SUMMARY OF ASCMP LEGISLATION
American Samoa Government
1980

The PREAMBLE illustrates the fundamental importance and essential balance between economic opportunity in American Samoa and the health and productivity of American Samoa’s natural resources. The ASCMP has operated under executive order 3-80 for the past eight years. This legislation merely establishes the program in statute, and makes it possible for American Samoa to continue to receive guidance and financial support under the federal Coastal Zone Management Act. In addition, this statute will make it possible to substantially streamline and improve the land use, building permit, and business licensing system in American Samoa.

The DEFINITIONS will make it easier to implement a streamlined land use and building permit system and to clarify the roles and responsibilities of each of the ASG agencies. These definitions will clarify the scientific and managerial basis for decisions of the ASCMP agencies.

240502: This section was in the original executive order. It establishes the ASCMP for all the resources of American Samoa. This is consistent with the federal Coastal Zone Management Act which excludes from the coastal zone all lands “the use of which is by law subject solely to the discretion of or which is held in trust by the Federal Government, its officers, or agents” (16 USC 1453(1))

240503: This very important section not only declares the purpose of the ASCMP to protect, maintain, and enhance American Samoa’s coastal resources, but specifically provides direction to the ASG agencies to accomplish the objectives through a well coordinated and streamlined governmental permitting process. All of the subsections set out in this section were drawn from the original executive order. As used here the policies are more clearly defined and the agencies’ responsibilities are also clarified. The section also makes it clear that the matais and the villagers themselves should play an important role in the ongoing implementation of the ASCMP.

240504: This section establishes the goals and objectives of the ASCMP and provides guidance to each of the ASG agencies for how they are supposed to achieve the goals and objectives. It helps clarify interagency roles and responsibilities for producing a government permitting system.
that is effective, efficient, and understandable to the public. The section emphasizes the importance of working with traditional leadership to implement the ASCMP. It declares the major policy that risk to lives and property should be minimized by reducing exposure to coastal flooding and other hazards.

It seeks to maintain the productivity of coastal fisheries and other resources by minimizing destruction from activities that could be conducted at another location. Thus, the maintenance of the valuable subsistence and recreational fisheries of American Samoa depends not only on the careful management of fish stocks, but on the skillful management and conservation of marine and estuarine habitat. The section explains ASCMP policy goals concerning the reduction of soil erosion and conservation of the territory's fragile coral reef resources. Coral reefs are not only extremely valuable as part of the integrated ecosystem that supports American Samoa's rich marine and terrestrial wildlife, they represent a significant potential for the tourist economy. The protection of coral reefs is called for through careful planning and permitting of construction activity that could be accomplished elsewhere. Any reefs that have been damaged should be restored, no matter why they were damaged.

Recreation and tourism are important parts of American Samoa life and its economy. Both can be conducted in such a manner as to avoid damaging the resources so that future generations can enjoy the same activities. ASCMP policy seeks to site recreational activities where the benefits can be enjoyed for many years to come. At the same time, it encourages the development of new recreational facilities for residents and tourists at their best locations. Healthy water quality is vital for both human use and the health of the territory's biological resources. This section will help ASCMP to coordinate with DPW, EGCA/SEPA, DPH and the other agencies with jurisdiction over water management or activities that impact water quality, including drinking water quality.

Marine and terrestrial resources are a key part of American Samoa's diet, commerce, and tourism. This section provides guidance to the ASCMP agencies as they seek to manage habitats to maintain their productivity for future generations. In this way, very expensive clean-up or restoration costs can be avoided. Certain parts of the Territory are key elements of the biological system not only for production of fish and wildlife, but also as natural systems for water purification and as scenic areas for recreation and tourism. These areas are "unique" because they bring together a vital combination of biological, health, and economic value. This policy provides direction to ASCMP agencies for coordinating their activities in unique areas, particularly specifically described unique areas.

