

## Chapter 05

### COASTAL MANAGEMENT PROGRAM

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#### **24.0501 Title.**

This chapter is designated and may be cited as the “American Samoa Coastal Management Act of 1990.

**History:** 1990 PL 21-35.

#### **24.0502 Establishment of coastal management program.**

- (a) There is established in the Executive branch, within the office of development planning, an office to be known as the “American Samoa coastal management program” (hereinafter “ASCMP”).
- (b) The office of development planning is the designated territorial agency, as required by federal law, for the administration and implementation of ASCMP, and shall receive, manage, and account for all coastal management grants, contracts, cooperative agreements and other funds received and dispensed.

**History:** 1990, PL 21-35.

#### **24.0503 Designation of coastal zone and special management areas.**

- (a) Coastal zone management area. The islands of Tutuila and Aunu’u, the Manu’a Islands, Swains Island, Rose Island, and all coastal waters and submerged lands included within the boundaries of the territorial sea are hereby designated as the coastal zone management area of American Samoa, (hereinafter “coastal zone”), and are subject to the provisions of this chapter. Excluded from the coastal zone management area 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.
- (b) Special management areas. Due to their unique and valuable characteristics and to the imminent threat from development pressures, Pago Pago Bay, and the “pala” or wetland areas of both Nu’uuli and Leone, are hereby designated as “special management areas” under this chapter. The director of development planning is directed to delineate boundaries and promulgate rules for special management areas, in accordance with the Administrative Procedures Act, 4.1001 A.S.C.A. et. seq., that impose the highest practical standards for the preservation, restoration, and management of their ecological, commercial, recreational, and esthetic values. Future special management areas may be designated by the Governor, following a nomination

process and designation pursuant to the Administrative Procedures Act, 4.1001 et seq.

**History:** 1990, PL 21-35.

#### **24.0504 Program purpose and responsibilities.**

The general purpose of ASCMP is to provide effective resource management by protecting, maintaining, restoring, and enhancing the resources of the coastal zone. This shall be accomplished through:

- (1) protection of unique areas and resources, including wetlands, mangrove swamps, aquifer recharge areas, critical habitat areas, streams, coral reefs, watersheds, near shore waters, and designated or potential historic, cultural or archaeological sites, from destructive or inappropriate development;
- (2) development of strategies to cope with sea level rise and other coastal hazards, plus all other cumulative impacts on land, air, and water resources;
- (3) promotion of the public's health, safety, and economic welfare in the conservation of wildlife, marine, and other natural resources;
- (4) coordination and integration of planning, monitoring, and enforcement activities of all government agencies whose activities impact the coastal zone;
- (5) establishment of criteria for major facility siting and guidelines for the priority use of public shorefront property;
- (6) improvement and expansion of recreation opportunities and shorefront access for all residents and visitors; and
- (7) establishment of criteria and procedures for an environmental impact assessment process.

**History:** 1990, PL 21-35.

#### **24.0505 Land use permit.**

- (a) A land use permit shall be required for all uses, developments, or activities which impact the coastal zone.
- (b) The office of development planning is vested with exclusive authority to designate uses subject to land use permit requirements, and will approve, approve with conditions, or disapprove all land use permit applications according to permit review rules. For purposes hereof, the term "impact the American Samoa coastal zone" is defined as having direct and significant impacts on coastal waters and adjacent lands as defined in section 304 (1) of the federal Coastal Zone Management Act of 1972, as amended (16 U.S.C. 1451-1464).
- (c) Where there is reasonable cause to believe that a violation of this chapter, or rule adopted pursuant to it, has occurred, officials designated by the director of development planning may issue a stop order to the person responsible for the violation. The stop order must detail the facts alleged to constitute a violation and may include an order that necessary corrective action be taken within a reasonable time. In the event of the failure of the person or persons to comply with the order, the director of development planning may apply to the High Court for an injunction.

**History:** 1990, PL 21-35.

#### **Case Notes:**

A preliminary injunction is unwarranted when an environmental organization fails to plead specific harm to itself or its members and when it did not seek a stop order from the territorial Development Planning Office. A.S.C.A. §§ 4.1040, 24.0505(c). *Le Vaomatua v. American Samoa Government*, 23 A.S.R.2d 11 (1992).

