicant within six (6) months of the permit expiration day.

3. The land use permit shall be posted at the site prior to commencing physical development and visible to the public throughout the duration of the project.

## B. Contents

1. The land use permit shall be issued on a standard form prepared by the Department of Commerce and shall contain at a minimum the following information:

2. purpose and scope of the land use permit;

3. all conditions imposed by the Board;

a. All land use permit conditions shall be incorporated into the final design plans of a land use permit.

b. The land use permit shall be submitted to each Board member agency having jurisdiction over the conditions imposed who shall be responsible for the enforcement of the conditions.

c. A performance bond or cash equivalent may be required by the Board if a failure to adhere to the terms and conditions of a land use permit may result in or threaten damage to coastal resources, including beyond the boundaries of the project site.

d. All conditions imposed on a land use permit shall be for the term of the permit, unless otherwise stated.

4. duration of the land use permit;

5. notice that the American Samoa Coastal Management Program or member agencies of the Board have legal authority, as provided by this chapter, to periodically inspect the project; and

6. notice that any deviation from the purpose and scope of the land use permit, or any violation of the conditions of the permit, shall subject the permittee to financial penalties and/or revocation of the permit as provided by this chapter.

26.0211 Land use permits: amendment.

A. An amendment to a land use permit shall be required of all projects before significant alterations or expansions occur.

B. The permittee shall submit a revised land use permit application for consideration of the Board as consistent with the provisions of this chapter.

C. Alterations and expansions requiring an amended land use permit include, but are not limited to:

1. a project change which increases the project cost by 25% or more;

2. a project change which increases the square footage of the project by 10% or more;

3. a modification or deviation of the site plan which causes new or increased adverse impacts on coastal resources; or

4. a change in the proposed use.

26.0212 State of emergency and emergency land use permits.

A. Upon a declaration of a state of emergency by the Governor, due to a natural catastrophe or other act of God, or that the provision of emergency services or repairs is necessary for the public good, including the preservation of human life and property, an emergency land use permit may be granted.

B. An applicant may seek an emergency land use permit by application to the Director under the following procedures:

1. The Director shall issue an emergency land use permit in writing to the agency providing the emergency services or repairs, accompanied by written findings of fact and conclusions of law.

2. The emergency land use permit shall allow the stated activities to occur for a period not to exceed ninety (90) days.

3. Notice shall be published at least twice post hoc in a newspaper of general circulation in the Territory, specifying the duration of the emergency land use permit and citing the reasons for the emergency land use permit.

4. An emergency land use permit does not relieve the emergency land use permittee from compliance with all other applicable territorial and federal laws and regulations.

26.0213 Monitoring and regulation, authority and duty.

A. The Manager, or any Board member agency, shall have the authority and duty to investigate, monitor and regulate any and all projects, uses and activities that require a land use permit pursuant to the provisions of this chapter.

B. An application for a land use permit shall constitute consent by the applicant that representatives of the American Samoa Coastal Management Program, or any Board member

agency, may enter the site of a proposed project, use or action, at any reasonable time, for the purpose of inspecting the site, before or after issuance of a land use permit.

C. If the Manager or any Board member agency, has reasonable cause to believe a criminal offense has been committed under the Act, the action shall promptly be reported to the Office of the Attorney General. These provisions do not limit the authority of any Board member to report offenses directly to the Attorney General.

#### 26.0214 Stop work orders.

A. The Manager may issue a stop work order, upon finding reasonable cause to believe that a project, use or action violates one or more provisions of the Act, the provisions of this chapter or the terms and conditions of a land use permit or that an imminent threat exists of adverse impact.

B. The stop work order shall specify:

1. the provisions of law or the conditions of the land use permit alleged to be violated and a statement of facts constituting the violation; and

2. the corrective measures, if any, necessary to satisfy compliance with the Act and the provisions of this chapter, including but not limited to, immediate removal of any fill, structure, or other material, and provide for a time period in which compliance shall be effected; and

3. that sanctions specified by the Act and the provisions of this chapter may be imposed, unless the corrective measures are taken in the time period provided, and advise that the stop work order may be contested as provided by this section. At the discretion of the Manager, the stop work order may authorize specific mitigation work to be performed.

C. The stop work order shall be personally served upon the land use permittee, if any, or the person in charge at the site of the project, use or action, and shall be posted at the site.

1. Copies of the stop work order shall be sent to the Building Division, Department of Public Works.

2. It is a violation of the provisions of this chapter to remove or otherwise deface a posted stop work order.

D. A stop work order may be contested by its recipient upon giving notice, in writing, to the Manager within five (5) days of service of the stop work order.

1. If a recipient of a stop work order submits a land use permit application within ten (10) days of the stop work order, the land use permit shall be reviewed and considered by the Board pursuant to the same procedures applicable to a major project.

2. In the event a stop work order is contested, the Manager shall schedule a hearing before the Board at its next regularly scheduled meeting and notify the contestant at least twenty-four (24) hours before the hearing. The Board may approve, approve with conditions, or overturn the stop work order by a unanimous vote. A decision shall be rendered within thirty (30) days of the hearing and be accompanied by findings of fact and conclusions of law.

E. In the event the recipient of a stop work order does not comply with the terms of the stop work order or the decision of the Board, if appealed, the matter shall be referred to the Office of the Attorney General. The Attorney General is authorized to petition the High Court of American Samoa for injunctive relief to obtain compliance.

F. The stop work order shall remain in effect, except for mitigative work authorized by the Manager, if a citation has been issued, until the citation is adjudicated and all fines and costs paid.

26.0215 Citations.

A. Citations.

1. A person shall not engage in activities without an approved land use permit, including but not limited to: site preparation, filling, grading, dredging, excavation, erection or siting of temporary or permanent structures or the permanent siting of containers.

2. A land use permittee shall not engage in activities in violation of an approved land use permit, including the terms and conditions so stated;

3. A person shall not violate the provisions of this chapter on Special Management Areas;

4. A person shall not violate the provisions of this chapter on wetlands, including, but not limited to:

a. filling wetlands;

b. siting a project, use or activity within the wetlands setback area;

c. siting a project, use or activity within the stream setback area; and

d. hardening of stream banks.

5. Any other violation of this chapter.

#### B. Service of process for citations

1. As provided in ASCA § 24.0509, upon finding reasonable cause to believe that a project, use or action violates one or more provisions of the Act, the provisions of this chapter, or the terms and conditions of a land use permit, the Manager or his designee may issue a citation therefore.

2. The citation shall be personally served upon the land use permittee, if any, or the person in charge at the site of the project, use or action, and shall be posted at the site. Copies of the citation shall be sent to the Attorney General and filed with the District Court of American Samoa.

a. The form of the citation shall be approved by the Attorney General.

b. The citation shall be signed by the Manager or his designee at the time of service.

c. The citation shall specify the provisions of law or the land use permit condition(s) alleged to be violated.

d. The citation shall contain a statement of facts constituting the violation; and

e. The citation may include corrective measures, if any, necessary to satisfy compliance with the Act and the provisions of this chapter, including but not limited to, immediate removal of any fill, structure, or other material, and provide for a time period in which compliance shall be effected.

3. A citation may answered in the manner provided in this section.

a. If the citation is not answered by appearance, plea, and waiver before the District Court of American Samoa before the close of business hours within seven (7) business days from the date of service of the citation, the defendant must appear in the District Court of American Samoa at the time and date indicated thereon.

b. A complaint signed and sworn to by the person who issued the citation, i.e. the Manager or his designee, shall be filed with the clerk of the court before any offense may be heard or plea taken in court. The complaint shall be substantially in the form prescribed for a citation in this section. It may also contain other information pertinent to the alleged offense.

4. Plea and trial

a. After reading the complaint to the defendant, the District Court of American Samoa shall ask the defendant to answer. If the defendant does not contest the allegations, the District Court of American Samoa shall assess the appropriate fine. If the defendant contests the allegations, the person who issued the citation, i.e. the Manager or the Compliance Review Officer, shall present the District Court of American Samoa with the grounds on which it was issued, adding evidence to this end. The Attorney General may assist to the extent deemed necessary.

b. The defendant may then introduce evidence to establish the fact that liability should not be imposed.

c. The District Court of American Samoa may examine the evidence and question the parties and their witnesses at any time.

d. Any person charged with a violation of the Act, the provisions of this chapter or a condition of a land use permit may appear before the clerk of the court in person before the close of business hours and within seven (7) business days from the date of service of the citation and, upon signing a waiver of trial, pay the fine for the offense charged. Prior to signing a waiver of trial and payment of the fine, the person charged with a violation shall be informed of his or her right to appear before the District Court of American Samoa and that a waiver shall have the same force and effect as a judgment of the District Court of American Samoa.

