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November 22, 1994

In reply refer to:
OAM:
Serial: 0915

Hon. Governor A.P. Lutali
American Samoa Government
Executive Office Building
Utulei, American Samoa 96799

Dear Governor Lutali,

I am pleased to forward to you the attached copy of the Administrative Rules for the American Samoa Coastal Management Program (ASCMP). These rules were adopted on November 22, 1994, pursuant to authority granted the Development Planning Office (DPO) under Public Law 21-35, the American Samoa Coastal Management Act (the Act) of 1990, 24.0501 et seq., ASCA. Section 24.0506 of the Act directed that

> (a) the director of development planning, after public hearings, shall adopt, pursuant to this chapter and the Administrative Procedures Act, 4.1001 ASCA 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 (sic) 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.

Development of the Administrative Rules took several years because of unforeseen difficulties during the past administration and the long consultation process required to address coordination issues among the seven (7) PNRS Board agencies. The rules have undergone an extensive public hearing, review and comment period, including noticed opportunities for the general public and territorial and federal agencies to review and comment on the proposed rules.

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Comments from that process and agency meetings and workshops have been incorporated into this final document. Additionally, our legal counsel forwarded a copy of the rules to your legal counsel and received favorable comments.

On behalf of my staff, the American Samoa Coastal Management Program, and members of the Project Notification and Review System, I wish to thank you for your support and look forward to the continuance of our service to the people of our Territory.

Sincerely,

Alfonso P. Galea'i
EDPO Director

Enc.

cc: John Faumuina, Jr., PNRS Chairman
PNRS Board Members
Douglas J. Juergens, Assistant Attorney General
Lelei Peau, ASCMP Manager
Larry Ward, Environmental Planner, ASCMP

American Samoa Coastal Management Program

Administrative Rules

US Department of Commerce
NOAA Coastal Services Center Library
2234 South Hobson Avenue
Charleston, SC 29405-2413

November 22, 1994

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AMERICAN SAMOA COASTAL MANAGMENT PROGRAM
ADMINISTRATIVE RULES

26.0201 Adoption authority. These Administrative Rules for Coastal Management (the Rules) are adopted pursuant to authority granted the Development Planning Office (DPO) under Public Law 21-35, the American Samoa Coastal Management Act of 1990 (the Act), 24.0501 et seq., ASCA.

26.0202 Purpose. The Rules govern the administration of the American Samoa Coastal Management Program (ASCMP), and set standards for the ASCMP in implementing its responsibilities under the Act. The Act mandates the establishment of a system of environmental review at the territorial level intended to ensure that environmental concerns are given appropriate consideration in the land use decision-making process, along with economic and technical considerations. The Rules establish a consolidated land use permitting process, known as the Project Notification and Review System (PNRS), set development standards, procedures for the designation, planning and management of Special Management Areas (SMA's), procedures for Environmental Assessment (EA), and procedures for determination of federal consistency. The Rules 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 and with the policies and standards of annexes A and B of these rules. The Rules are consistent with the federal Coastal Zone Management Act of 1972, as amended.

26.0203 Construction. The Rules shall be construed to secure the just and efficient administration of the Act and the just and efficient determination of uses subject to Land Use Permit (LUP). In any conflict between a general rule or provision and a specific rule or provision, the specific shall control over the general.

26.0204 Definitions. The following definitions shall apply:

(__) "Acceptance for review" means a formal determination that a document is sufficiently complete to commence its review. Acceptance is not a determination that the proposed action is acceptable or permitted; only that the document is sufficiently complete to commence its review.

(__) "Act" means the American Samoa Coastal Management Act of 1990 (the Act), 24.0501 et seq., ASCA.

(__) "Adjacent" means bordering, contiguous or neighboring. Wetlands separated from other waters of the United States by man-made dikes or barriers, natural river berm, beach dunes and the like are "adjacent wetlands".

(__) "Adverse impact" means an alteration or the sum of alterations 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 rules; or which adversely affect the economic, health, safety or social welfare of a community or the territory. Adverse impact includes but is not limited to:

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

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

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

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

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

(f) disruption of historic, cultural, or archaeological properties or sites;

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

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

(__) "Agency" as it pertains to a subdivision of the American Samoa Government means any board, department, office, commission, committee, or other instrumentality created by the Constitution, statutes or rules of the Territory, or by executive order of the Governor.

(__) "Applicant" means any person or agency of the territorial or federal government who, pursuant to the Act and the Rules, files an application for a LUP.

(__) "Approval" means a discretionary consent required from an agency prior to actual implementation of an action.

(__) "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 to events or conditions of the human past.

(__) "ASCMP" means the American Samoa Coastal Management Program.

(__) "ASCMP Manager" means the individual designated by the Director who is responsible for the overall implementation and administration of the ASCMP.

(__) "Baseline" is a continuous line which encircles an island or atoll and 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.

(__) "Beach" means an accumulation of unconsolidated deposits along the shore with their seaward boundary being at the low-tide or reef-flat-platform level and extending inland to the strand vegetation or, where none is present, to the limits of the unconsolidated materials.

(__) "Best management practices" means economically achievable measures for the control of the addition of pollutants from existing and new categories of nonpoint sources of pollution, which reflect the greatest degree of pollutant reduction achievable through the application of the best available nonpoint control practices, technologies, processes, siting criteria, operating methods, or other alternatives.

(__) "Board" means the PNRS Board.

(__) "Buffer zone" refers to a set back area in which development of any kind is prohibited.

(__) "Coastal resource" means the land, air, water, minerals, flora, fauna, and objects of historic or aesthetic significance within the Territorial coastal zone.

(__) "Coastal zone or coastal zone area" includes the entire island of Tutuila, the Manu'a Islands, Aunu'u Island, Rose Island, and Swains Island, territory of American Samoa, and all coastal waters and submerged lands for a distance of three (3) nautical miles seaward in all directions therefrom. The entire coastal zone area is subject to the Act and all other policies

and regulations of the ASCMP.

(__) "Coral" means the calcareous skeletons secreted in or by the tissues of various marine coelenterates, including all varieties of hermatypic coral, coralline structures, and precious corals.

(__) "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.

(__) "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 endangered, threatened or a species of concern.

(__) "Director" means the Director of the DPO.

(__) "Emergency" means a sudden unexpected occurrence demanding immediate action to prevent or mitigate loss or damage to life, health, property, or essential public services.

(__) "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, ambient noise, and objects of historic or aesthetic significance.

(__) "Environmental Assessment (EA)" means a written evaluation to determine whether an action may have a significant adverse impact on coastal resources.

(__) "Erosion" means the result of natural processes, often exacerbated through human impact, by which surface materials are worn away, loosened, or dissolved, and transported off site.

(__) "Exempt Activity" means projects which do not adversely affect coastal resources, and thus not requiring a LUP, and include:

a. maintenance/repair of existing single family homes, other structure, etc., which do not change footprints, increase dimensions, or change the use of the structure;

b. small scale landscaping which does not exceed ten (10) cubic yards of topsoil; and

c. small, temporary (not exceeding seventy-two [72] hours) structures for political campaign, public service or fund raising activities and government sponsored cultural celebrations, events or activities, e.g., flag day, coast weeks.

Project applicants are encouraged to receive written acknowledgment from DPO/ASCMP that their projects constitute "exempt activities."

(__) "Fa'a Samoa" means the traditional Samoan way of life.

(__) "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.

(__) "Feasible alternatives" applies both to locations or sites and to methods of design or construction, and includes a "no action" alternative.

(__) "Federal consistency determination" is a determination by the ASCMP Manager whether a proposed federal or federally funded or permitted action is consistent with the enforceable policies of the ASCMP.

(__) "Federal government" is the government of the United States of America.

(__) "Federal or federally excluded lands" are defined as lands the use of which is by law subject solely to the discretion of or which is held in trust by the federal government, and includes lands owned, leased, or held in trust by the Federal Government.

(__) "Fill" means rock or soil not containing any foreign matter, manmade or otherwise. The act of placing fill.

(__) "Flooding" means the inundation of normally dry land areas adjacent to a stream, bay, or coast which is caused by storm runoff, storm surge, or tsunami.

(__) "Floodplain" means the area adjoining a stream, bay, or coast that is subject to flooding.

(__) "Grandfathered use" means any legally authorized use or structure existing at the time of the enactment or subsequent amendment of the Rules, but not in conformity with its provisions. Grandfathered uses may be continued with the following limitations. Any use or building which does not conform to the provisions of the Rules may not be:

a. Changed to another "grandfathered use."

b. Re-established after discontinuance for a period of one year or more.

c. Extended except in conformity with the Rules.

(__) "High tide line" 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 of oil or scum along the shore, objects, 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.

(__) "Hydric soil" refers to a soil that is saturated, flooded or ponded long enough during the growing season to develop anaerobic conditions in the upper part.

(__) "Impact" means the consequence of a course of action or effect of a plan or permit decision which results in modification to existing conditions.

(__) "Land Use Permit" (LUP) 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.

(__) "Major facility" includes, but is not limited to, construction or major repair of water or sewage treatment plants, roads, highways, seaports, airports, aids to navigation, power production, distribution and transmission facilities, major recreation areas, national defense installations, solid-waste disposal areas and facilities, and water supply systems.