#### **24.0506 Adoption of rules—Appeals.**

(a) The director of development planning, after public hearings, shall adopt, pursuant to this chapter and the Administrative Procedures Act, 4.1001 A.S.C.A. et seq., rules as are deemed necessary for the efficient and effective administration of this chapter. The rules shall be promulgated and take effect as soon as possible, and not later than one year after the enactment of this chapter. These rules, at a minimum, shall:

- (1) establish a streamlined land use permit system that integrates the permitting requirements of each of the territorial agencies concerned with environmental management, and determines a land use permit fee schedule commensurate with the cost of administering the permit review system;
- (2) establish procedures for the conduct of appeals by aggrieved parties for a decision reached or conditions imposed on a land use permit application.

(b) Notwithstanding this or any other provision of law or rule, the rules promulgated as chapter 26.02 of the American Samoa Administrative Code (Executive Order 12-88) shall continue in effect until such time as the rules required under this section are promulgated as final.

**History:** 1990, PL 21-35.

#### **Case Notes:**

Existing coastal management rules and regulations were not nullified by the Development Planning Office's failure to formally promulgate new, statutorily-required rules for administering the American Samoa Coastal Management Program. A.S.C.A. § 24.0506(a)-(b); A.S.A.C. §§ 26.0201 et seq. *Le Vaomatua v. American Samoa Government*, 23 A.S.R.2d 11 (1992).

#### **24.0507 Federal consistency rules.**

The director of development planning, shall adopt pursuant to this chapter and the Administrative Procedures Act, 4.1001 A.S.C.A. et seq., rules as are necessary to govern review of any activity, program, project, license, permit, or funding of the United States Government within the Territory to ensure that federal action is consistent with the policies and goals of this chapter, pursuant to section 307 of the federal Coastal Zone Management Act of 1972, as amended.

**History:** 1990, PL 21-35.

#### **24.0508 Prohibited acts.**

(a) It shall be a violation of this chapter for any person, including corporations, 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 without a land use permit or in violation of a permit. This section applies to principals, their agents, and contractors.

(b) Any person, including any corporation, who violates this section is guilty of a class A misdemeanor, and shall also be subject to civil fines according to the provisions of 24.0509 of this chapter.

**History:** 1990, PL 21-35.

#### **24.0509 Violations and penalties.**

- (a) Except as otherwise specifically provided in 24.0508, any person who violates any provision of this chapter or any rules or order issued hereunder is guilty of a civil offense and, upon conviction, shall be subject to a civil fine imposed by the High Court of American Samoa not to exceed \$5,000 per violation. Corporations shall also be subject to a civil fine imposed by the High Court of American Samoa not to exceed

\$10,000 per violation.

- (B) For the purposes of this section, a violation shall constitute an offense committed on any single calendar day, and offenders may be cited on subsequent violations if the objectionable practice or activity persists beyond one calendar day and is not righted or stopped.
- (b) In addition to the foregoing and in order to deter violations of the provisions of this chapter, or rules issued pursuant to this chapter, the attorney general may maintain an action in the High Court of American Samoa for exemplary damages, the amount of which is left to the discretion of the Court, against any person who intentionally and knowingly violates any provision of this act or those rules.
- (c) Any individual or corporation who knowingly and willfully makes a false statement, representation, or certification in any application for a permit, or in any record, plan or other document filed or required to be maintained under this chapter or rules issued hereunder, or in any permit or order issued pursuant to this chapter, or who falsifies, tampers with or knowingly renders inaccurate any monitoring device or method required to be maintained pursuant to this chapter or rules issued hereunder or any permit or order issued pursuant to this chapter, shall be subject to permit revocation or suspension and is guilty of a class B misdemeanor and upon conviction shall be sentenced accordingly.

**History:** 1990, PL 21-35.

#### **24.0510 Environmental restoration fund.**

(a) There is established an environmental restoration fund that shall be used to further the monitoring, enforcement, hazard mitigation, and environmental restoration duties of the ASCMP. The fund shall be managed by the director of development planning who shall submit financial reports at the end of each fiscal year to the Governor and Legislature.

(b) Fines collected pursuant to this chapter are to be deposited in the general fund.

(c) All money or proceeds donated or bequeathed for the benefit of the ASCMP are to be deposited in the general fund, provided that money or proceeds donated or bequeathed for specific purposes shall be held in trust, and may only be used for purposes described in the donation or bequest.

**History:** 1990, PL 21-35.