C. It is a violation of the provisions of this chapter to remove or otherwise deface a posted citation.

1. The citation shall remain in effect and all project work shall cease, except for mitigative work authorized by Manager, until the citation has been adjudicated, and, if applicable, all fines and costs are paid.

2. In addition to any civil or criminal penalty, the applicant shall immediately restore the site to the pre-offense condition at no cost to the Territory.

26.0216 Revocation of a land use permit.

A. If the Manager determines that a land use permittee has violated a provision of the Act, a provision of this chapter or any provision of a land use permit, or that an imminent threat exists to coastal resources or the public's health, safety, or welfare, a land use permit may be revoked pending a hearing before the Board.

B. Revocation of a land use permit

1. Where a land use permittee is in violation of the Act, a provision of this chapter or any provisions of a land use permit, or where a stop work order or citation has been issued, the Manager shall initiate revocation proceedings by issuing a notice of revocation to the land use permittee, citing the nature of the violation, the legal authority for the proposed action, and the time and date of a hearing to be held before the Board. The land use permittee shall be given at least seven (7) days notice of the hearing.

2. The Board may revoke a land use permit based upon any of the grounds for bringing an enforcement action.

3. Upon revocation of a land use permit no further work other than emergency mitigation measures ordered by the Manager shall be done on a project, use or action until an amended or new land use permit has been applied for and obtained pursuant to the Act and the provisions of this chapter.

26.0217 Standing.

A. Any person with standing who is aggrieved by any decision of the Manager or the Board may file a motion for reconsideration and appeal the decision.

B. The following persons have standing to file a motion for reconsideration and appeal a minor land use permit decision of the American Samoa Coastal Management Program:

1. the applicant for the land use permit;

2. any landowner or lessee within two hundred (200) feet of the site of the project, use or action; or

3. any Board member agency.

C. The following have standing to file a motion for reconsideration and appeal a major land use permit decision of the Board:

1. the applicant for the land use permit;

2. any landowner or lessee within two hundred (200) feet of the site of the project, use or action;

3. Any publicly funded organization representing no less than twenty-five (25) members; or

4. No less than twenty-five (25) members of the public who can demonstrate the decision being appealed impacts the public health, safety, or environmental welfare.

26.0218 Motion for reconsideration and special land use permits.

A. Motion for reconsideration

1. No appeal of a decision of the Board shall be allowed unless a motion for reconsideration is filed with the Board within ten (10) days of the Board decision being moved for reconsideration. Motions for reconsideration shall be heard by the Board at a regularly scheduled meeting or special meeting held for purpose of hearing the motion no less than ten (10) days and no more than thirty (30) days after the motion for reconsideration is filed. The moving party and any party who has filed written comments on the matter to be heard shall be given no less than seven (7) days notice of the hearing.

2. The motion for reconsideration shall contain following information:

a. Name, address and telephone number of the moving party and basis for standing as set forth in the provisions of this chapter;

b. A description of the decision being moved for reconsideration; and

c. A written statement of the factual or legal basis for the motion, including such new evidence as may be proffered.

3. The Board shall review the entire record of the matter moved for reconsideration, any new evidence submitted and arguments made, and rule on the motion de novo.

4. The Board, by majority vote, may grant or deny a motion for reconsideration, except that any decision to amend or overturn a land use permit decision requires a unanimous vote and shall contain written findings of fact and conclusions of law.

#### B. Special land use permits

1. A special land use permit to conduct acts prohibited by the provisions of this chapter may be requested by petition. An applicant may seek a special land use permit under the following procedures:

a. The applicant shall submit with the motion for reconsideration a petition for a special land use permit to the Director. The petition shall state facts sufficient to establish conformity with the special land use permit requirements listed below. The petition shall include all information required for a major project, all proposed actions to prevent adverse effects, all proposed actions to mitigate adverse effects or restore the site, and a statement indicating why the proposed action is necessary at the site in the manner proposed.

b. The Board may grant, by unanimous vote of the entire Board, a special land use permit, if the applicant demonstrates that:

(1) literal enforcement of the applicable provisions of the Act and the provisions of this chapter will cause the applicant undue hardship, excluding economic hardship; and

(2) such hardship results from conditions peculiar to the applicant's property; and

(3) such conditions could not reasonably have been anticipated by the American Samoa Coastal Management Program when the provisions of this chapter were adopted; and

(4) the applicant's plan for the proposed action minimizes any disturbance to the site and any affected area or neighboring property and demonstrates that all reasonable steps will be taken to restore and mitigate any adverse effects; and

(5) no other feasible alternative site exist; and

(6) the applicant agrees in writing to abide by the plan submitted under penalty of the total cost to restore the site to its existing conditions; and provided further that

(7) the land use permit application shall not be for an after-the-fact project, use or activity.

2. A petition for a special land use permit shall be reviewed and considered by the Board pursuant to the same procedures applicable to a major project, except that a public hearing shall be held, pursuant to the same notice requirements as for a public hearing on a major project.

a. If a special land use permit is granted by the Board, within thirty (30) days following the date of the decision, notice of same shall be published once a week for two (2) consecutive weeks in a newspaper of general circulation in the Territory which will provide the public an opportunity to appeal.

b. The Board's denial of a special land use permit is final, the special land use permit applicant has no appeal rights.

3. Nothing herein shall be interpreted to exempt a special land use permit from the provisions of this chapter protecting Special Management Areas and wetlands.

#### 26.0219 Appeals.

A. An appeal of the Board's decision on the motion for reconsideration shall be filed within ten (10) days of the Board's decision, provided that such appeal is submitted in writing to the Director and contains the information required for a motion for reconsideration.

B. Within twenty (20) days of receipt of the appeal the Director shall submit the appeal to an administrative law judge. The administrative law judge shall consider the case on the record and arguments of the parties and thereafter submit written findings of fact and conclusions of law.

C. The administrative law judge shall adopt findings based on the entire record, which shall be reviewable in the High Court of American Samoa in accordance with ASCA §§ 4.1000 et. seq. the American Samoa Administrative Procedures Act.

#### 26.0220 Standards and criteria for review.

A. As a requirement for approval, all projects shall satisfy or be conditioned to satisfy the following criteria:

1. The Project Notification and Review System shall be sensitive to the fa'aSamoa which means the traditional Samoan way of life, including but not limited to:

a. recognizing the village council authority in regards to maintaining harmony and welfare of the community; and

b. considering the village mitigation ordinances, village wetland resolutions or other applicable policies approved by the village council.

2. The proposed project shall not cause or threaten a substantial, or potentially substantial, adverse impact in or upon coastal resources.

a. Adverse impact means an alteration or the sum of alternations which would impair the long-term function, stability, or quality of an ecosystem or human community; which curtail the range of beneficial uses of the natural and cultural environment; which are contrary to territorial environmental laws or provisions of this chapter; or which adversely affect the economic, health, safety or social welfare of a community or the Territory.

b. Adverse impact includes, but is not limited to:

(1) alteration of chemical or physical properties of coastal or fresh waters so that they no longer provide a suitable habitat for natural communities;

(2) accumulation of toxins, carcinogens, or pathogens which threaten the welfare of humans or aquatic or terrestrial organisms;

(3) disruption of the ecological balances in coastal or fresh waters upon which natural biological communities depend;

(4) disruption or burial of marine or stream bottom communities;

(5) introduction of man-made substances foreign to the terrestrial or marine environment;

(6) disruption of archaeological/cultural/historic resources, properties of sites;

(7) disruption of agricultural, fishing activities or recreational opportunities; and

(8) disruption of the natural protective and beneficial functions of coastal resources.

3. The proposed project shall be compatible with existing adjacent uses and adopted plans;

4. That no alternative site exists for the proposed project and that no alternative construction methods exist which could avoid or lessen any adverse impacts to coastal resources;

5. The proposed project shall not cause an excessive demand on existing facilities and services.

B. The following standards of the Board shall be met for approval of a land use permit, provided that due deference shall be given to the Board member with jurisdiction of specific criteria and that the project, use or activity is consistent with the provisions of this chapter and the sections on Special Management Areas, wetlands, and coastal hazards:

1. Archaeological/cultural/historic resources

2. Commercial agricultural development

3. Major facility siting

4. Marine resources, reef, and fisheries protection and development

5. Recreation and public access

6. Water and air quality

7. Unique areas

C. Archaeological/cultural/historic resources.

1. The significant archaeological/cultural/historic resources of the Territory shall be protected and preserved.

a. Archaeological/cultural/historic resources means those sites, structures, and artifacts which possess material evidence of human life and culture of the prehistoric and historic past, or which have a relationship, including legendary, to events or conditions of the human past.

b. Protection and preservation shall be accomplished by the following procedures, provided that any federal undertaking as defined in the National Historic Preservation Act of 1966, as amended, 16 USC 470, et. seq., shall comply with section 106 of the Act.