(__) "Major project" means a proposed project, use or action which is likely to have significant adverse impact to coastal resources, including actions that:

a. will create a new, or relocate an existing, discharge of pollutants to ocean, surface, or ground waters;

b. will result in substantial increases in the volume of discharge or the loading of pollutants from an existing source or from new facilities to receiving waters;

c. are known to, or are expected to, have a significant impact on the quality of the human environment, either individually or cumulatively;

d. are known or are predicted not to be cost-effective or might be associated with significant public controversy;

e. are classified as a major facility;

f. will involve landfilling, excavation, disposal of dredged materials, mining, quarrying, or incineration activities that may cause adverse impacts;

g. will involve dredging or filling in marine or fresh waters, point source discharge of water or air pollutants, noise pollution, ocean dumping, or artificial reef construction;

h. have the potential for adverse impacts on submerged lands, reef systems, groundwater recharge areas, cultural areas, historic or archaeological sites and properties, SMA's, pristine ecosystems, mangroves, wetlands, beaches, areas of scientific interest, recreational areas, undisturbed native vegetation, and endangered or threatened species habitat;

i. will involve large-scale commercial agriculture or mariculture facilities or include silviculture or timber operations;

j. may cause 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;

k. constitute a project, action, or program 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.

l. 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;

m. any project, use or action that is located within an SMA; or

n. cost of which is greater than $250,000.

(__) "Matai" means the titled head of a Samoan extended family.

(__) "Minor project" means any project, use or action which

may have an adverse impact on coastal resources, particularly when viewed within the context of the cumulative impacts or other uses; except, where the location of project is within or may adversely affect coastal resources listed in major project list paragraph h., in which case the project shall be deemed a "major projects." Minor projects include the following:

a. construction of a single family home;

b. construction of structures or extensions to existing structures not exceeding 120 square feet;

c. utility connections (water, sewer and/or electricity); and

d. temporary (not exceeding thirty [30] days) structures, uses or activities.

(__) "Mariculture" means the culture or commercial production of marine plants or animals for research or food production.

(__) "Nearshore waters" means those waters within the territorial sea, presently defined as those waters within three nautical miles of the shoreline.

(__) "NEPA" means the National Environmental Policy Act of 1969, Public Law 91-190, 42 USC 4321-4347, as amended.

(__) "Ordinary high water mark" 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, the presence of litter and debris, or other appropriate means that consider the characteristics of the surrounding areas.

(__) "Permit" means a certificate, license, approval, or similar form of permission required by law.

(__) "Person" includes any individual, partnership, firm, association, trust, estate, private corporation, an agency of the territorial or federal governmentor or other legal entity.

(__) "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.

(__) "Pulenu'u" means the official representing central government in a village; the village mayor.

(__) "Rules" mean the above and foregoing Administrative CZM Rules, including the Annexes, adopted pursuant to authority granted the Development Planning Office (DPO) under Public Law 21-35, the American Samoa Coastal Management Act of 1990 24.0501 et seq., ASCA.

(__) "Shoreline" means the boundary line between a body of water and the land, measured on tidal waters at mean high-tide and nontidal waterways at the ordinary high-water mark.

(__) "Sound agricultural practices" 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.

(__) "Special Management Areas" (SMA) are those areas duly designated by the Act or the Rules 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 the fa'a Samoa.

(__) "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.

(__) "Subsistence" when used in regard to hunting, fishing and agricultural activities means the taking, gathering or growing of animals, fish, sea creatures or vegetation historically used in the Samoan islands and taken, gathered or grown by traditional methods for the personal use of the taker and immediate family. Subsistence hunting, fishing and agricultural activities do not include commercial, for profit or for barter activities. Such activities, while ordinarily exempt from the need for a LUP, are not exempt from compliance with other federal or territorial laws or regulations.

(__) "Sustained yield" means a resource management concept used to achieve a balance between the rates of renewable resource consumption and renewal, recruitment, or productivity.

(__) "Territory" means American Samoa.

(__) "Threatened, endangered or a species of concern" means a species listed by DMWR as being threatened, endangered or a species of concern.

(__) "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.

(__) "Traditional Samoan uses" 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.

(__) "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.

(__) "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.

(__) "Watershed" means a distinct area bordered by features of higher elevations that is usually accented by surface drainage leading to the ocean.

(__) "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;

b. all interstate waters including interstate wetlands; and

c. 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:

i. which are or could be used by interstate or foreign travelers for recreational or other purposes;

ii. from which fish or shellfish are or could be taken and sold in interstate or foreign commerce; or

iii. which are used or could be used for industrial purposes by industries in interstate commerce.

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

e. tributaries of waters identified in paragraphs (a) thru (d) above;

f. the Territorial seas; and

g. wetlands adjacent to waters (other than waters that are themselves wetlands) identified hereinabove.

(__) "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 adapted for life in saturated soil conditions. Wetlands generally include but are not limited to swamps, marshes, mangroves, streams, springs, cultivated marsh, and similar areas.

(__) "Work" includes site clearing, dredging, excavating, filling or grading, delivery of construction materials, or erection or siting of temporary or permanent structures.

26.0205 Interagency coordination.

a. All territorial executive, autonomous, or legislative agencies and their employees shall conform to the Rules, and shall endeavor to ensure their activities, or the possible indirect result of their activities, 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 Rules are fully understood to maximize coordination, thoroughness, and attainment of the purposes, objectives and policies of the Act and the Rules.

26.0206 Establishment of the Project Notification and Review System; members of the PNRS board; and conduct of meetings.

a. There is established and consolidated within the DPO a Project Notification and Review System. The PNRS shall be administered by the Board. Members of the Board shall be the directors/managers or their designee of the following Territory agencies and departments which have permitting or regulatory authority over land use development and/or environmental matters: Development Planning Office/American Samoa Coastal Management Program (DPO/ASCMP); American Samoa Environmental Protection Agency (ASEPA); American Samoa Power Authority (ASPA); Department of Health; Department of Marine and Wildlife Resources (DMWR); Department of Parks and Recreation/American Samoa Historic Preservation Office (DPR/ASHPO); and Department of Public Works (DPW). The Director shall appoint an ex

officio chairperson. ASCMP shall provide support staff for the Board and all necessary supplies.

b. The Board shall convene at times and places as determined by the Board. 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 Chairperson. The presence of four (4) members shall constitute a quorum. Unless otherwise provided by the Rules all actions taken by the Board shall be by majority vote of those present or voting by proxy. All action by the Board shall be by vote and publicly cast. Each member agency shall have one vote.

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

d. All Board members participating in decisions regarding A LUP shall do so in fair and impartial manner. They shall not participate in decisions on a LUP where there exists an appearance of or an actual conflict of interest. In the event any member agency of the Board submits a LUPA for approval of a project to be conducted by that agency, that agency shall be recused from voting on the proposed project. A representative of a Board member agency who is recused hereunder shall be counted for purpose of determining a quorum.

e. 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 (LUPA) 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 LUP except where specifically exempted by law. No physical project work, including site preparation, grading, or excavation, may commence without a LUP.

b. Burden on applicant. In all cases, the burden is on the applicant to obtain the proper permits required for the project prior to commencement of the work. Federal permits may also be necessary for certain projects. ASCMP

will make reasonable attempts to assist a LUP 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 will be held between prospective LUP applicants and ASCMP to determine the likelihood of the project, use or action being proposed having an adverse impact on coastal resources requiring a LUP. If so determined, ASCMP 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 LUPA. ASCMP shall also assist the applicant in understanding the applicable provisions and procedures of the Act and the Rules 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 determine, if possible, the array of local and federal permits that may be required.

e. When to file. LUPA forms shall be made available at the DPO office and at such other locations as may from time to time be designated. The completed LUPA shall be filed with the DPO for review at any time during normal business hours.

f. Application package. The LUPA shall be accompanied by a vicinity map, a site plan, plus any supporting documentation that may be required by law or the Rules. All information submitted with the application or at any other time in the review process shall be public information, except that certain proprietary information, not material to a review of project compliance, may be withheld if requested in writing to the Director and such request is approved. Site plans must include topographic data at a scale appropriate to discern the principal features of the site.

g. Information requirements. The LUPA 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 or engineer or contractor, if any, including their mailing address and telephone number;

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

4. landowner or matai for the project site;

5. signature of matai if communal land;

6. signature of pulenu'u if communal land;

7. signature of secretary of Samoan Affairs if communal land;

8. signature of governor if government land;

9. copy of 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 and funding source if federal funds are involved;

16. distance of project from the shoreline if project is located within two hundred feet (200') of the shoreline;

17. existing contours and proposed final grading of the site, including the existing and proposed drainage plan, a description of adjacent and down slope sites and a narrative of how the proposed drainage plan will impact those sites;

18. erosion control plan, or provisions, necessary to reduce nonpoint source pollution;

19. current and projected utility requirements and connections, including streets, sewer, water, electricity, fuel (including storage onsite) and all existing and proposed line locations, including size and engineering requirements;

20. statement of compliance with the policy objectives of the ASCMP;

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

22. 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. An LUPA shall include a signed declaration by the applicant that the information supplied in the LUPA and its exhibits and attachments is true and correct, under penalty of law.

i. Fees. At the time of issuance of the LUP, payment of a 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 fee for government agency-funded projects or projects of nonprofit U.S. Internal Revenue Code 501(c)(3) corporations; however, a LUPA and LUP is required. Fees shall be set in accordance with the following fee schedule:

MINOR PROJECTS: $10

MAJOR PROJECTS:

Cost of Project	Fee
Less than $10,000	$ 10
$10,000 to $29,999	25
$30,000 to $49,999	50
$50,000 to $249,999	150
$250,000 to $499,999	300
$500,000 to $1,000,000	$500

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

j. Penalty for filing after work commenced. In addition to the LUP fee and other penalties provided by law or the Rules, a penalty of $100 or 200% of the LUP fee, whichever is the greater, shall be assessed for a project for which physical work has been commenced prior to receiving the necessary licenses, permits, determinations or approvals.

k. In the case of work commenced without applicable permit[s], should the Board determine that the applicant is not eligible for a LUP, the applicant shall restore the site to its pre-work condition. If the applicant refuses or is unable to take the required remedial action the Territory shall perform the necessary remedial action for which the applicant shall be financially responsible.