The continued vitality of American Samoa's culture depends on a continuing sense of personal and cultural history. The historic resources
policy objective provides direction and methods to ensure future generations will be able to know and appreciate their cultural history.

Air quality in the Territory is very high. Both the territorial and the federal governments have standards to ensure that air quality remains high and the negative consequences of deteriorated air quality can be avoided. Equally important, subsistence and commercial agriculture are necessary not only for their economic value and for reducing imports, but also as important cultural activities. This policy objective makes it clear that promoting continued and sustainable agriculture is a necessary part of resource management in the Territory.

Finally, the major facilities-policy in this section sets forth the objectives for the proper siting of major facilities in order to both minimize adverse environmental and social impact and to promote orderly and efficient economic development. The policy sets the stage for a coordinated, streamlined, and effective Project Notification and Review System (PNRS), otherwise known as the land use and building permit system.

240505: Federal law requires that a single agency be designated as the lead agency for managing the ASGMP. This section designates the Office of Development Planning as the lead agency.

240506: This section requires the Director of DPO to establish clear, streamlined, and coordinated regulations for the management of the ASGMP to achieve the program's policy objectives. The subparagraphs continue to emphasize the legislative intent of this bill that DPO make the PNRS a streamlined, fair, and effective permit system. Under the revised PNRS, members of the public would know exactly what policies they need to satisfy and the agencies would know exactly how they are supposed to perform their responsibilities. The section specifies certain activities that are not presently regulated by another agency or permit system, but that have an important impact on the coastal zone management area. Included are certain activities already prohibited under existing law. The policy requires that DPO establish a procedure and criteria for a person to apply for a special exception to undertake one of the prohibited activities.

240507: This section requires that the Director of DPO establish regulations and procedures to ensure that activities of the federal government are consistent with the policy goals and objectives of the Territory. This “consistency determination” is also required by the federal government.

240508: This section intends to make legislative policy clear that the ASGMP does in no way limit the roles or responsibilities of any ASG
agency under any other part of Territorial law, only that each agency is required to conform with the ASCMP policies, regulations, and procedures.

240509. The original executive order establishedPago Pago Harbor and Pala Lagoon as Special Management Areas. This section extends that designation and designates DPO as the agency with authority to establish any future Special Management Areas.

240510. This section requires DPO to produce a public annual report to the Governor and the Legislature.

240511. This section intends to strengthen and coordinate monitoring for compliance of all AS6 agency activities and of private individuals which affect the ASCMP policy objectives. The section requires DPO to include in its rules clear and systematic procedures for monitoring and enforcement by each of the ASCMP agencies. At the same time, it instructs DPO to adopt procedures to handle violations of the ASCMP rules, and to integrate enforcement activities with the Attorney General's ongoing enforcement responsibilities.

240512. This section establishes a system of penalties up to $5,000 per violation for individuals and $10,000 per violation for corporations for either violations of the ASCMP or for willful misrepresentation. Each day the violation continues may be treated as a separate violation. In addition, for particular cases, the Attorney General is authorized to seek exemplary damages. The amount of any such penalty is left to the discretion of the High Court of American Samoa.

240513 - 240522. These sections explain in detail what the procedures will be for the issuance of citations for violations of the ASCMP rules. The procedures for this citation authority are modeled after identical procedures for other regulatory agencies found under present statute.

240523. This section establishes the ASCMP Fund as a mechanism to help pay the costs associated with monitoring, enforcement, mitigation, and environmental restoration activities of the ASCMP. The revenues of the fund would come from any fines, permit application fees, or gifts bequeathed to the ASCMP, collected pursuant to carrying out the ASCMP rules.

240524. With the passage of this legislation, the original executive order is vacated in its entirety.
ASCMP LEGISLATION

H.B. NO. ________
INTRODUCED BY: __________

A BILL FOR AN ACT ENTITLED: "AN ACT ESTABLISHING THE AMERICAN SAMOA COASTAL MANAGEMENT PROGRAM, PROPULSATING MANAGEMENT OBJECTIVES AND POLICIES, DESIGNATING THE LEAD AGENCY FOR PROGRAM IMPLEMENTATION, ENFORCEMENT, AND MONITORING, AND PRESCRIBING PENALTIES; CREATING A NEW CHAPTER 05 UNDER TITLE 24 ASCA."