(1) For projects over \$250,000, the applicant is responsible for ensuring that the section 106 process is carried out.

(2) For projects under \$250,000 dollars the Board will assume responsibility for identification, evaluation, assessment and mitigation. In this case the applicant will allow the Board access to the project area when necessary to carry out these procedures.

2. All archaeological/cultural/historic resources within the project, use or activity area shall be identified and evaluated for significance by a trained cultural resource specialist.

a. A trained cultural resource specialist includes an archaeologist; historian, or anthropologist who shall possess at least a masters of arts in their field and have one year of supervisory experience in their field.

b. The identification and evaluation shall be documented in a report following the American Samoa Historic Preservation Office guidelines. The report shall be submitted to the Board for review with a cover letter signed by the applicant.

3. An archaeological/cultural/historic resource is significant if the resource is:

- a. at least fifty (50) years old, possesses historic integrity, and
  
- b. is associated with events that have made a significant contribution to the broad patterns of Samoan history; or
  
- c. is associated with the lives of persons significant in Samoan past; or
  
- d. embodies the distinctive characteristics of a type, period, or method of construction, or that represents the work of a master, or that possess high artistic values, or that represent a significant and distinguishable entity whose components may lack individual distinction; or
  
- e. has yielded, or may be likely to yield, information important in prehistory or history.

4. If the archaeological/cultural/historic resource is significant, an assessment shall be made as to whether the project may affect the historic resource. If the project may affect the historic resources, an assessment shall be made as to whether that effect will be adverse.

a. A project has an effect on an archaeological/cultural/historic resource when the project, use or activity may alter characteristics of the resource that qualify the resource as significant.

b. A project, use or activity is considered to have an adverse effect when the effect on an archaeological/cultural/historic resource may diminish the integrity of a location, design, settling, materials, workmanship, feeling, or association of a resource. Adverse effects on archaeological/cultural historic resources include, but are not limited to:

(1) Physical destruction, damage, or alteration of all or part of the resource.

(2) Isolation of the resource from or alteration of the character of the property's setting when that character contributes to the significance of the resource.

(3) Introduction of visual, audible, or atmosphere elements that are out of character with the property or alter its setting.

(4) Neglect of a property resulting in its deterioration or destruction.

c. The assessment shall be documented in a letter report to the Board prepared by a cultural resource specialist and signed by the applicant. The letter report shall make and justify one of the following determinations:

(1) No effect; or

(2) No adverse effect (there will be an effect, but not an adverse one, e.g. repairing a roof on a historic structure with historically accurate materials and not altering the roof line); or

(3) Adverse effect.

5. If the effect on the historic resource may be adverse, mitigation shall be conducted by the applicant.

a. The applicant, in consultation with the Board, shall enter into a mitigation agreement that determines what mitigation shall occur.

b. Mitigation may include, but is not limited to:

(1) Avoidance of the historic property.

(2) Monitoring with data recovery.

(3) Data recovery.

(4) Museum displays related to the historic property adversely affected.

(5) Educational videos related to the historic property adversely affected.

(6) Research projects related to the historic property adversely affected.

6. If the effect will be adverse and no mitigation agreement can be reached, the Board may deny a permit to protect the historic resource.

7. The Board shall not grant a land use permit to an applicant who, with intent to avoid the requirements of this section, has intentionally adversely affected an archaeological/cultural/historic resource to which the land use permit would relate, or having legal power to prevent it, allowed such an adverse effect to occur; provided that the Board, after consultation with the applicant, determines that circumstances justify granting a land use permit despite the adverse effect created or permitted by the applicant and the applicant enters into a mitigation agreement with the Board.

#### D. Commercial agricultural development

1. Agricultural development shall be promoted in a manner consistent with sound agricultural practices which means the use of methods and technologies that maximize the potential for the long-term maintenance of soil fertility, and which minimize the escape of soil particles or agricultural chemicals to receiving waters.

2. Commercial and subsistence agriculture shall be encouraged on lands suitable for cultivation. Agricultural action shall be accompanied by best management practices designed to protect land and water resources and maintain crop yields, which include:

a. cultivation on suitable slopes;

b. use of adequate ground cover to prevent soil erosion;

c. proper use of pesticides, herbicides, and fertilizers;

d. techniques to maintain soil fertility; e.g. fallow periods; and

e. techniques to reduce non-point source pollution and protect water quality.

E. Major facility siting.

1. Major facility means, but is not limited to, construction or major repair of the following:

a. water supply systems;

b. water or sewage treatment plants;

c. solid-waste disposal areas and facilities;

d. power production, distribution and transmission facilities;

e. roads, highways, seaports, airports, aids to navigation;

f. major recreation areas; and

g. national defense installations.

2. Major facilities shall be sited and designed to minimize adverse environmental and social impacts and promote orderly and efficient economic development.

a. Major facilities not dependent on a waterfront location shall be located elsewhere, unless no feasible alternative sites exist;

b. All efforts shall be made so that water-dependent major facilities are accommodated through planning.

3. The Territory shall recognize identified regional benefits and national interests in the siting of major facilities and shall adequately consider them in major facility siting decisions.

4. A public hearing as provided by this chapter shall be required for all major facilities.

#### F. Marine resources, reef, and fisheries protection and development

1. Living marine resources and their habitats shall be protected from over harvesting or degradation, in accordance with ASCA §§ 24.0300 et. seq., the Department of Marine and Wildlife Resources Act.

2. Coral reefs shall be protected and restored.

a. Coral means any living aquatic organism of the subphylum cnidaria that are capable of secreting hard skeletal parts or can incorporate stony secretions within or around their tissues, including, but not limited to, hermatyic corals, black coral, organpipe corals, fire corals, and lace corals.

b. Coral reef means a structure which may or may not be adjacent to the shoreline, formed and bounded by the gradual deposition and calcareous secretions of coralline materials.

c. Coral reefs and other submerged lands shall not be dredged, filled, or otherwise altered or channeled unless it can be demonstrated that there is a public need, there are no feasible, environmentally preferable alternatives, and unless measures are taken to minimize adverse impacts.

d. Coral reefs shall be protected from sedimentations, over fishing, runoff, and the impacts resulting directly and indirectly from other activities to the maximum extent feasible. Degraded reefs shall be restored wherever feasible.

3. Fisheries development shall be promoted in a manner consistent with sound fisheries management.

a. Shoreline areas suitable and necessary for the support of fishery development shall be reserved for such use.

b. Fisheries development shall be guided by a fisheries management program which conserves stocks, protects marine habitats, and maintains sustained yields.

4. Permissible uses for marine resources and habitats:

a. maintenance of highest levels of water quality;

b. non-structural projects preserving fish and wildlife habitat, and

c. creation of underwater preserves.

5. Conditional use for marine resources and habitats:

Dredging of low or moderately productive corals and reefs associated with permitted uses and activities for which there is a demonstrated public need.

6. Prohibited uses for marine resources and habitats:

a. destruction of reefs and corals not associated with permitted projects; and

b. taking corals for other than scientific study.

#### 7. Ofu Territorial Marine Park, Fagatele Bay National Marine Sanctuary, and the National Park of American Samoa

a. The irreplaceable marine and coastal resources of Ofu Territorial Marine Park, Fagatele Bay National Marine Sanctuary, and the National Park of American Samoa shall be protected as a resources for present and future Samoans to the greatest content possible.

b. Land use permit applications for sites adjacent to Ofu Territorial Marine Park and Fagatele Bay National Marine Sanctuary, shall be rigorously reviewed to ensure minimum adverse impact to marine and coastal resources, including water-quality, habitat, fish and wildlife, and recreational opportunities.

#### G. Recreation and public access

1. Recreation opportunities and shorefront public access shall be improved and increased for the public.

a. The acquisition, siting, development, and maintenance of varied types of recreation facilities that are compatible with their surrounding landscape and land uses, and which serve the recreation and shorefront public access needs of villages shall be promoted.

b. Acquisition and/or use agreements and minimal development of passive recreation sites such as marine and wildlife conservation areas, scenic overlooks, trails, parks, and historic sites shall be promoted.

1. Public access to and along the ocean shall be maintained, improved and increased in accordance with ASCA §§ 18.0100 et. seq., the Department of Parks and Recreation Act., including:

a. shorefront areas suitable for recreation use shall be reserved for such use and physical access to these areas shall be provided where feasible; and

b. visual access to the ocean from the road parallel to and near the shoreline shall be maintained where feasible.

2. Public lands shall be managed to maintain physical and visual public access. Where public access must be eliminated because of security or other reasons, similar access shall be created as near as practical to the curtailed access.