26.0208 Review of major and minor LUPA.

a. Acceptance for review. Upon filing the application the ASCMP Manager shall initiate a review to ensure that the application is complete, that the vicinity map and site plan are acceptable, and that all other necessary documentation is attached. If any additional information is required the applicant will be notified; however, responsibility for completing the application ultimately lies with the applicant. Once all necessary materials are submitted by the applicant the ASCMP 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 ASCMP shall post notice of the application at the DPO which notice shall remain posted for three (3) business days. No action on the permit can be taken during the notice period. The notice shall contain: the status of the project review; a statement that a record of the project proposal is available for public inspection; and a statement that public comments will be considered.

2. Major projects. Upon acceptance for review ASCMP shall post notice in the DPO 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. 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. The applicant shall be given at least seven (7) days written notice of the meeting.

c. Site visit. ASCMP shall conduct a site visit and prepare a report prior to taking action on any LUPA. The report shall be maintained as part of the application record. For major projects ASCMP shall coordinate a site visit for the Board.

d. Review standards. The proposed project shall be reviewed in accordance with the Act and the Rules. The issuance of an approved or conditional LUP does not relieve an applicant from complying with other required territorial or federal permits, licenses, clearances, or approvals which may be required by law or regulation.

e. Redesignation of a project from minor to major. During the notice period, any Board member may redesignate a minor project to a major project. The justification for the redesignation shall be stated in writing and made a part of the permanent record.

f. Minor project review. Minor projects shall be reviewed by ASCMP. ASCMP may consult with diverse government agencies for technical assistance. A decision shall be issued no more than three (3) business days from the close of the notice period unless any Board member has redesignated the project.

g. Major project review. Major projects shall be reviewed, evaluated and a decision made by the Board at a regular meeting or at a special meeting. Failure of the applicant or a designee to appear without giving twenty-four (24) hours notice authorizes the Board to consider the application as abandoned. A decision on a LUPA for a major project shall be issued within forty-five (45) days of its acceptance for review, unless the following occurs:

1. additional information is requested by any Board member agency in order to properly evaluate the project;

2. a public hearing is held; or

3. the Board determines, by majority vote of the entire Board, that an EA or an Alternatives/Mitigation Plan (AMP) is necessary to properly evaluate the

project.

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 a final EA or AMP, as the case may be.

h. Public hearings. A public hearing on a major project shall be held in or near the village in which the project is located in the event:

1. a request is made in writing to ASCMP by any Board member agency, by any other territorial or federal agency, by any publicly funded organization representing no less than twenty-five (25) members, by any landowner or occupier within two hundred feet (200') of the project site, or by no less than twenty-five (25) members of the public; or the project includes the construction of major facilities;

2. 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 DPO, and published at least once a week for two (2) consecutive weeks in a newspaper of general circulation in the Territory. The applicant shall be responsible for posting and publication of the notice on forms provided by ASCMP.

3. the Board may exempt major projects which are funded by a federal grant that have had a public hearing as part of the grant process from the requirements of paragraph 2 above. In such case the record of the prior public hearing shall be filed with the Board.

26.0209 PNRS review of major projects.

a. Written technical findings shall be prepared by each Board member with jurisdiction. If additional permits, e.g., water quality certification, are required, those Board members with jurisdiction shall comment on the requirements. If appropriate, project modifications, alternatives or mitigating conditions shall be proposed. 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.

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

record and shall be considered by the Board in making its decision.

c. Upon review of the entire record, including technical findings, supporting documentation and public comments, the Board shall determine whether or not the proposed project, use or action complies, or reasonably can be conditioned to comply, with the Act and the Rules, and with each agency's respective jurisdiction and permitting authority. An approved or conditional LUP requires a unanimous vote of the Board members present. The Board's decision shall include written findings of fact and conclusions of law.

26.0210 General standards and criteria for review.

a. All approved projects shall meet all of the requirements of the Rules, the ASCMP Statement of Policies and Objectives, ANNEX A, and the ASCMP Statement of Permissible, Conditional, and Prohibited Uses, ANNEX B, attached hereto and incorporated herein.

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

1. the proposed project shall not cause or threaten a substantial, or potentially substantial, adverse change in or upon coastal resources;

2. the proposed project shall be compatible with existing adjacent uses and adopted plans;

3. 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;

4. the proposed project will not cause an excessive demand on existing facilities and services;

5. public access to the shoreline is maintained; and

6. adequate space is provided between the proposed project and identified hazardous lands, including floodplain, erosion-prone areas, landslide hazard areas, storm wave inundation areas, air traffic patterns and sound zones, and major seismic fault lines.

c. Unless it can be demonstrated that a proposed development does not pose unreasonable risks to the health,

safety, or welfare of the people of the Territory, and complies with applicable laws, a project which does not provide adequate setback from hazardous lands is not in compliance with the ASCMP and shall be denied.

26.0211 Conditional LUP.

a. All LUP conditions shall be incorporated into final design plans which shall be submitted to each Board member agency having jurisdiction and permitting authority over the conditions imposed, who shall be responsible for its enforcement.

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

c. All conditions imposed on a LUP shall be for the term of the permit unless otherwise stated.

26.0212 LUP, issuance, duration and affirmative duties of applicant.

a. Upon a determination by the ASCMP Manager in the case of a minor project, or recommendation of the Board in the case of a major project, the ASCMP Manager shall certify whether the application complies with the Act and the Rules. The Director shall, then, based upon such certification, approve, approve with conditions, or disapprove the LUPA.

b. Physical development of the project which is approved under a LUP shall commence within one (1) year of the date the LUP is issued, and shall be completed within two (2) years of the date of issuance. If physical development of the project is not commenced within the one (1) year period, the LUP shall be voidable by the Board. If the project is not completed within the two (2) year period the Board may extend the permit duration.

c. If work is discontinued for a period of one (1) year or more, that LUP is considered abandoned and a new LUPA is required.

d. Legally authorized uses which predate the Rules are grandfathered subject to subparagraph c above.

e. The holder of an approved LUP shall be under an affirmative duty to notify the ASCMP Manager within three (3) days if any of the following events occur:

1. the holder has knowledge of any information in the LUPA which was untrue at the time of its submission;

2. the holder has knowledge of any unforeseen adverse impacts of the project; or

3. prior to the completion of the project, the holder of the LUP transfers, conveys or assigns his legal or equitable interest in the project to a successor in interest. The holder shall also be under an affirmative duty to advise the transferee of the existence and terms of the LUP.

26.0213 LUP, contents. The LUP shall be issued on a standard form prepared by the DPO, and shall contain at a minimum the following information:

a. purpose and scope of the LUP;

b. all conditions imposed by the Board;

c. duration [if temporary] of the LUP;

d. notice of the right of ASCMP or member agencies of the Board to periodically inspect the project; and

e. notice that any substantial deviation from the purpose and scope of the LUP, or any violation of the conditions of the permit, shall subject the permittee to financial penalties and or revocation of the permit as listed in 26.0219 and 26.0220 of the Rules.

26.0214 LUP, amendment. An amendment to a LUP shall be required of all projects before they are significantly altered or substantially expanded. The amendment shall require submission of a revised LUPA. Alterations and expansions requiring an amended LUP include, but are not limited to:

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

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

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

d. a change in the proposed use.

26.0215 States of emergency, exemptions.

a. Upon a declaration a state of emergency by the Governor, due to a natural catastrophe or other act of God, the provision of emergency services or repairs is necessary for the public good, an interim exemption may be granted. The interim exemption shall be issued in writing to the agency providing the emergency services or repairs, shall be accompanied by written findings of fact and conclusions of law, and shall allow the stated activities to occur without a LUP for a period not to exceed ninety (90) days. Such notice shall be published at least once a week for two (2) consecutive weeks in a newspaper of general circulation in the Territory, and shall specify the duration of the exemption and cite the reasons for the exemption. The exemption does not relieve the agency from compliance with all other applicable Territorial and federal laws and regulations, to the maximum extent practicable.

b. An applicant may seek a special exemption by application to the Board under the following procedures:

1. to conduct a prohibited use as defined in ANNEX B the applicant shall submit a petition for special exemption to the Director. The petition shall state facts sufficient to establish conformity with the special exemption requirements listed below. The petition shall include all information required for a major project, a plan for the proposed action which provides a detailed description of the site, the surrounding area, the proposed action, the location of all existing and proposed roads, structures, utilities, watercourses and wetlands, 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 this site in the manner proposed.