PREAMBLE

American Samoa is rich in a variety of natural, commercial, recreational, ecological, agricultural, industrial, and aesthetic resources that are vital to the present and future economic well-being of the Territory. In order to ensure the long term economic productivity of the natural resources of the Territory, it is necessary to streamline and coordinate effective natural resource management for the beneficial use of the coastal zone for present and future generations of American Samoa.

American Samoa has had a Coastal Management Program and has participated in the Federal Coastal Management Program since 1980. The Federal Coastal Management Program was established to: (a) promote, preserve, protect, develop and, where possible, to restore or enhance, the resources of the nation’s coastal zone for this and succeeding generations; and (b) encourage and assist the states to exercise effectively their responsibilities in the coastal zone through the development and implementation of management programs to achieve wise use of the land and water resources of the coastal zone.
in order for American Samoa to continue to streamline, coordinate
and improve effective planning and management of its resources, and to
receive continual encouragement and assistance from the Federal Coastal
Zone Management Program, it is now necessary to establish the American
Samoa Coastal Management Program under territorial statute.

BE IT ENACTED BY THE LEGISLATURE OF AMERICAN SAMOA:

SECTION 1. There is created a new Chapter 05 under Title 24 ASCA which
reads:

"Chapter 05

COASTAL ZONE MANAGEMENT PROGRAM"

Sections:
24.0501 Definitions.
24.0502 Coastal zone management area.
24.0503 American Samoa coastal management program purpose.
24.0504 American Samoa coastal management program objectives.
24.0505 Office of development planning - Duties and authority.
24.0506 Director of development planning - Rules.
24.0507 Director of development planning - Federal consistency rules.
24.0508 Conformance and cooperation of executive agencies and
employees.
24.0509 Designation of special management areas.
24.0510 Annual report.
24.0511 Enforcement and monitoring for compliance.
24.0512 Penalties.
24.0513 Citation authority.
24.0514 Citation - Form and contents.
24.0515 Citation - Service.
24.0516 Citation - Appearance in court.
24.0517 Citation contents - Motion for further information.
24.0518 Arrest for failure to answer citation.
24.0519 Plea and trial.
24.0520 Abstract of case.
24.0521 Failure to answer citation or pay a fine.
24.0522 Violations bureau - Duties.
24.0523 American Samoa coastal management program fund - Revenues from fines, application fees, and gifts.
24.0524 Executive order vacated.

24.0501 Definitions.

As used in this chapter, unless the context clearly requires otherwise:

(1) "Alternative" means one of a number of choices. For example, identification of alternative locations may involve identification of locations off the project site not owned or controlled by an applicant.

(2) "ASCMP" means the American Samoa coastal management program.

(3) "ASCMP fund" means the ASCMP fund established for monitoring the coastal management area and enforcing provisions of this act.

(4) "ASCMP participating agencies" shall include at least the following agencies or instrumentalities: the office of development planning, the office of the Governor, department of public works, the environmental quality commission/AEPEA, the office of the Attorney General, the department of parks and recreation, the department of port administration.
the office of Samoan Affairs, the office of marine and wildlife resources, the department of public safety, territorial planning commission, territorial energy office, American Samoa power authority, capital improvement projects and procurement review committee, and the industrial parks commission.

(5) "ASCMP manager" is the person designated by the director of development planning who is responsible for the overall implementation and administration of the ASCMP.

(6) "ASCMP review agencies" shall include the following agencies: office of development planning, department of public works, environmental quality commission/ASEPA, department of parks and recreation, department of agriculture, zoning board, department of health, office of Samoan Affairs, and office of marine and wildlife resources.