#### H. Water and air quality

1. Water quality shall be maintained.

a. Territorial water quality standards shall be the standards of the American Samoa Coastal Management Program and land use permit applications shall adhere to those standards, in accordance with ASCA §§ 24.0100 et. seq., the Environmental Quality Act.

b. Consistent with Territorial water quality standards, degraded water quality shall be restored to acceptable levels and potential threats to water quality shall be prevented where feasible.

c. Non-point source pollution shall be controlled through implementation of best management practices.

2. Safe drinking water shall be protected and maintained.

a. Territorial safe drinking water standards shall be the standards of the American Samoa Coastal Management Program and land use permit applications shall adhere to those standards, in accordance with ASCA §§ 24.0100 et. seq., the Environmental Quality Act.

b. Drinking water sources, including aquifer recharge areas, above and below ground, shall be protected from contamination due to sedimentation, saltwater intrusion, or other sources of pollution.

c. Drinking water systems shall be improved to protect public health and welfare.

3. High standards of air quality shall be maintained.

a. Territorial air quality standards shall be the standards of the American Samoa Coastal Management Program and land use permit applications shall adhere to those standards, in accordance with ASCA §§ 24.0100 et. seq., the Environmental Quality Act.

b. Consistent with Territorial air quality standards, degraded air quality shall be restored to acceptable levels and potential threats to air quality shall be prevented when feasible.

## I. Unique Areas

1. Unique areas and their values shall be protected from adverse impacts. Development in areas adjacent to unique areas shall be rigorously reviewed to prevent impacts that would significantly degrade such areas.

2. Critical habitats shall be protected, conserved and managed in the Territory.

a. Critical habitat means a land or water area where sustaining the natural characteristics is important or essential to the productivity of plant and animal species, especially those that are threatened or endangered.

b. Threatened or endangered species means a species listed by the Department of Marine and Wildlife Resources as being threatened, or endangered, in accordance with ASCA §§ 24.0700 et. seq., the Endangered Species Act and ASCA §§ 24.2300 et. seq., the Conservation of Flying Foxes Act.

c. No taking of endangered or threatened species shall be allowed.

## 26.0221 Special Management Areas.

A. Special Management Areas mean those areas duly designated by the Act or the provisions of this chapter that possess unique and irreplaceable habitat, products or materials, offer beneficial functions or affect the cultural values or quality of life significant to the general population of the Territory and fa'a Samoa.

### B. Designated Special Management Areas

1. The following boundaries delineate the Special Management Areas of American Samoa:

a. Pago Pago Harbor Special Management Area is delineated by a line drawn from Goat Island Point to the jetty at Leloaloa and includes all land and water resources on the same side of the American Samoa Highway 001 paralleling the shoreline around the Pago Pago harbor;

b. The Leone Pala Lagoon is delineated by a line drawn parallel with the shoreline at the ocean terminus of the Leafu stream, and adjacent wetlands as delineated by the provisions of this chapter; and

c. The Nu'uuli Pala Lagoon is delineated by a line drawn from Avatele Point, the eastern most point of the airport, to Mulinu'u Point, the nearest part of Coconut Point, and includes all water resources of the lagoon, plus adjacent wetlands as delineated by the provisions of this chapter.

1. Boundary maps, at a minimum of 1"=2' scale, for all wetland areas included as Special Management Areas shall be maintained for public inspection at the Department of Commerce.

2. Any proposed project, use or action in a Special Management Area shall be deemed a major project, and all proposed projects, uses, or activities in any Special Management Area,

other than the Pago Pago Harbor Special Management Area, shall require a public hearing as provided by this chapter.

### C. Policy for Special Management Areas

1. The functions, values and benefits of Special Management Areas shall be protected so that their benefits can be enjoyed by present and future generations of the Territory.

2. Actions that degrade, limit, or eliminate Special Management Areas functions, values, and benefits to the public shall be prohibited.

3. Lagoon, and reef areas. Any project proposed for location within a designated Special Management Area which also is characterized as a lagoon or reef area shall comply with the following standards:

a. subsistence usage of coastal areas and resources shall be insured;

b. living marine resources, particularly fishery resources, shall be maintained for optimum sustainable yields;

c. adverse impacts to reefs and corals shall be prevented;

d. lagoon and reef areas shall maintain or enhance subsistence, commercial and sport fisheries;

e. lagoon and reef areas shall be protected to assure the maintenance of natural water flows, natural circulation patterns, natural nutrient and oxygen levels and to avoid the discharge of toxic wastes, sewage, petroleum products, siltation and destruction of productive habitat;

f. areas and objects of historic and cultural significance shall be preserved and maintained;  
and

g. underwater preservation areas shall be designated.

4. Wetland areas. Any project proposed for location within a designated Special Management Area and a wetland shall be evaluated to determine its compatibility with this section and the wetlands section of this chapter.

5. Shoreline Areas. Any project proposed for location within a designated Special Management Area and a shoreline area shall be evaluated to determine its compatibility with this section, the wetlands section of this chapter, and with the following standards:

a. the impact of on shore activities upon wildlife, marine or aesthetic resources shall be minimized;

b. the effects of shoreline development on natural beach processes shall be minimized;

c. removal of hazardous debris from beaches and coastal areas shall be required; and

d. where possible, public landholding along the shore shall be maintained and increased, for the purpose of access and hazard mitigation; and in addition to deciding whether the proposed project is consistent with the above standards, Board members shall consider the following in their review of coastal land permit applications:

(1) whether the proposed project is water-dependent or water-related in nature;

(2) whether the proposed project is to facilitate or enhance coastal recreational, subsistence, or cultural opportunities (i.e. docking, fishing, swimming, picnicking, navigation devices);

(3) whether the existing land use including the existence of roadways, has irreversibly committed the area to uses compatible with the proposed project, particularly water-oriented uses, and provided that the proposed project does not create cumulative and secondary adverse impacts;

(4) whether the proposed project is single-family dwelling in an existing residential area and would occur on private property owned by the same owner as of the effective date of the program, of which all or a significant portion is located in the Special Management Areas or no reasonable alternative is open to the property owner to trade land, relocate or sell to the government;

(5) whether the proposed project would be safely located on a rocky shoreline and would cause adverse impacts to wildlife, marine or scenic resources;

(6) whether the proposed project is designated to prevent or mitigate shoreline erosion; and

(7) whether the proposed project would be more appropriately located in the port and industrial area.

6. Notwithstanding any other provisions of this chapter, any proposed project, use or action in the Pago Pago Harbor Special Management Area shall be evaluated in connection with the following objectives and priorities of use:

a. The Pago Pago Harbor area shall be developed to emphasize:

(1) the value as a working port and safe harbor; and

(2) to protect the natural resources and water quality;

b. Priorities of use:

(1) Water-dependent uses and activities shall have highest priority.

(2) Water-related uses and activities shall have second priority.

(3) Uses and activities which are neither water-dependent nor water-related, but which are compatible with water-dependent and water-related uses and activities or are for recreational activities or a public use shall receive third priority.

(4) All other uses and activities shall have lowest priority and will normally be denied.

c. Any project proposed for location as a port or industrial project in the Pago Pago Harbor Special Management Area shall comply with the following standards:

(1) siting of port and industrial development shall comply with the long-term economic and social goals of the Territory;

(2) development proposals shall be considered from the perspective of port-related opportunities and constraints which are applicable to the Territory;

(3) the limited availability of the port and industrial resources shall be recognized in making land use allocation decisions;

(4) development shall ensure respect for the Territory's inherent natural beauty;

(5) shoreline locations shall be limited to water-dependent and water-related projects;

(6) the amount of shoreline frontage utilized by any project, regardless of the extent to which the project may be water-dependent, shall be minimized to the greatest extent practicable; and

(7) to the maximum extent practicable, petroleum based coastal energy facilities shall be located within the port and industrial area.

D. Procedures to establish a Special Management Area

1. Pursuant to the Act, the Board is authorized to recommend to the Governor areas of the Territory to be designated as Special Management Areas, and authorized to propose modifications to the established boundary of any existing Special Management Area.