2. The Board may grant, by unanimous vote, a special exemption if the applicant demonstrates that:

A. literal enforcement of the applicable provisions of the Act and the Rules will cause the applicant undue hardship, excluding economic hardship; and

B. such hardship results from conditions peculiar to the applicant's property; and

C. such conditions could not reasonably have been anticipated by the ASCMP when the rules were adopted; and

D. 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

E. no other feasible alternative sites or activities exist; and

F. the applicant agrees in writing to abide by the plan submitted under penalty of the total cost to restore the site to its existing condition; and

G. the proposed project is consistent with the spirit, purpose, and intent of the Act.

3. A petition for special exemption 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. If a special exemption is granted by the Board, within thirty (30) calendar 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.

4. Nothing herein shall be interpreted so as to permit an exemption from the provisions protecting SMA's found in 26.0225, et seq. of the Rules.

26.0216 Monitoring and regulation, authority and duty.

a. The ASCMP Manager shall have the authority and duty to investigate, monitor and regulate any and all projects, uses and activities that require a LUP pursuant to the Act and the Rules.

b. An application for a LUP shall constitute consent by the applicant that representatives of ASCMP, 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 or the use or action being conducted thereat, before or after issuance of a LUP.

c. Upon reasonable cause to believe a violation of the Act or the Rules is taking place, the ASCMP Manager, or the Board, may petition the Territorial High Court, pursuant to the Revised Constitution of Territory and applicable law, for a search warrant to search the site of the project, use or action, regardless of the LUP status of the site.

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

26.0217 Reserved.

26.0218 Stop work order.

a. The ASCMP Manager, upon finding reasonable cause to believe that a project, use or action violates one or more provisions of the Act, the Rules, or the terms and conditions of a LUP, or that an imminent threat exists may issue a "stop work order". The stop work order shall:

1. specify the provisions of law or the LUP alleged to be violated, and include a statement of facts or conduct constituting the violation;

2. state the corrective measures, if any, necessary to satisfy compliance with the Act and the Rules, 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. state that sanctions specified by the Act and the Rules 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 in subsection c below. At the discretion of the ASCMP Manager, the stop work order may authorize specific mitigation work.

b. The stop work order shall be personally served upon the LUP holder, 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 stop work order shall be sent to the Building Branch Manager, DPW, and each Board member agency. It is a violation of the Rules to remove or otherwise deface a posted stop order.

c. A stop work order may be contested by its recipient upon giving notice, in writing, to the ASCMP Manager within five (5) days of service of the stop work order. The notice shall state the grounds for the contest.

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

26.0219 Revocation of LUP.

a. If the ASCMP Manager determines that a holder of a LUP has violated a provision of the Act, the Rules or LUP, or that an imminent threat exists to the public's health, safety, or welfare, a LUP may be revoked pending a hearing before the Board. The hearing before the Board shall be conducted pursuant to the procedures for suspension or revocation which follow.

b. Revocation of LUP.

1. Where a LUP holder is in violation of the Act or the Rules or any provisions of a LUP or its conditions, or where there has been a violation of a Stop Work Order the ASCMP Manager shall initiate revocation proceedings by issuing a notice of revocation to the LUP holder, 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 LUP holder shall be given at least seven (7) days notice of the hearing.

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

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

26.0220 Penalties.

a. As provided in ASCA 24.0509; and

b. 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.

26.0221 Appeals.

a. Any person with standing who is aggrieved by any decision of the ASCMP Manager or the Board may appeal the decision.

b. The following have standing to appeal a decision of ASCMP:

1. the applicant for the LUP;

2. any landowner or occupier within 200 feet of the site of the project, use or action; or

3. any Board member agency.

c. The following have standing to appeal a decision of the Board:

1. the applicant for the LUP;

2. any landowner or occupier within 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.

26.0222 Appeals of minor LUP decisions.

a. An appeal of a minor LUP decision shall be made in writing and filed with the Director within ten (10) days of the date of the decision.

b. The appeal shall contain the following information:

1. name, mailing address and telephone number of appellant and basis for standing as set forth in 26.0221 b. of the Rules;

2. a description of the decision being appealed; and

3. a written statement of the factual or legal basis for the appeal, including such new evidence as may be proffered.

c. The appeal of a minor LUP decision shall be heard by the Board at a regularly scheduled meeting or special meeting held for purpose of hearing the appeal no less than ten (10) days and no more than thirty (30) days after the filing of the appeal. The appellant 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.

d. The Board shall review the entire record of the matter under appeal, any new evidence submitted and arguments made, and rule on the appeal de novo. A recommendation to the Director by the Board overturning a minor LUP decision requires a unanimous vote and shall contain written findings of fact and conclusions of law.

26.0223 Motion to reconsider.

a. No appeal of a decision of the Board shall be allowed unless a motion to reconsider is filed with the Board within ten (10) days of receipt by the applicant of the Board decision being appealed. Motions to reconsider shall be heard by the Board at a regularly scheduled meeting or special meeting held for purpose of hearing the motion no less ten (10) days and no more than thirty (30) days after filing. 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.

b. The motion to reconsider shall contain the following information:

1. name, address and telephone number of the moving party and basis for standing as set forth in 26.0221 c. of the Rules;

2. a description of the decision being moved for reconsideration; and

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

c. The Board, by majority vote, may grant or deny the motion to reconsider, or may modify or amend its previous decision, except that any decision which results in an approval or amendment of a LUP for a major project shall require a unanimous vote.

26.0224 Appeals from the Board, final decisions.

a. Appeals of Board decisions shall be filed within ten (10) days of receipt by the applicant of the Board

decision being appealed, provided such appeal is submitted in writing to the Director and contains the information required for a motion to reconsider.

b. Within twenty (20) days of receipt of the appeal the Director shall appoint a panel of at least three persons to review such appeals and recommend appropriate action to the Director. None of the panel members shall have participated in the action under appeal. To the extent practicable, the panel shall include persons knowledgeable in the areas of environmental regulation, economic development and land use planning. At least one of the panel members shall be a qualified attorney. The panel shall consider the case on the record and arguments of the parties and thereafter submit written findings as provided below.

c. The appeals board shall make its recommendation to the Director within sixty (60) days of its appointment. The Director shall, within ten (10) days thereafter, make a final decision and adopt findings based on the entire record, which shall be reviewable in Territorial High Court pursuant to the Administrative Procedures Act.

26.0225 Special Management Areas.

a. The following SMA's are established:

1. Pago Pago Harbor SMA is delineated by a line drawn from the Rainmaker Hotel to the jetty at Leloaloa and includes all land and water resources on the sami (ocean) side of the Main East-West Highway paralleling the shoreline around the harbor;

2. The pala, or wetland area, of the village of Leone is delineated by a line drawn parallel with the shoreline at the ocean terminus of the Leafu stream, plus associated wetlands as determined by ASCMP using wetlands delineation techniques established in the 1989 Federal Manual for Identifying and Delineating Jurisdictional Wetlands, or revised standards as adopted by the U.S. EPA; and

3. The pala, or wetland area, of the village of Nu'uuli is delineated by a line drawn from the eastern most point of the airport to the nearest part of Coconut Point, and including all water resources of the lagoon, plus associated wetlands as determined by ASCMP using wetlands delineation techniques established in the 1989 Federal Manual for Identifying and Delineating Jurisdictional Wetlands, or revised standards as adopted by the U.S. EPA.

b. Boundary maps, at a minimum of 1"=200' scale, for all wetland areas included as SMA's shall be maintained for public inspection at the DPO.

c. Any proposed project, use or action in a SMA shall be deemed a major project, and all proposed projects, uses or activities in any SMA, other than the Pago Harbor SMA, shall require a public hearing pursuant to the same notice requirements as for a public hearing on a major project.

26.0226 Procedures to establish SMA.

a. Pursuant to the Act, the Board is authorized to recommend to the Governor areas of the Territory to be designated as SMA, or propose to modify the established boundary of any existing SMAs.

b. The following procedures shall apply to nominations for designation or modification of the boundary of SMA's:

1. Proposals. Any territorial agency, any publicly 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 nomination to the Governor of the designation or modification of a SMA.

2. Supporting documentation. Proposals for the designation or modification of SMAs 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.

3. 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 the SMA. 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.

4. Technical findings. On all proposals to designate or modify a SMA, 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 Rules. 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.

5. Public hearings. Within forty-five (45) days of the receipt of a proposal for designation or modification of the boundary of a SMA, 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.

6. PNRS decision 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 SMA, including technical findings, supporting documentation, and public comments, the Board shall determine whether or not the proposal should be accepted for nomination 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 subsection (5), above. 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.

7. Upon a decision by the Board to nominate to the Governor a proposal to designate or modify a SMA, the ASCMP Manager shall certify the nomination as being in compliance, or not in compliance, with the Act and the Rules. If in compliance, the ASCMP 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.