(7) "ASEPA" means the American Samoa environmental protection agency.

(8) "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.

(9) "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.

(10) "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.
(11) "Coral reef" means a structure which may or may not be adjacent to the shoreline, formed and bounded by the gradual deposition of and calcareous secretions of coralline materials.

(12) "Critical habitat area" 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 or threatened.

(13) "Director" means the director of development planning.

(14) "Erosion" means the result of natural and man made processes by which surface materials are worn away, loosened, or dissolved, and transported off site. Areas of shoreline erosion are indicated in the American Samoa Shoreline Inventory" by the U.S. Army Corps of Engineers, Pacific Ocean Division, Honolulu, Hawaii. 

(15) "Fa'afa Samoa" means the traditional Samoan way of life.

(16) "Feasible" means capable of being accomplished in a reasonable period of time taking into account economic, social, technological, and environmental factors.

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

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

(19) "Impact" means the direct and indirect consequences of a course of action or effect of a human action, activity, plan, or permit decision which results in modification to existing conditions of an element of the human, historical, cultural, and natural environment, including modifications as to quantity, aesthetics, or human use.
(20) "Maintain" means to support, keep, and continue in an existing state or condition.

(21) "Major facilities" includes public or privately owned water treatment plants, schools, public buildings, roads, highways, seaports, airports, navigation aids, electric power production, transmission and distribution facilities, major recreation areas, national defense installations, solid-waste disposal areas and facilities, national aerospace facilities, and water supply systems.

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

(23) "Nautical miles" means a unit of distance used for sea and air navigation which is equal to 6,076.115 feet (1852 meters) used officially in the United States since July 1, 1959.

(24) "Nearshore waters" means those waters within 1,500 feet of the shoreline.

(25) "Office" means the office of development planning.

(26) "Pago Pago harbor" means the inner harbor area delineated by a line drawn from Blunt's Point to Breaker's Point.

(27) "Pola lagoon" means the embayment area delineated by a line drawn from the easternmost point of the airport to the nearest part of Coconut Point.

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

(29) "Public need" means a condition or circumstance for which a village, group of villages, the Territory, or the United States has a demonstrated need.
(30) "Saltwater intrusion" means the subsurface movement of waters of higher salt concentrations, e.g. seawater, into basal aquifers.

(31) "Shoreline" means the boundary line between a body of water and the land, measured or tidal waters at mean high water and non-tidal waterways at the ordinary high-water mark.

(32) "Stream" means a natural pathway for surface water drainage or runoff, often intermittent in flow, and typically characterized by unique riparian plant and animal communities.

(33) "Sustained yield" means the resources are managed in such a manner that only that much of the resource is harvested or removed in any period of time as to maintain the productivity of the resource indefinitely into the future.

(34) "Territorial boundaries" means all surface, submerged, and coastal waters for a distance of three nautical miles seaward in all directions from the islands of Tutuila, Aunu'u, Rose Atoll, Swain's Island, and the Manu'a Island group.

(35) "Traditional Samoan uses" means low-intensity or low-density traditional subsistence or communal uses and facilities.

(36) "Unique areas" means areas that are unusual or are necessary to sustain life and the productivity of the natural resource system, including but not limited to wetlands, mangrove swamps, aquifer recharge areas, critical habitat areas for endangered or threatened species, riparian flood plains, streams, and watersheds.

(37) "Water-dependent" means a use, activity, or development which can be carried out only on, in, or adjacent to water areas because the use requires direct access to the water body to function at all.
"Water-related" means a use, activity, or development which is not dependent on direct access to a water body, but which provides a good or service that is directly associated with a water-dependent use, activity, or development.

"Watershed" means a distinct area bordered by features of higher elevations that is usually distinguished by surface drainages.

"Wetland" means those land areas where excess water is the dominant factor determining the nature of soils and the types of plant and animal communities; wetlands generally include swamps, marshes, mangroves, lakes, natural ponds, surface springs, streams, estuaries, bogs, and other similar areas.