2. The following procedures shall apply to nominations for designation or modification of the boundary of a Special Management Area:

a. Proposals. Any territorial agency, any public funded organization representing no less than twenty-five (25) members, or no less than twenty-five (25) members of the public, may propose to the Board the designation or modification of a Special Management Area.

b. Supporting documentation. Proposals for the designation or modification of a Special Management Area shall include detailed documentation supporting the proposal. The documentation shall address the criteria for consideration set forth in this section, and may include other information pertinent to the area proposed for designation or modification.

c. Public Notice. Within thirty (30) days of receipt by the Board of the proposal for designation or modification, the Board shall cause to be published in a newspaper of general circulation, at least once a week for three (3) consecutive weeks, public notice of the proposed designation or nomination. The Board shall further cause such public notice to be personally served upon the Secretary of Samoan Affairs and the pulenu'u of each village adjacent to a proposed Special Management Area. Such notice shall describe the area involved, advise the public that a record of the proposal is available for inspection, that comments by the public will be accepted for a period of forty-five (45) days from date of first publication of the notice, that comments received will be considered by the Board in reviewing the proposal, and advising the public of the places and dates of no less than two (2) public hearings which shall be held in order to consider the proposal.

d. Technical findings. On all proposals to designate or modify a Special Management Area, technical findings on the proposal and its potential impacts shall be prepared by each Board member agency. The Board member agency shall determine the appropriateness of the proposal to that agency's respective jurisdiction and permitting authority, and may further comment on the appropriateness of the proposal under the Act and the provisions of this chapter. The technical findings shall be prepared and made available to the public prior to the public hearings, and shall be considered by the Board in making its decision.

e. Public hearings. Within forty-five (45) days of the receipt of a proposal for designation or modification of the boundary of a Special Management Area, no less than two public hearings shall be held to consider the proposal. One public hearing shall be held at a place convenient to the general public. A second public hearing shall be held at or as near as reasonably practicable to the area affected by the proposal.

f. The Project Notification and Review System decisions to nominate. Within thirty (30) days of the closure of the comment period, upon review of the entire record of the proposal for designation or modification of a Special Management Area, including technical findings, supporting documentation, and public comments, the Board shall determine whether to nominate the proposal to the Governor. The Board may, in accepting a proposal for nomination, make minor amendments to the proposal; provided that any amendment which increases the size of the affected area, or alters the nature of the designation, shall require further public hearings in accordance with this section. A decision by the Board to nominate, nominate with amendments, or deny the proposal shall be accompanied by written findings of fact and conclusions of law.

g. Upon a decision by the Board to nominate to the Governor a proposal to designate or modify a Special Management Area, the Manager shall certify the nomination as being in compliance, or not in compliance, with the Act and the provisions of this chapter. If in compliance, the Manager shall transmit the nomination to the Governor for approval. The nomination shall be either approved, or disapproved, by the Governor within thirty (30) days of receipt of the nomination. The Governor's decision to approve, or disapprove, is final.

#### E. Criteria for designation or modification of a Special Management Area

1. In reviewing a proposal for designation or modification of a Special Management Area, the Board shall consider the following natural resource criteria for special management status:

a. areas of unique, scarce, fragile, or vulnerable natural habitat or areas of historical significance, cultural value, or scenic importance (including resources on or eligible for the National Register of Historic Places);

b. areas of high natural productivity or critical habitat for living resources, including threatened or endangered species;

c. areas of outstanding recreational value or potential;

d. areas which, if development were permitted, might be subject to significant hazard due to storms, landslides, floods, erosion, settlement, or salt water intrusion.

e. areas needed to protect, maintain, or replenish coastal lands or resources, including coastal floodplain, aquifers and their recharge areas, estuaries, coral reefs and beaches; or

f. areas needed for the preservation or restoration of coastal resources due to the value of those resources for conservation, recreational, ecological, or aesthetic purposes.

2. The following commercial criteria shall also be considered for special management status:

a. areas where developments and facilities are dependent either upon the utilization of, or access to, coastal waters or of geographic significance for industrial or commercial development;

b. areas of urban concentration where shoreline utilization and water uses are highly competitive;

26.0222 Wetlands.

A. Wetlands means those areas that are inundated or saturated by surface or ground water at a frequency and duration sufficient to support, and under normal circumstances do support, a prevalence of vegetation typically and adapted for life in saturated soil conditions.

1. The phrase “under normal circumstances” which, as used in the definition of wetlands, means situations in which the vegetation, hydrology and soils have not been substantially altered by human activity.

2. Wetlands include but are not limited to pala, cultivated and non-cultivated marshes, mangroves, streams, springs, swamps, aquifer recharge areas, floodplains, streams, watersheds, and nearshore waters.

a. Watershed means a distinct area bordered by features of highest continuous elevations that is usually accepted by surface drainage leading to the ocean.

b. Stream means a natural pathway for surface water drainage or runoff, often intermittent in flow, and usually characterized by unique riparian plant and animal communities.

c. Nearshore waters means those waters within the territorial sea.

d. Mangroves means the characteristic littoral plant formation of tropical and subtropical sheltered coastlines. Generally mangroves are trees and bushes growing up to the high tide level along coastlines or into stream mouths. Mangrove root systems are regularly inundated with saline water, though freshwater surface runoff and flooding may result in brackish conditions.

e. Aquifer recharge means a distinct area from which surface water runoff is concentrated and enters the earth where the water is then stored in a stratum of permeable rock, and or gravel, and flows freely through the intervening spaces of the rock. When the underlying rock is impermeable an aquifer acts as a groundwater reservoir which supplies water for wells and springs.

3. Adjacent wetlands are wetlands separated from other waters of the United States by artificial dikes or barriers, natural river berm, or beach dunes.

4. The following Samoan terminology applies to wetlands:

a. Pala approximately translates to mangrove swamp;

b. Taufusi approximately translates to taro freshwater march;

c. Laueleele susu approximately translates to land that is wet;

## B. Delineation of Wetlands.

1. Delineation by the American Samoa Coastal Management Program shall use wetlands delineation techniques established in the 1987 Federal Manual for Identifying and Delineating Jurisdictional Wetlands, or revised standards as adopted.

2. Wetland delineation shall be determined with evidence of a minimum of three positive indicators, at least one from each of the three parameters of hydrology, soils, and vegetation.

a. Under normal circumstances all three must be found before a positive determination can be made.

b. In atypical situations, evidence may be developed from historical data, recent existing data and observations made in the field.

## C. Policy on wetlands

1. Wetlands areas shall be protected from significant disruption of their physical, chemical, and biological characteristics and values. Only uses dependent upon such areas may be permitted.

2. Wetlands shall be preserved, protected, conserved, and managed in the Territory.

a. Despoliation and destruction of wetlands shall be prevented by insuring that development adjacent to wetlands areas shall be designed and sited to prevent impact that would significantly degrade such areas;

b. The present and potential value of wetlands shall be protected for food production, wildlife habitat, storm and flood control, water quality, recreation, education, and research; and

c. The use and development of wetlands areas shall be regulated in order to secure the natural benefits of wetlands, consistent with the general welfare of the Territory, including:

(1) adequate water flow, nutrients and oxygen levels shall be ensured;

(2) the natural ecological and hydrological processes and mangrove areas shall be preserved;

(3) critical habitat that is in a wetlands shall be maintained and, where possible, enhanced so as to increase the potential for survival of rare and endangered flora and fauna;

(4) public landholding in, and adjacent to, wetlands areas shall be maintained and, to the extent possible, increased, for the purpose of access and/or hazard mitigation; and

(5) wetlands resources shall be utilized for appropriate agriculture, recreation, education, public open space and other compatible uses which would not degrade productivity.

3. A policy of “no net loss” of wetlands in the Territory is established that includes no net loss of wetlands value and function, as well as, actual acreage loss. Providing wetlands conservation in order to achieve no net loss include the protection of the following values:

a. flood and storm control by the hydrological absorption and storage capacity of freshwater wetlands;

b. wildlife habitat by providing breeding, nestling, and feeding grounds and cover for the many forms of wildlife, wildfowl and shorebirds, including migratory wildfowl and rare species such as the Australian gray duck;

c. protection of subsurface water resources and provisions for valuable watersheds and recharging groundwater supplies;

d. recreation areas by providing areas for hunting, fishing, boating, hiking, bird watching, photography, swimming;

e. erosion control by serving as sedimentation areas and filtering basins, absorbing silt and organic matter thereby protecting channels, and coral reefs;

f. educational and scientific research opportunities;

g. sources of nutrients in freshwater and brackish water food cycles, nursery and feeding grounds, and sanctuaries for fish species; and

h. agricultural uses such as taro production and harvest of natural wetlands products.

#### D. Wetlands jurisdictional limits.

1. The jurisdictional limits of authority of the American Samoa Coastal Management Program with regard to wetlands is determined by the Submerged and Tidal Lands Act of 1974, 48 USC 1705(a).

a. The American Samoa jurisdictional limits of authority is based on the conveyance of the “waters of the United States” to American Samoa, including tidelands, submerged lands, or filled lands.

b. Subject to valid existing rights, all right, title, and interest of the United States in lands permanently or periodically covered by tidal waters up to but not above the line of mean high tide and seaward to a line three geographical miles distant from the coastline of American Samoa, as heretofore or hereafter modified by accretion, erosion, and reliction, and in artificially made, filled in, or reclaimed lands which were formerly permanently or

periodically covered by tidal waters, were conveyed to the government of American Samoa, to be administered in trust for the people thereof.