26.0227 Criteria for designation or modification of a SMA. In reviewing a proposal for designation or modification of a SMA, the Board shall consider whether the areas require special management because they are:

a. areas of unique, scarce, fragile or vulnerable natural habitat; have a unique or fragile physical configuration; are 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 essential habitat for living resources, including threatened, endangered or species of concern;

c. areas of outstanding recreational value or potential;

d. 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;

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

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

g. 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

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

26.0228 Wetlands.

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

b. Tidal Waters of the United States. The landward limits of jurisdiction in tidal waters:

1. extends to the high tide line, or

2. when adjacent non-tidal waters of the United

States are present, the jurisdiction extends to the limits identified in paragraph (c) of this section.

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;

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 consists only of wetlands, the jurisdiction extends to the limit of the wetland.

(d) Wetland Buffer. A buffer zone around the wetland delineated boundary will be established in the following manner:

1. A twenty-five (25) foot buffer zone will be established between the wetland delineated boundary and any development which is stated below.

2. A fifty (50) foot buffer zone will be established between the wetland delineated boundary and commercial or industrial development.

(e) Prohibited Acts.

1. 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 LUP or in violation of a permit. This section applies to principals, their agents, and contributors.

2. 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.

3. Any person who violates this section is guilty of a class B misdemeanor and shall be subject to civil fines according to law.

(f) Multiparameter Approach to Delineation of Wetlands. Wetland delineation will 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. Under normal circumstances all three must be found before a positive determination can be made. Evidence may be developed from historical data, recent existing data and/or observations made in the field.

26.0229 Procedures for Territorial EAs for major projects.

a. The purpose of this Section is to establish a procedure to assess environmental effects of a proposed major project. The process begins with a determination by the Board of whether the proposed action requires an EA and a listing of mitigative actions that are available. If impacts can be avoided or mitigated or if no significant impacts are expected a finding of no significant impact (FONSI) is made. If significant impacts are discovered that cannot be avoided as proposed, a Determination of Significant Impact (DSI) is made and an AMP is prepared by the applicant. This section does not apply to federal undertakings which would trigger the NEPA process.

b. The Board has the authority to require EAs and AMPs.

c. Activities subject to these provisions. The provisions of this Section shall apply to major projects which can be reasonably expected to have a significant adverse impact on coastal resources. The Board shall require an EA if any member or members of the Board with permitting or regulatory authority over the application request(s) an EA. Additionally an EA shall be required under the following circumstances: the Board finds that new or expanded source or pollutants resulting in a potentially dangerous condition having a significant adverse impact on the health, safety and welfare of the public; the Board finds that a significant adverse impact to the habitat of threatened or endangered species or species of concern; or petition signed by not less than twenty-five (25) members of the public is submitted to the Board.

d. Scoping meetings for proposed actions. For LUP applications and other proposed actions subject to this Section, a scoping meeting of the Board may be requested by the project proponent or by any Board member. Scoping meetings may be held at a regularly scheduled Board meeting or at another time and place, as determined by 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 EA will be required for the particular application.

e. Public Comments. All EAs and AMPs and associated documents pertaining to this Section or the review of such documents or written public comments pertaining to these documents shall be public documents. ASCMP Manager shall inform the public of the opportunity to review and comment on all such documents through publication in a newspaper of general circulation in the territory and other available means:

1. the availability of any EA, AMP or other associated documents that it or the PNRS receives for review and comment;

2. the acceptance or non-acceptance of an EA or AMP; and

3. other notices as required by territorial law, ordinance, or rule that, when published together, provide for effective coordination of public and agency comment for statements.

f. Contents of EAs. Agencies or persons proposing actions requiring an EA shall prepare an EA of each proposed action and state whether the anticipated impacts constitute a significant adverse impact to coastal resources. The EA shall contain the following information:

1. title and executive summary;

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

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

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

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

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

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

8. findings and reasons supporting determination.

g. DSI and FONSI.

1. Acceptance or rejection of the EA. The Board shall review and accept or reject an EA or require revisions or additions. After preparing an EA, the applicant shall submit ten (10) copies of the supporting EA to ASCMP Manager for distribution to the Board and public review. At a regularly scheduled meeting or at a special meeting called by the Board, the Board shall review the assessment and determine its adequacy in meeting the requirements of this Section. 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.

2. Determination of FONSI or DSI. A determination shall be made by the Board as to whether or not significant adverse impacts can reasonably be expected to occur from the proposed action. If measures have not been identified that will adequately avoid or mitigate the significant impacts a Determination of Significant Impact (DSI) shall be issued and an AMP shall be prepared by the applicant. If no significant impact is found, or if impacts can be adequately avoided or mitigated, a Finding of No Significant Impact (FONSI) shall be issued and considered in determining whether a LUP should be approved as per 26.0209 (c).

3. Decision-making Criteria. In determining whether an action may have a significant impact on coastal resources, the Board shall consider every phase of a proposed action, the expected consequences, both primary and secondary, and the cumulative as well as the short and long-term effects of the action. In most instances, an action shall be determined to have a significant effect on the environment if it:

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 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, endangered, or species of concern, or its habitat;

J. Detrimentally 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.

4. Documentation of review and decision; public comment and notice. The Board shall document its review of an EA of a proposed action for future reference, and shall make its determination of DSI or FONSI in writing. The actual determination shall be filed with ASCMP Manager and notice of its 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) calendar 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.

h. Addressing a DSI; AMP. In cases where the Board issues a DSI, the applicant shall prepare an AMP in consultation with the jurisdictional agencies that addresses the findings of the DSI. The Board shall review the AMP and determine whether the plan is acceptable and whether a LUP should be issued. The AMP shall list alternatives and mitigation measures for the project.

i. Review and comment period. The period for public review of an AMP and for submitting written comments shall

commence as of the date the notice of availability of the AMP is published in a newspaper of general circulation in the territory and shall continue for a period of thirty (30) days. Written comments to ASCMP Manager must be postmarked within the public comment period. Copies of all comments shall be forwarded by ASCMP Manager to the Board and the applicant. Any late comments need not be considered by the Board.

26.0230 National Environmental Protection Act (NEPA).

a. Applicability. When the situation occurs where a certain action will be subject both to the NEPA, as amended by Public Law 94-52 and Public Law 94-83; 42 USC 4321-4347) and this Section, the following shall occur:

1. The applicant or agency, upon discovery of their proposed action being subject to both this Section and NEPA, shall notify the responsible federal agency and the Board of the situation.

2. NEPA requires that draft statements be prepared by the responsible federal agency. When the responsibility of preparing an Environmental Impact Statement (EIS) is delegated to a territorial agency, this Section shall apply in addition to requirements under NEPA. The DPO and Board shall cooperate with agencies to the fullest extent possible to reduce duplication between federal and territorial requirements. This cooperation shall include joint environmental impact statements with concurrent public review and processing at both levels of government. Where federal law has EIS requirements in addition to but not in conflict with this Section, the DPO and Board shall cooperate in fulfilling the requirements so that one document shall comply with all applicable laws.

26.0231 Supplemental Statements.

a. Change of circumstance. An EA or AMP that is accepted with respect to a particular action is usually qualified by the action's size, scope, location, and timing, among other things. If there is a substantial change in the project a supplemental statement shall be prepared and reviewed as provided in this section. Substantial change is defined in 26.0214 and in (b)(1), below.

b. PNRS determination of applicability.

1. A supplemental statement shall be warranted when the scope of an action has been substantially

increased, when the intensity of environmental impacts will be increased, when the AMP originally planned is not implementable, or where new circumstances or evidence have brought to light different or likely increased environmental impacts not previously dealt with.

2. The Board shall be responsible for determining whether a supplemental statement is required. This determination will be submitted to ASCMP Manager for written notification to the proposing agency or applicant. Proposing agencies or persons shall prepare for public review supplemental statements whenever the proposed action for which an EA or AMP was accepted has been modified to the extent that new or different environmental impacts are anticipated.

c. Contents. The contents of the supplemental statement shall be the same as required by 26.0229 for the EA and AMP and may incorporate by reference unchanged material from the same; however, in addition, it shall fully document the proposed changes from the original EA and AMP and completely and thoroughly discuss the process followed to address these changes, and discuss the positive and negative aspects of these changes.

d. 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 is prescribed by 26.0229 for an EA.

26.0232 Federal consistency

a. Standards for determining consistency. The ASCMP Manager shall be charged with responsibility to review a federal agency's consistency determination, an application for a federal license or permit's consistency certification, and a territorial or local government's application for financial assistance, and shall inform the Board chairperson of the undertaking and shall inform all other government agencies with relevant jurisdiction and permitting authority to apply the following enforceable policies in reviewing such determinations, certifications, and applications.

1. the goals, purposes, policies and objectives of the Act and the Rules; and

2. applicable territorial air and water quality standards, rules, and regulations.

b. Federal activities and development projects that

affect any land or water use or natural resource of the coastal zone must meet federal consistency requirements. This includes any federal development project involving the planning, construction, modification, or removal of public works facilities, or other structures, and the acquisition, utilization or disposal of land or water resources.

1. Federal agency consistency determination. If a federal agency plans to undertake a federal action directly or indirectly affecting coastal resources, the federal agency must provide a consistency determination to the ASCMP Manager at least ninety (90) days prior to a final decision on the federal action. The federal agency and the ASCMP Manager may agree on an alternative review schedule. The determination shall include a statement indicating how the proposed project will be undertaken in a manner consistent, to the maximum extent practicable, with the Act and the Rules. The agency's consistency determination must be based upon an evaluation of the relevant provisions of the ASCMP. The ASCMP Manager shall notify other relevant territorial agencies with relevant permitting authority of the proposed federal action. Each territorial agency has thirty (30) days from the date of receiving the notice to submit comments to the ASCMP Manager. In the event the ASCMP Manager does not respond to the federal agency within forty-five (45) days from receipt of the federal agency's consistency determination, the federal agency may presume the ASCMP Manager's agreement of consistency.

2. A consistency determination shall include:

A. a detailed description of the proposed project and its associated facilities;

B. an assessment of the impacts to coastal resources; and

C. data and information sufficient to support the federal consistency determination.

3. Extensions. ASCMP requests for an extension of time to review the determination may be made for a period of not more than fifteen (15) days unless the federal agency agrees to longer or additional extension requests. The ASCMP Manager's agreement with a federal agency's consistency determination shall not be presumed if a request for an extension of time is made within the forty-five (45) day review period.

4. Resolution of differences. The ASCMP

Manager's agreement or disagreement with a federal agency's consistency determination must be set forth in writing with reasons and information supporting the agreement or disagreement and sent to the federal agency and the director of NOAA/OCRM. In case of disagreement, the ASCMP Manager and the federal agency shall attempt to resolve any differences.

5. Mediation. In the event that the ASCMP Manager and the federal agency are unable to come to an agreement on the manner in which a federal action may be conducted or supported in a manner consistent, to the maximum extent practicable, with the Act and the Rules, either party may request mediation of the disagreement pursuant to the procedures set forth in section 307 of the Federal Coastal Zone Management Act of 1972 (P.L. 92-583, as amended) and 15 CFR 930, subpart H.

6. Federal agencies are required to obtain a territorial LUP and to include such permit applications in federal consistency determinations when: (i) territorial permits for certain activities are required by other federal law; (ii) the federal action, whether within or outside the coastal zone, can be reasonably expected to affect any land or water use or natural resource of the coastal zone; and (iii) when the permit is a federally approved enforceable component of the ASCMP.

7. Even if a federal agency is not required to obtain a territorial permit under federal law, the federal agency conducting an action that affects any land or water use or natural resource of the coastal zone must still be consistent to the maximum extent practicable with ASCMP rules and regulations. For permit requirements that are not required of federal agencies by other federal law, the federal agency may submit the necessary information in any manner it chooses so long as the requirements of 15 C.F.R. Part 930, Subpart C (consistency regulations for direct federal activities) are satisfied.

c. Applicants for Federal licenses and permits.

1. An applicant includes any individual or organization, except a federal agency, which files an application for a federal license or permit to undertake an action affecting the Territorial coastal resources. Federal licenses and permits include any authorization, certification, approval, or other form of permission which any federal agency is empowered to

issue to an applicant.

2. An applicant for a federal license or permit to undertake an action or project affecting the Territorial coastal resources must file, along with the application, a certification that the action will be conducted in a manner consistent with the Act and the Rules and all necessary data and information to support the certification. A copy of the application for a federal license or permit, and the certification, along with all necessary data and information, shall be simultaneously filed with the ASCMP Manager. The consistency certification shall include:

A. a detailed description of the proposed project and its associated facilities;

B. an assessment of the impacts to coastal resources; and

C. data and information sufficient to support the federal consistency conclusion.

3. The federal agency shall not issue the license or permit unless the ASCMP Manager issues a concurrence with the consistency certification or such concurrence is presumed because there has been no response from the ASCMP Manager within six (6) months from the date of receipt of a copy of the application and certification.

4. The federal agency licenses and permits that the ASCMP Manager shall review for consistency with the ASCMP are those so listed in the federally approved ASCMP Program Document which is available for review from the ASCMP. 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 ASCMP Manager will either seek to review the activity as an unlisted activity pursuant to 15 CFR 930.54 and/or the ASCMP Manager will request NOAA/OCRM approval to include the activity as a listed activity.

5. The ASCMP Manager shall provide guidelines and the above described list to the relevant federal agencies who in turn shall make the information available to applicants. Upon the request of an applicant, the ASCMP Manager will provide assistance to the applicant in developing the consistency certification, assessment, and findings required.

6. If any action or project which requires a

federal license or permit also requires a LUP or any other permit or approval from the Territorial Government, applicants shall prepare a LUP application simultaneously with their federal permit or license application.

7. Interested parties may assist the applicant by providing information to the ASCMP Manager to be incorporated into the review of the project's consistency with the Act and the Rules.

8. Upon the ASCMP Manager's determining that adequate information exists within both the applicant's consistency certification and supporting data to properly review the proposed action or project, it shall be accepted for review. Upon acceptance for review, notice of the proposed action shall be published at least once a week for two (2) consecutive weeks in a newspaper of general circulation in the Territory. The public notice shall include: a summary of the proposal; state that the information submitted by the applicant is available for public inspection; and that public comments may be made to the ASCMP Manager within thirty (30) days of the first publication. The applicant shall be responsible for posting and publication of the notice on forms provided by ASCMP.

9. At the earliest practicable time within six (6) months after acceptance for review hereunder, the ASCMP Manager shall notify the issuing federal agency and the applicant of concurrence or objection. If the ASCMP Manager has not issued a decision within three (3) months after acceptance of the proposal for review, the applicant and the federal agency shall be advised of the status of the matter and the basis for further delay.

10. If the ASCMP Manager objects to the applicant's consistency certification, the ASCMP Manager shall make said objection in writing and include supporting information/documentation. The objection shall include alternative measures, if appropriate, which would permit the action in a manner consistent with the Act and the Rules. The ASCMP Manager's objection shall include a statement informing the applicant of a right to appeal to the U.S. Department of Commerce pursuant to the Federal Coastal Zone Management Act of 1972, 307, as amended and 15 CFR part 930, subpart H.

d. Federal assistance. The ASCMP Manager shall be

notified of all applications submitted by territorial or local governments to the federal government for any federal assistance program listed in the catalog of federal domestic assistance. Applications for federal assistance for activities affecting the coastal zone shall be reviewed by the ASCMP Manager. In the event the ASCMP Manager finds that the proposed federal assistance is not consistent with the Act and the Rules, the application shall not be approved unless the objection is resolved through informal discussions among the federal program agencies, the applicant and the ASCMP Manager, or the Secretary of Commerce on appeal pursuant to section 307 of the Federal Coastal Zone Management Act of 1972, as amended and 15 CFR, part 930, subpart H. The ASCMP Manager's objection shall be set forth in writing with reasons, supporting information, and alternative measures.

1. "Federal assistance" as used in this subsection d. means assistance provided under a federal grant program to an applicant agency through grant or contractual agreements, loans, subsidies, guarantees, insurance, or other forms of financial aid for activities which affect the coastal zone.

2. "Applicant" or "applicant agency" as use in this subsection d. refers to any agency of the Territorial Government.

26.0233 Public Information and education.

a. The ASCMP 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 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 ASCMP shall provide ongoing technical assistance and education to villages when requested in order to assist the villages in preparing and maintaining any local coastal management program or village ordinance in support of coastal management objectives.

c. The ASCMP shall maintain a current series of island maps clearly showing the Territory's SMA's and other unique areas.

26.0234 Public records.

a. The DPO shall retain and preserve the following records for a minimum of five years following their receipt,

or in the case of a LUP, for five years following the last agency action. After five (5) years, all pertinent materials shall be safely archived.

1. The complete record of a LUPA and the action taken thereon.

2. Board meetings and public hearing records, including all minutes, transcripts and audio or video tape recordings.

3. ASCMP program materials, including all studies, guides, plans, policy statements, special reports, educational materials, memorandums of understanding, or other information obtained or prepared by the DPO or ASCMP in order to provide public information and education or improve interagency coordination.

b. All ASCMP records on file at the DPO 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 law, or where the public distribution of minutes of meetings held in executive session would defeat the lawful purpose of the executive session. Reasonable fees and costs incurred in researching and reproducing the records may be charged.

26.0235 ASCMP access to government records. ASCMP Manager, authorized designee and the Board, shall have access to relevant governmental records for the purpose of obtaining information for official business purposes. This access may include government reports, reviews, policy statements, and any other information not protected by law. The ASCMP Manager shall keep any request reasonable in scope and accompany any requests for information with payment of any required fees and costs. The Board shall have the same access, and be bound by the same restrictions, as cited above. Should either the ASCMP Manager or the Board be denied access to government records in violation of the provisions of the Act and of these rules, then legal advice may be sought and appropriate legal action taken in order to gain access to such records.

26.0236 Severability. If any provision of the Rules, or the application of any provision of the Rules to any person or any other instrumentality or circumstances, shall be held invalid by a court of competent jurisdiction, the remainder of the Rules and the application of the invalid provision to other persons, instrumentalities, and circumstances, shall not be affected.

ANNEX "A"

OBJECTIVES AND POLICIES OF THE TERRITORIAL COASTAL MANAGEMENT PROGRAM

The following standards must be met for approval of a LUP.

1. Territorial administration.

Objective A: Provide more effective and sensitive administration of laws, rules, and programs.