2. Waters of the United States means:

a. all waters which are currently used, or were used in the past, or may be susceptible to use in interstate or foreign commerce, including all waters which are subject to the ebb and flow of the tide; and

b. all other waters such as intrastate lakes, rivers, streams (including intermittent streams), mudflats, sandflats, wetlands, sloughs, prairie potholes, wet meadows, playa lakes, or natural ponds, the use, degradation or destruction of which could affect interstate or foreign commerce including such waters:

(1) which are or could be used by interstate or foreign travelers for recreational or other purposes;

(2) from which fish or shellfish are or could be taken and sold in interstate or foreign commerce; or

(3) which are used or could be used for industrial purposes by industries in interstate commerce.

c. all impoundments of waters otherwise defined as waters of the United States under the definition;

d. tributaries of waters identified in paragraphs (2)(a) thru (d) of this section.

3. Limits of jurisdiction of the waters of the United States.

a. Territorial Sea. The limit of jurisdiction in the Territorial seas is measured from the baseline in a seaward direction a distance of three nautical miles.

(1) A baseline is a continuous line which encircles an island or atoll and

(2) A baseline is measured as follows:

(a) The baseline of an island or portion of an island lacking a barrier reef, fringing reef, or other reef system is seaward from the ordinary high water mark; or

(b) The baseline of an atoll or island or portion of an island having a barrier reef, fringing reef, or other reef system, is the seaward edge of the reef system, i.e. those outermost elevations of the reef which are above water at low tide.

b. Tidal Waters of the United States.

(1) Tidal waters means those waters that rise and fall in a predictable and measurable rhythm or cycle due to the gravitational pulls of the moon and sun. Tidal waters end where the rise and fall of the water surface can no longer be practically measured in a predictable rhythm due to masking by hydrologic, wind or other effects.

(2) The landward limits of jurisdiction in tidal waters:

(a) extends to the high tide line which means the line of intersection of the land with the water's surface at high tide. The high tide line may be determined in the absence of actual data by a line along the shore that consists of a more or less continuous deposit of fine shell or debris on the foreshore or berm, other physical markings or characteristics, vegetation lines, tidal gauges, or other suitable means, or

(b) when adjacent non-tidal waters of the United States are present, the jurisdiction extends to the limits identified in paragraph (c) of this subsection.

c. Non-tidal waters of the United States. The limit of jurisdiction in non-tidal waters is:

(1) in the absence of adjacent wetlands, the jurisdiction extends to the ordinary high water mark which means that line on the shore established by the fluctuations of water and indicated by physical characteristics such as a clear, natural line impressed on the bank, shelving, changes in the character of soil, destruction of terrestrial vegetation, or other appropriate means that consider the characteristics of the surrounding areas.

(2) when adjacent wetlands are present, the jurisdiction extends beyond the ordinary high water mark to the limit of the adjacent wetlands; or

(3) when the waters of the United States consist only of wetlands, the jurisdiction extends to the limit of the wetland.

E. Wetland buffer and prohibited activity.

1. Buffer zone means a set back area in which development of any kind is prohibited.

2. A buffer zone around the wetland delineated boundary, including streams, shall be established in the following manner:

a. A twenty-five (25) foot buffer zone shall be established between a wetland delineated boundary and non-commercial or non-industrial development.

b. A fifty (50) foot buffer zone shall be established between a wetland delineated boundary and commercial or industrial development.

3. Human alteration of sand dunes and mangroves stands is prohibited within VE and V zones of American Samoa Federal Insurance Rate Maps, which would increase potential flood damage.

F. Wetlands regulated activities; permitted and prohibited projects, uses or activities; and violations.

1. Regulated activities includes:

a. Village ordinances adopted by the village councils, including but not limited to:

(1) The Resolution by the Leone Village Council, a resolution to protect and preserve the Leone Pala, including mangroves and streams, ratified on March 5, 1994.

(2) The Nu'uuli Wetland Agreement, a declaration to protect and preserve the Nu'uuli Pala Lagoon, ratified on May 12, 1995; and

(3) The Ofu (Vaoto) Marsh Resolution, a resolution recognizing the valuable natural resources of the Ofu wetland and an agreement to preserve and protect the Ofu Marsh, ratified on September 23, 1996.

b. Altering wetlands, which includes, but is not limited to:

(1) The act of placing fill.

(2) The filling, dumping, or depositing of any soil, stones, sand, gravel, mud, aggregate of any kind or garbage, either directly or indirectly, on or in any coastal wetlands;

(3) The dredging, excavating or removal of soil, mud, sand, gravel, flora, fauna or aggregate of any kind from any coastal wetlands;

(4) killing or materially damaging any flora or fauna on or in any coastal wetland; and

(5) the erection on coastal wetlands of structure which materially affect the ebb and flow of the tide.

2. Permissible uses of wetlands:

a. preservation and enhancement of wetlands; and

b. preservation of wildlife, primary productivity, conservation areas and historical properties in both wetlands and unique areas.

3. Conditional use wetlands:

a. Projects for which there is demonstrated public need which cause a minimal amount of damage to the wetlands and other coastal resources.

b. Any such use shall take into consideration the no net loss policies enumerated in this section.

c. Any such use shall include "off-set" measures, which means least-damaging practicable alternatives: avoidance, minimization, and compensatory mitigation as determined by the Board.

d. All projects, uses, or activities on condition that any adverse impact to the wetland is compensated in kind, meaning that for every acre adversely impacted a specific acreage shall be rehabilitated:

(1) creating new wetlands at a minimum 1:1 ratio or restoration of former wetlands at a minimum 1:1 ratio, and

(2) rehabilitation of deteriorated wetlands at a minimum 1:2 ratio.

#### 4. Prohibited uses of wetlands:

- a. Land fill, dumping of solid waste, discharge of pollutants, and clearing, grading or removal of natural vegetation or any other activity or use not associated with a conditional use which limits or eliminates beneficial functions or values of wetlands or unique areas; and
- b. Adverse impact on natural drainage patterns, the destruction of important habitat, and the discharge of toxic substances shall be prohibited.

#### 5. Violations

- a. It shall be a violation of this section for any person to fill, make deposits on, or in any fashion create or attempt to create, artificial land, or augment or add to the natural shoreline of any coastal area or wetland area or drain a wetland area without a land use permit or in violation of a permit. This section applies to principals, their agents, and contributors.
- b. It shall be a violation of this section for any person to fill, make deposits on, or in any fashion attempt to create artificial land, or augment the area within the buffer area of a wetland. This includes alteration of the surface of the land, disturbance of vegetation or alteration of the hydrology.
- c. Any person who violates this section is guilty of a class B misdemeanor and shall be subject to civil fines according to law.

#### 26.0223 Coastal hazards.

##### A. Coastal hazards policy

- 1. Coastal hazards means hazards to life and property from flooding, tsunamis, landslides, slope, and shoreline erosion, storm surge, and winds.

2. Life and property shall be protected from such coastal hazards.

3. Projects, uses or activities in coastal hazards areas, including floodplains, storm wave inundation areas, landslide hazard areas, and erosion-prone areas shall normally be denied, unless:

a. there is a public need, including recreational; and

b. the development is located and designed to minimize risks to public safety; and

c. is water-dependent or water-related, if adjacent to the shoreline; and

d. is compatible with adjacent land uses; and

e. traditional Samoan uses; and

f. has no feasible, environmentally preferable, alternative sites, provided that:

(1) individual and/or communal family lands have been exhausted; and

(2) the proposed project, use or activity does not pose adverse environmental impact.

g. alterations of the natural shoreline, streams, and hillsides are minimized; and

h. adverse effects on habitats, streams, and drainage are minimized.

4. Projects, uses or activities permitted in areas prone to flooding, landslides, and erosion shall meet the standards of the American Samoa Floodplain Management Regulation.

a. Development in areas prone to flooding, landslides, and erosion that will not require protection through dikes, dams, levees, groins, seawalls, retaining walls, shoreline protection or other structures shall be preferred over uses that require such protection.

b. Structures to protect existing development against flooding, landslides, and erosion shall comply with the following criteria:

(1) remedial protective measures must avoid impacts on adjacent properties;

(2) there are no feasible environmentally preferable alternatives;

(3) alterations of the natural shoreline, streams, and hillsides are minimized.

#### B. Shoreline development policy

1. In the area measured two hundred (200) feet horizontally inland from the mean high-tide mark, projects, uses or activities shall normally be denied.

2. In villages with a ratified Village Mitigation Ordinance, the minimum setback established in a Village Mitigation Ordinance shall be imposed between the proposal project, use or activity and identified coastal hazards lands.

a. Village mitigation ordinance means a village regulatory instrument established collectively with a village council and the American Samoa Coastal Management Program that sets forth village or municipal mitigation policies for future village development which compliment and supplement Village Regulations including the most feasible coastal hazards setbacks specific to village geography.

b. Village Mitigation Ordinances have been developed and ratified in the following villages of American Samoa:

(1) Eastern District:

(a) Alofau, ratified on July 1, 1997;

(b) Tula, ratified on July 2, 1997, and

(c) Aua, ratified on July 3, 1997.