Policy A: A coordinated, expeditious, and comprehensive LUP and project notification and review system shall be instituted. The technical capability of agency personnel shall be increased. Sensitivity to fa'a Samoa in the exercise of government administration shall be increased.

2. Village development.

Objective B: Provide more effective and better coordinated territorial aid to villages.

Policy B: Assistance to foster village development and improvement shall be coordinated through the village development plans in ways sensitive to village needs and preferences. Village development plans shall incorporate all ASCMP policies and objectives.

3. Shoreline development.

Objective C: Assure that lands adjacent to the sea are developed in a way least damaging to coastal resources and that reduces the risk of damage resulting from coastal hazards.

Policy C: In the area measured two hundred feet (200') horizontally inland from the mean high-tide mark, projects, uses and activities shall be rigorously reviewed to determine whether they:

a. are susceptible to damage from shoreline erosion or other identified coastal hazards;

b. diminish visual or physical access to the shoreline; or

c. may result in degradation of coastal resources.

Those uses, developments, or activities which may result in

any of the above impacts shall normally be denied. Exceptions may be allowed if the proposed use, development, or action:

d. serves a public need, including recreation; and

e. is water-dependent or water-related; and

f. is compatible with adjacent land uses or traditional Samoan uses; and

g. has no feasible, environmentally preferable alternative sites.

In areas immediately adjacent to the landward and seaward side of the mean high-tide line, proposed uses, developments, and activities shall also be evaluated using the U.S. Army Corps of Engineers permit application evaluation factors to the extent applicable.

4. Coastal hazards.

Objective D: Reduce hazards to life and property from flooding, tsunamis, landslides and shoreline erosion.

Policy D: Proposed development in areas prone to stream and ocean flooding, slides, and shoreline erosion shall only be permitted if:

a. there is a public need;

b. there are no feasible environmentally preferable alternative locations; and

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

The following standards shall apply to location and design of development in areas prone to flooding, slides, and erosion:

d. uses that will not require protection through dikes, dams, levees, groins, seawall, shoreline protection or other structures shall be preferred over uses that require such protection;

e. uses that pose the least risk to loss of life and damage to property shall be preferred over uses that pose such risks;

f. development permitted in areas prone to flooding shall be designed to meet Federal Emergency Management Agency National Flood Insurance Program

standards.

Structures to protect existing development against flooding and erosion shall only be permitted if:

g. there is significant risk to public health and safety;

h. there are no feasible environmentally preferable alternatives;

i. habitats that may be affected are identified and their values determined;

j. adverse effects on nearby areas are minimized;

k. alterations of the natural shoreline are minimized; and

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

5. Soil erosion.

Objective E: Reduce soil erosion.

Policy E: Road building and construction activities that severely alter land contours, occur in steep areas, or may otherwise promote soil erosion shall be minimized and controlled to reduce or eliminate soil erosion. Clearing, grading, or construction on slopes greater than 40% shall be avoided and be permitted only if no feasible environmentally preferable alternatives to the proposed action exist. All clearing, grading, or construction on slopes shall use best management practices to avoid or minimize soil erosion. These shall include, but not necessarily be limited to:

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

b. retaining soil through use of retaining walls, silt fences and other best management practices to minimize slope cutting; and

c. controlling off-site movement of soil through replanting disturbed land immediately after construction with soil stabilizing plants and other available techniques.

6. Major facility siting.

Objective F: Assure the proper siting of major facilities.

Policy F: Major facilities shall be sited and designed to minimize adverse environmental and social impacts and promote orderly and efficient economic development. Major facilities not dependent on a waterfront location shall be located elsewhere unless no feasible alternative sites exist; water-dependent major facilities will be accommodated through planning. Conservation of resources shall be a primary goal of the Territory.

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.

7. Agricultural development.

Objective G: Promote agricultural development in a manner consistent with sound conservation practices.

Policy G: Commercial and subsistence agriculture shall be encouraged and approved 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.

8. Reef protection.

Objective H. Protect and restore coral reefs.

Policy H: 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. Coral reefs shall be protected from

sedimentation, 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.

9. Recreation/Shorefront access.

Objective I: Improve and increase recreation opportunities and shorefront access for both residents and visitors.

Policy I: 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 access needs of villages and urban areas, shall be promoted. 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 also be promoted.

Public access to and along the ocean shall be maintained, improved and increased. Beach areas suitable for recreation use shall be reserved for such use and physical access to these areas shall be provided where feasible. Visual access to the ocean from the road parallel to and near the shoreline shall be maintained where feasible.

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.

10. Water quality.

Objective J: Maintain and, where necessary, restore water quality.

Policy J: Territorial water quality standards shall be the standards of Territory in the coastal zone. Consistent with these standards, degraded water quality shall be restored to acceptable levels and potential threats to water quality shall be prevented from degrading water quality where feasible. Nonpoint source pollution shall be controlled through implementation of best management practices.

11. Marine resources.

Objective K: Protect marine resources for present and

future generations.

Policy K: Living marine resources and their habitats shall be protected from over harvesting or degradation. No taking of marine mammals, or endangered or threatened species shall be allowed.

12. Fisheries development.

Objective L: Promote fisheries development in a manner consistent with sound fisheries management.

Policy L: Shoreline areas suitable and necessary for the support of fishery development shall be reserved for such use. Fisheries development shall be guided by a fisheries management program which conserves stocks, protects marine habitats, and maintains sustained yields.

13. Drinking water quality.

Objective M: Provide and maintain safe drinking water.

Policy M: Drinking water sources, both above and below ground, shall be protected from contamination due to sedimentation, saltwater intrusion, or other sources of pollution. Drinking water systems shall be improved to protect public health and welfare. Territorial water quality standards shall be implemented as directed by ASEPA.

14. Unique areas.

Objective N: Protect unique areas and their values from an adverse impact.

Policy N: Unique areas, including wetlands, coral reefs, mangrove swamps, mudflats, aquifer recharge areas, critical habitat areas, floodplain, streams, watersheds and nearshore waters, shall be protected against significant disruption of their physical, chemical, and biological characteristics and values. Only uses dependent on such areas shall be permitted. Development in areas adjacent to unique areas shall be designed and sited to prevent impact that would significantly degrade such areas.

15. Archaeological/Cultural/Historic resources.

Objective O: Protect the archaeological, cultural, and historic resources of Territory.

Policy O: Significant Samoan archaeological, cultural, and historic sites and artifacts, shall be protected and preserved.

16. Air quality.

Objective P: Maintain high standards of air quality.

Policy P: Territory air quality standards shall be the standards of the Territory in the coastal zone and a LUPA shall adhere to those standards.

17. Fagatele Bay National Marine Sanctuary (NMS).

Objective Q: Protect the marine and coastal resources of Fagatele Bay NMS, including water-quality, habitat, fish and wildlife, and recreational opportunities.

Policy Q: The irreplaceable marine and coastal resources of Fagatele Bay NMS shall be protected from adverse impacts and shall be protected as a resource for present and future Samoans to the greatest extent possible.

18. Wetlands.

Objective R: To preserve, protect, conserve and manage wetlands in the Territory.

Policy R(1):

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

b. protect the present and potential value of wetlands for food production, wildlife habitat, storm and flood control, water quality, recreation, education, and research;

c. regulate the use and development of wetland areas in order to secure the natural benefits of wetlands, consistent with the general welfare of the Territory; and

d. protect unique wetland areas including mangrove swamps, recharge areas, critical habitat areas, floodplain, streams, watersheds and nearshore waters from significant disruption of their physical, chemical, and biological characteristics and values. Only uses dependent upon such areas shall be permitted.

Policy R(2):

A "no net loss" policy in the Territory is established and it includes value and functional loss as well as actual acreage loss. Considerable acreage of wetlands has been lost, despoiled or impaired in the Territory due to filling,

dredging, excavation, building, pollution or other acts. Freshwater wetlands conservation is a matter of concern for an entire watershed since a wetland in one area is affected by acts on rivers and streams that run into other wetlands and by adjacent wetlands. Providing wetland conservation in order to achieve "no net loss" includes the protection of the following values:

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

2. wildlife habitat by providing breeding, nesting, 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;

3. protection of subsurface water resources and provision for valuable watersheds and recharging groundwater supplies;

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

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

6. educational and scientific research opportunities;

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

8. agricultural uses such as taro production and harvest of natural wetland products.

19. Special Management Areas.

Objective S: To protect the functions, values and benefits of SMAs.

Policy S: Actions that degrade, limit or eliminate SMA functions, values and benefits to the public shall be prohibited. SMA's shall be protected to the fullest extent of the law so that their benefits can be enjoyed by present and future generations of the Territory.

a. Notwithstanding any other provisions of the Rules, any proposed project, use or action in the Pago Pago Harbor

SMA shall be evaluated in connection with the following objectives and priorities of use:

1. Objective: to develop the Pago Pago Harbor area in a way that emphasizes its irreplaceable value as a working port and safe harbor and protects its natural resources and water quality.

2. Priorities of use:

A. Water-dependent uses and activities shall have highest priority.

B. Water-related uses and activities shall have second priority.

C. 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. All other uses and activities shall have lowest priority and will normally be denied.