(2) Western District:

(a) Nua & Se'etaga, ratified June 3, 1997;

(b) Utulei & Gaiavai, ratified June 5, 1997;

(c) Afao, ratified June 6, 1997; and

(d) Amanave, ratified June 10, 1997.

(3) Manua District:

(a) Fitiuta, ratified June 2, 1997.

c. Subsequent Village Mitigation Ordinances shall be adopted by the American Samoa Coastal Management Program thirty (30) days after a village council has ratified such ordinance.

C. Soil erosion policy.

1. All clearing, grading, or construction on slopes shall use best management practices or avoid or minimize soil erosion, including but not limited to:

a. conducting a soils survey and providing a geological report of the affected project, use or activity;

b. minimizing on-site disturbance by utilizing careful design and knowledge of soils, vegetation, and terrain and other available techniques;

c. retaining earth slopes through use of retaining walls and professionally designed slope stabilization techniques; and

d. controlling off-site movement of surface soils during construction through use of silt fences, berms, dikes, desilting ponds, ground netting, and other temporary measures to be maintained throughout construction.

2. Development on steep slopes

a. Projects, uses or activities that develop slope areas of grades zero to twenty percent (0-20%), outside of known landslide paths, and having stable soils for the intended use shall generally be permitted.

b. Projects, uses or activities that develop slope areas of grades twenty to forty percent (20-40%), outside of known landslide paths, and having stable soils for the intended use may be conditionally permitted.

c. Projects, uses or activities that develop slope areas of grades greater than forty percent (40%), shall normally be denied; provided that feasible environmentally preferable alternatives to the proposed action exist.

3. Road building and construction activities that severely alter land contours, are located in steep areas, or may otherwise promote soil erosion shall be minimized and controlled to reduce or eliminate soil erosion.

26.0224 Territorial environmental assessments.

A. Procedures

1. Environmental assessment means a written evaluation to determine whether an action may have a significant adverse impact on the coastal zone.

2. Activities subject to these provisions. The Board shall require an environmental assessment if:

a. any member or members of the Board with permitting or regulatory jurisdiction over the application request(s) an environmental assessment.

b. the Board finds a new or expanded source of pollutants resulting in a potentially dangerous condition having a significant adverse impact on the health, safety, and welfare of the public;

c. the Board finds a significant adverse impact to critical habitat;

d. a project, use or activity is Federally funded;

e. a project, use or activity costs more than \$250,000; or

f. a petition signed by not less than twenty-five (25) members of the public is submitted to the Board.

3. Scoping meetings for proposed actions. For land use permit applications subject to this section, a scoping meeting of the Board may be requested by the land use project applicant or by any Board member. Scoping meetings may be held at a regular or special meeting of the Board. Scoping sessions shall be held for the purposes of identifying potential significant adverse impacts to coastal resources which the project may cause and determining whether an environmental assessment will be required for the particular application.

4. Contents of an environmental assessment. Persons proposing actions requiring an environmental assessment shall prepare an environmental assessment of each proposed action and state whether the anticipated impacts constitute a significant adverse impact to coastal resources. An environmental assessment shall contain the following information:

a. title and executive summary;

b. identification, qualifications and credentials of the preparers and those consulted in preparing the assessment;

c. general description of the technical, economic, social, and environmental characteristics of the project, including an operational plan, if applicable, and all applicable drawings, maps and plans necessary to understand the project;

d. summary description of the affected environment, including a vicinity map and site plan;

e. identification and summary of potential adverse impacts to coastal resources;

f. source of funding, if federal monies are being used for the project, and any federal permits needed for which application has been made;

g. determination of whether alternatives or mitigation are feasible; and

h. findings and reasons supporting determination.

5. Determination of significant impact or finding of no significant impact.

a. Board review of an environmental assessment. The applicant shall submit ten (10) copies of the environmental assessment to the Manager for distribution to the Board and public. At a regular or special meeting called by the Board, the Board shall review the environmental assessment and determine whether the proposed project meets the requirements of this chapter. Where necessary, the Board shall instruct the applicant to amend or furnish additional information necessary for the Board to reach a decision of adequacy of the assessment.

b. Determination of significant impact or finding of no significant impact. A determination shall be made by the Board as to whether significant adverse impacts can reasonably

(1) If measures have not been identified that will adequately avoid or mitigate the significant impacts a determination of significant impact shall be issued and a mitigation action plan shall be requested from the applicant.

(2) If no significant impact is found, or if impacts can be adequately avoided or mitigated, a finding of no significant impact shall be issued and considered in determining whether a land use permit should be approved.

c. Decision-making Criteria

(1) In determining whether an action may have a significant impact on coastal resources, the Board shall consider whether, every phase of a proposed action, the expected consequences, both primary and secondary, and the cumulative effects of the action comply with the standards and criteria as provided by this chapter.

(2) In most instances, an action shall receive a determination of significant impact on the environment if the action:

(a) Involves an irrevocable commitment to loss or destruction or alteration of any natural or cultural resource;

- (b) Curtails the range of beneficial uses of the environment;
  
- (c) Conflicts with any of the Territory's long-term environmental policies or goals, statutes, Rules, Amendments, court decisions, or executive orders;
  
- (d) Affects public health or safety;
  
- (e) Adversely affects the economic or social welfare of the community or Territory;
  
- (f) Causes cumulative or secondary impacts that increase costs to the public, such as substantially increasing demands on public facilities;
  
- (g) Involves a substantial degradation of environmental quality;
  
- (h) Is individually limited but cumulatively has considerable effect upon the environment or involves a commitment for larger actions;
  
- (i) Affects a threatened or endangered species or critical habitat;
  
- (j) Detrimentially affects air or water quality or ambient noise levels; or
  
- (k) Affects an environmentally sensitive area such as a floodplain, erosion-prone area, geologically hazardous area (including landslide hazard area), wetland, surface water or ground water, or coastal waters.

d. Documentation of review and decision; public comment and notice. The Board shall document review of an environmental assessment of a proposed action for future reference, and shall make a determination of significant impact or a finding of no significant impact in writing. The actual determination shall be filed with the Manager and notice of availability shall be published in a newspaper of general circulation in the Territory, soliciting comments from other agencies and the general public. A comment period of thirty (30) days shall follow

the date of the first publication of the notice in a paper of general circulation in the Territory and shall be cited in the notice. Associated documents pertaining to this section or written public comments pertaining to these documents shall become public documents in the applicants file.

6. Addressing a determination of significant impact: mitigation action plan.

a. If the Board issues a determination of significant impact, the applicant shall prepare a mitigation action plan in consultation with the jurisdictional agencies that issued the determination of significant impact.

(1) Mitigation action plan means a document that describes the plan for implementing commitments made in an environmental assessment to mitigate adverse environmental impacts associated with a project, use or activity.

(2) Mitigation includes:

(a) Avoiding the impact altogether by not taking a certain action or parts of an action;

(b) minimizing impacts by limiting the degree or magnitude of the action and its implementation;

(c) Rectifying the impact by repairing, rehabilitating or restoring the affected environment;

(d) Reducing or eliminating the impact over time by preservation and maintenance operation during the life of the action; and

(e) Compensating the impact by replacing or providing substitute resources or environments.

(3) Factors that the Board will consider when determining the acceptability of appropriate and practicable mitigation action plan include, but are not limited to:

(a) To be practicable, the mitigation must be available and capable of being achieved, considering costs, existing technology, and logistics in light of overall project purposes;

(b) To the extent appropriate, applicants should consider restoration, creation, replacement, enhancement, or preservation of the area requiring mitigation.

(c) Mitigation that may be appropriate and practicable includes, but is not limited to:

i) reducing the size of the project;

ii) establishing buffer zones to protect coastal resources; and

iii) replacing the loss of coastal resources by creating, restoring, and enhancing similar functions and values.

b. The Board shall review the mitigation action plan and determine whether the plan is acceptable and whether a land use permit should be issued.

(1) The record shall describe those mitigation measures to be undertaken which shall make the selected alternative environmentally acceptable.

(2) The Board may discuss preferences among alternatives based on relevant factors including economic and technical considerations and Board agency statutory missions.

c. The period for public review and comment on a mitigation action plan shall commence as of the date the notice of availability is published in a newspaper of general circulation in the Territory and shall continue for a period of thirty (30) days. Written comments to the Manager shall be forwarded to the Board and the applicant.

B. Supplemental statements

1. Change of circumstances. An environmental assessment or mitigation action plan that is accepted with respect to a particular action is qualified by the size, scope, location, and timing of the action. If there is a substantial change in the project or an amended land use permit in accordance with the provisions of this chapter, a supplemental statement shall be prepared and reviewed as provided in this section.

2. Project Notification and Review System determination of applicability.

a. A supplemental statement shall be warranted when:

(1) the scope of an action has been substantially increased,

(2) the intensity of environmental impacts may be increased,

(3) the mitigation action plan originally planned cannot be implemented, or

(4) new circumstances or evidence may result in different or likely increased environmental impacts.

b. The Board shall be responsible for determining whether a supplemental statement is required. This determination will be submitted to the Manager for written notification to the applicant that a supplemental statement shall be required for public review.

3. Contents. The contents of the supplemental statement shall be the same as required for an environmental assessment and a mitigation action plan and may incorporate by reference unchanged material from the same; however, the supplemental statement shall fully document the proposed changes from the original environmental assessment and mitigation action plan, discuss the process followed to address these changes, and discuss the positive and negative aspects of these changes.

4. Procedures. The requirements of consultation, filing public notice distribution, public review, comments and response, and acceptance procedures, shall be the same for the supplemental statement as prescribed for an environmental assessment.

#### 26.0225 National Environmental Policy Act.

A. Applicability. When a proposed project, use or activity is to be subject both to the National Environmental Policy Act, as amended, 42 USC §§ 4321 - 4370, as amended by Public Law 94-52 and Public Law 94-83; and this section, the following shall occur;

B. The applicant shall notify the responsible federal agency and the Board of the situation.

C. The National Environmental Policy Act requires that a draft environmental assessment or environmental impact statement be prepared by the responsible federal agency. When the responsibility of preparing an environmental assessment or an environmental impact statement is delegated to a territorial agency, the Board shall cooperate with relevant agencies to the fullest extent possible to reduce duplication between the federal and territorial requirements. This cooperation shall include, where appropriate, a joint environmental impact statement or environmental assessment, with concurrent public review and processing at both levels of government, so that one document shall comply with all applicable laws.

#### 26.0226 Federal Consistency.

A. Application. Federal actions (including direct federal activities and development projects, federal license or permit activities, and federal assistance activities) shall be conducted consistent with the provisions of this chapter, if the action is reasonably likely to affect any land or water use of a natural resource of American Samoa's coastal zone, pursuant to the federal regulations, 15 C.F.R. part 930 and any federal consistency guidance provided by the American Samoa Coastal Management Program.

B. American Samoa Coastal Management Program responsibility. The Manager is responsible for reviewing a federal agency's consistency determination, an applicant's consistency certification, and a territorial or local government's application for financial assistance, and shall inform the Board of the undertaking and shall inform all other government agencies with relevant jurisdiction and permitting authority to apply the goals, purposes, policies and

objectives of the Act and the provisions of this chapter; and applicable territorial air and water quality standards, rules, and regulations.

C. Public comment. Public comments are invited on the American Samoa Coastal Management Program's review of a federal agency's consistency determination and an applicant's consistency certification.

1. Direct federal activities. The American Samoa Coastal Management Program shall publish in a newspaper of general circulation in the Territory, a public notice in accordance with the provisions of this chapter on major projects, which will include: a summary of the proposal; state that the information submitted by the federal agency is available for public inspection; and that public comments may be made to the Manager within thirty (30) days of the first publication.

2. Federal license or permit activities. An applicant for a federal approval that is subject to the requirements of this chapter shall publish, on forms provided by the American Samoa Coastal Management Program, in a newspaper of general circulation in the Territory, a public notice which shall include: a summary of the proposal; state that the information submitted by the applicant agency is available for public inspection; and that public comments may be made to the Manager within thirty (30) days of the first publication.

D. Territorial permits. If any federal action subject to this chapter also requires a land use permit or any other permit or approval from the Territorial Government, the project proponent shall prepare a land use permit application simultaneously with their federal consistency determination or certification.

E. Listed Federal licenses or permits. The federal agency licenses and permits that the Manager shall review for consistency with the American Samoa Coastal Management Program are:

1. Permits required from the Department of Commerce, Office of Ocean and Coastal Resource Management, Sanctuaries and Reserves Division, for activities within Marine Sanctuaries under 33 USC 1401-1444;

2. Permits required from the Department of Defense, U.S. Army Corps of Engineers for:

a. Permits under sections 9 and 10 of the Rivers and Harbors Act, authorizing the construction of dams and dikes, and the obstruction of navigable waters.

b. Permits under section 4(F) of the Outer Continental Shelf Lands Act and amendments, authorizing artificial islands or fixed structures on the Outer Continental Shelf.

c. Permits under section 103 of the Marine Protection Research and Sanctuaries Act, authorizing the transport of dredged material for ocean dumping.

d. Permits under section 404 of the Clean Water Act, authorizing discharges of dredged and fill material into navigable waters (also subject to state certificate of reasonable assurance, under section 401 of the Clean Water Act).

3. Permits required by the Department of Energy and the Federal Energy Regulatory Commission for:

a. Licenses required for non-Federal hydroelectric projects and primary transmission lines under section 3(l), 4(e), and 15 of the Federal Power Act, 16 USC 796(l), 797(e) and 808).

b. Certificates of public convenience and necessity for the construction and operation of natural gas pipeline facilities, including both interstate pipeline and liquid natural gas terminal facilities under section 7 (c) of the Natural Gas Act, 15 USC 717(f)(c) ).

4. Permits required by the Environmental Protection Agency for:

a. Permits required under section 402 of the 1972 Federal Water Pollution Control Act and amendments, authorizing discharge of pollutants into navigable waters. (Also, subject to state certificate of reasonable assurance, Clean Water Act section 401.)

b. Permits required under section 405 of the 1972 Federal Water Pollution Control Act and amendments, authorizing disposal of sewage sludge.

c. Permits for new sources or for modification of existing sources and waivers of compliance allowing extensions of time to meet air quality standards under section 112(c)(1) of the 1972 Clean Air Act.

d. Exemption granted under the Clean Air Act for stationary sources.

5. Permits and licenses required for the Nuclear Regulator Commission for the siting, construction, and operation of nuclear facilities.

6. Permits required for the Department of Transportation. United States Coast Guard for:

a. Permits for construction of modification of bridge structures and causeways across navigable waters.

b. Permits for siting, construction, and operation of deep water ports.

c. If, in the future, it is found that the issuance of other types of federal permits and licenses cause direct and significant impact on coastal land and water resources, the Manager will either seek to review the activity as an unlisted activity pursuant to 15 CFR 930.54 and/or the Manager will seek to amend this list.

26.0227 Public information and education.

A. The American Samoa Coastal Management Program shall make information and educational materials available to the public and any Territorial agencies and officials. The information shall, to the extent practicable, be in the vernacular appropriate for American Samoa and translated into the Samoan language. The information made available should address coastal resources management and conservation and the land use permitting process.

B. The American Samoa Coastal Management Program shall provide ongoing technical assistance and education to villages to assist the villages in preparing and maintaining any

local coastal management program or village ordinance in support of coastal management objectives.

C. The American Samoa Coastal Management Program shall maintain a current series of island maps clearly showing the Territory's Special Management Areas, wetlands, and other unique areas.

#### 26.0228 Public records.

A. The Department of Commerce shall retain and preserve the following records for a minimum of five (5) years following their receipt, or in the case of a land use permit, for five (5) years following the last agency action. After five (5) years, the following materials shall be safely archived:

1. Land use permit applications and the action taken thereon.
2. Board meetings and public hearing records, including all minutes, transcripts and audio or video tape recordings.
3. The American Samoa Coastal Management Program materials, including all studies, guides, plans, policy statements, special reports, educational materials, memorandums of understanding, or other information obtained or prepared by the Department of Commerce or the American Samoa Coastal Management Program in order to provide public information and education or improve interagency coordination.

B. All the American Samoa Coastal Management Program records on file at the Department of Commerce shall be available for public inspection during normal business hours. Minutes of Board meetings and transcripts or tapes of meetings or public hearings shall be made available upon request within thirty (30) days after the meeting or hearing, except where the disclosure would be inconsistent with the law. Reasonable fees and costs incurred in researching and reproducing the records may be charged.

#### 26.0229 Severability.

If any provision of this chapter, or the application of any provision of this chapter to any person or any other instrumentality, shall be held invalid by a court of competent jurisdiction, the remainder of this chapter shall not be affected.

## Legal Resources

[Case Law](#)

[Code Annotated](#)

[Regulations](#)

[American Samoa Constitution](#)

[Organic Documents](#)

[Court Rules](#)

[Forms and Pamphlets](#)

[Other Legal Resources](#)

[Old Site](#)

[Legal Resources](#)

[Privacy & Terms](#)

[Contact Us](#)

[Employment](#)

[Site Map](#)

[Old asbar.org](#)

[FOLLOW US](#)

[COPYRIGHT 2011 ASBAR.ORG](#)

[ALL RIGHTS RESERVED.](#)