3. Port and industrial areas. Any project proposed for location as a port or industrial project in the Pago Pago Harbor SMA shall be evaluated to determine its compatibility with the following standards:

A. in the siting of port and industrial development, its suitability in terms of meeting the long-term economic and social goals of Territory;

B. recognize the limited availability of the port and industrial resources in making land use allocation decisions;

C. ensure that development is done with respect for Territory's inherent natural beauty;

D. improvements to infrastructure should be developed in port and industrial areas;

E. prohibit projects which would result in adverse impacts, including cumulative impacts on coastal resources outside the port and industrial area;

F. conserve shoreline locations for water-dependent projects;

G. locate, to the maximum extent practicable, petroleum based coastal energy facilities within the port and industrial area;

H. consider development proposals from the perspective of port-related opportunities and constraints which are applicable to the Territory; and

I. 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.

b. Lagoon, and reef areas. Any project proposed for location within a designated SMA which also is characterized as a lagoon or reef area shall be evaluated to determine its compatibility with the following standards:

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

2. living marine resources, particularly fishery resources, shall be managed so as to maintain optimum sustainable yields;

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

4. lagoon and reef areas shall be managed so as to maintain or enhance subsistence, commercial and sport fisheries;

5. lagoon and reef areas shall be managed so as 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;

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

7. underwater preservation areas shall be designated.

c. Wetland areas. Any project proposed for location within a designated SMA and a wetland shall be evaluated to determine its compatibility with the following standards:

1. adverse impact on natural drainage patterns, the destruction of important habitat and the discharge

of toxic substances shall be prohibited; 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 wetland habitat 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, the wetland areas shall be maintained and, to the extent possible, increased, for the purpose of access and/or hazard mitigation; and

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

d. Shoreline Areas. Any project proposed for location within a designated SMA and a shoreline area shall be evaluated to determine its compatibility with the following standards:

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

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

3. the taking of sand, gravel, or other aggregates and minerals from the beach and near shore areas shall not be allowed;

4. removal of hazardous debris from beaches and coastal areas shall be strongly encouraged; and

5. 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 permit applications:

A. whether the proposed project is water-dependent or water-related in nature;

B. whether the proposed project is to

facilitate or enhance coastal recreational, subsistence, or cultural opportunities (i.e. docking, fishing, swimming, picnicking, navigation devices);

C. 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 adverse cumulative impacts;

D. whether the proposed project is a 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 SMA, or, no reasonable alternative is open to the property owner to trade land, relocate or sell to the government;

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

F. whether the proposed project is designed to prevent or mitigate shoreline erosion; and

G. whether the proposed project would be more appropriately located in the port and industrial area.

ANNEX "B"

PERMISSIBLE, CONDITIONAL AND PROHIBITED USES

a. Permissible uses. A permissible use is a use which meets all of the requirements of the Rules, ANNEX "A" and ANNEX "B".

b. Conditional uses. A conditional use is a use which does not meet all of the requirements of the Rules, ANNEX "A" and ANNEX "B" but can be conditioned so that it does meet all of the requirements of the Rules, ANNEX "A" and ANNEX "B".

c. Prohibited uses. Prohibited uses are uses which do not the meet the requirements of the Rules, ANNEX "A" and ANNEX "B" and cannot be conditioned to meet the requirements of the Rules, ANNEX "A" and ANNEX "B". Permits cannot be issued for prohibited uses.

The following standards must be met for approval of a LUP.

1. General harbor, lagoon, and reef areas.

a. Permissible uses:

i. Uses and activities promoting conservation of open space, high water quality, historic, and cultural resources;

ii. Non-structural uses and activities promoting or enhancing public recreation and access;

iii. Sport and small-scale taking of edible marine resources within sustainable levels;

iv. Non-structural activities related to the prevention of beach erosion; and

v. Non-structural projects preserving fish and wildlife habitat.

b. Conditional uses:

i. Commercial taking of edible marine resources within sustainable levels;

ii. Water-dependent/related uses which are compatible with adjacent uses and which promote the policies of an SMA if located in one;

iii. Aquaculture projects which do not adversely affect the productivity of coastal waters or natural beach processes and which are compatible with the policies of an SMA if located in one;

iv. Piers and docks which are constructed with floating materials or which, by design, do not impede or alter natural shoreline processes and littoral drift;

v. Storm water drainage systems in conformance with Territorial water standards; and

vi. Dredge and fill action for the purpose of constructing piers, launching facilities, infrastructure, and boat harbors, if designed to prevent or mitigate adverse environmental impacts.

c. Prohibited uses:

i. Discharge of untreated sewage, petroleum

products or other pollutants or hazardous materials;

ii. Taking of sand and aggregate materials outside of designated sites;

iii. Destruction of coralline reef matter not associated with permitted activities and uses;

iv. Dumping of trash, litter, garbage, or other refuse into the harbor, lagoon, or reef areas; and

v. Dredge and fill activities not associated with permitted construction of piers, launching facilities, infrastructure, and boat harbors or other projects for which there is a demonstrated public need.

2. Coral reef areas.

a. Permissible uses:

i. maintenance of highest levels of water quality; and

ii. creation of underwater preserves.

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

c. Prohibited uses:

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

ii. taking corals for other than scientific study.

3. Wetland areas.

a. Permissible Uses:

i. preservation and enhancement of wetland and areas; and

ii. preservation of wildlife, primary productivity, conservation areas and historical properties in both wetland and mangrove areas.

b. Conditional use: Projects for which there is a demonstrated public need which cause a minimal amount of damage to the wetland and other coastal resources. Any such use shall take into consideration the "no net loss" policies

enumerated in Policy R(2).

c. Prohibited uses: land fill, dumping of solid waste, discharge of pollutants, land 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.

4. Shoreline areas.

a. Permissible uses:

i. public recreational uses of beach areas, including the creation of public shoreline parks and the construction of structures enhancing access and use, such as barbecue grills, picnic tables, docks, or boardwalks;

ii. non-structural traditional Samoan uses;

iii. preservation of fish and wildlife habitat;

iv. preservation of natural open areas of high scenic beauty and scientific value; and

v. activities related to the prevention of beach erosion through non-structural means.

b. Conditional uses:

i. compatible water-dependent development which cannot be reasonably accommodated in other locations;

ii. one (1) story, single-family dwelling in existing residential areas;

iii. agriculture or aquaculture which requires or is enhanced by conditions prevalent in the shoreline area;

iv. improvements to or expansion of existing water-oriented structures which are compatible with designated land uses and do not otherwise conflict with or obstruct public recreational use of coastal areas or other water-dependent or water-related uses; and

v. water-related development compatible with designated land uses, which cannot be accommodated in other locations and which neither conflicts with recreational uses nor restricts access to or along the shoreline.

c. Prohibited uses:

i. projects which result in growth or improvements to existing commercial, non-recreational public, or multi-unit residential uses;

ii. new commercial structures, industrial structures, or non-recreational public structures which are not water-dependent, water-oriented or water-related;

iii. disposal of litter and refuse; and

iv. the taking of sand and mining of gravel and extraction of minerals, oil and gas, or other extractive uses without a LUP.

5. Port and industrial areas.

a. Conditional uses:

i. water-dependent port and industrial activities and uses located on the Pago Pago Harbor SMA's shoreline;

ii. industrial uses that are not water-dependent but would cause adverse impacts if situated outside the Pago Pago Harbor SMA, and which would not be sited directly on the shoreline, and would not preclude the opportunity for water-dependent activities and uses;

iii. industries and services that support water-dependent industry and labor, which are not located on the shoreline and do not interfere with water-dependent uses;

iv. dredging in conjunction with a water-dependent use;

v. recreational boating facilities; and

vi. clearing, grading or blasting which does not have long-term adverse effects on environmental quality, drainage or patterns, so long as the action is related to a permitted action or use.

b. Prohibited uses:

i. indefinite storage or stockpiling of hazardous materials;

ii. indefinite storage of goods, not awaiting

water-borne transport, in a shorefront location;

iii. non-water-dependent or water-related uses which do not enhance or are not reasonably necessary to support permissible uses, activities and priorities in the port and industrial area;

iv. non-port and industrial related activities and uses which, if permitted, would result in conversion to other uses at the expense of port and industrial related growth, or would induce port and industrial related growth into other areas; and

v. uses and activities which would have an adverse impact on other SMA's, historic properties and other coastal resources.

Adopted pursuant the American Samoa Coastal Management Act of 1990, 24.0506, this 22nd day of November 1994.

Alfonso P. Galea'i, Director
Development Planning Office

TABLE OF ACRONYMS

ASEPA	America Samoa Environmental Protection Agency
ASCMP	American Samoa Coastal Management Program
ASPA	American Samoa Power Authority
DMWR	Department of Marine and Wildlife Resources
DPS/TEMCO	Department of Public Safety/Temporary Emergency Management Office
DPR/ASHPO	Department of Parks and Recreation/American Samoa Historic Office
DPW	Department of Public Works
DSI	Determination of Significant Impact
DPO/ASCMP	Development Planning Office/American Samoa Coastal Management Program
DPO	Development Planning Office
EA	Environmental Assessment
NMS	Fagatele Bay National Marine Sanctuary
FONSI	Finding Of No Significant Impact
LUPA	Land Use Permit Applications
LUP	Land Use Permit
NEPA	National Environmental Policy Act of 1969
PNRS	Project Notification and Review System
SMA	Special Management Areas

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