24.0502 Coastal zone management area.

The islands of Tutuila and Aunu'u, the Manu'a island group, Swain's Island, and all coastal waters and submerged lands included within the territorial boundaries are declared within the coastal zone management area and subject to ASCMP policy objectives.

24.0503 American Samoa coastal management program purpose.

The ASCMP is intended to protect, maintain, and enhance American Samoa's coastal resources which include but are not limited to, its shoreline and submerged lands through:

(1) regular and routine cooperation, coordination, and participation of at least the ASCMP participating agencies;
(2) cooperation and participation to foster the flow of information between agencies in matters regarding and affecting the coastal zone management area;

(3) adherence to the ASCMP policy objectives described in 24.0504 to guide management of the resources in the coastal zone management area;

(4) administration of a single, clear and efficient permit system, referred to as the "Project Notification and Review System" (PNRS); the PNRS will integrate the current and future activities and regulatory processes of the participating agencies which are related to permitting associated with guiding development and protecting the Territory's natural resources;

(5) prohibition of certain activities within the coastal zone due to their deleterious short and long term effects on the coastal zone's fragile resources;

(6) creation of procedures and criteria whereby special exceptions can be obtained to perform an activity prohibited pursuant to 24.0506;

(7) identification and designation of "Special Management Areas" to provide special protection and management guidelines for priority of uses in such geographic areas exhibiting a high degree of environmental sensitivity or subject to intense development pressure in the near future;

(8) continued involvement of the state and local (village) governments in the enforcement and ongoing management of the policy objectives of the ASCMP; the ASCMP and the state and local governments shall work together toward creating local management programs to operate in parallel with the ASCMP;
1. (9) establishing effective monitoring and enforcement which enhances, but does not unnecessarily duplicate, the monitoring and enforcement activities of the ASCHP participating agencies.

24.0504 American Samoa coastal management program objectives.

All executive branch departments, agencies, offices, instrumentalities and employees of the government shall take action to incorporate and implement the following policy objectives into their programs and to conduct their activities in a consistent manner:

(a) Coast/al/land use administration: To promote effective and sensitive administration of territorial laws, regulations and programs. This shall be promoted and accomplished by:

(1) Instituting a coordinated, streamlined, comprehensive project review and permit process;

(2) Providing educational and training programs for agency personnel;

(3) Improving the technical basis for decisions regarding the Territory’s natural resources;

(4) Administering government projects and programs with sensitivity to fa’a Samoa; and,

(5) Establishing a program of public education and public participation which explains the concepts of resource management, conservation and wise development of coastal resources.

(b) Territorial aid: To provide effective and coordinated territorial aid to villages. This shall be promoted and accomplished by:

(1) Providing ongoing technical assistance to the villages and the matai in resource management, review and evaluation of development
plans and projects, and, preparation of applications for federal
technical and financial assistance;
(2) assisting villages in the development of county coastal
management programs which meet the Territory's coastal
management policy objectives and which are sensitive to village
resources, needs and preferences; and
(3) requiring that all county coastal management programs receive
the approval of the office of Samoan Affairs and the ASCMP before
they can take effect.
(c) Seashore development: to assure that lands next to the sea are
managed in a way least harmful to coastal resources and with
minimal risk of damage from coastal hazards. This shall be promoted
and accomplished by:
(1) rigorously reviewing resource uses, developments, and activities
in the area measured 200 feet horizontally inland from the shoreline
to determine if they may be damaged from shoreline erosion or other
identified coastal hazards, interfere with visual or physical access to
the shoreline, or, may harm coastal resources;
(2) denying those proposed uses, developments and activities which
have the impacts described in (1) unless they serve a demonstrated
public need, including recreation, and are water-dependent
or water-related and are compatible with adjacent land uses or
traditional Samoan uses and no other feasible, environmentally
preferable alternative sites exist;
(3) evaluating proposed uses, developments and activities in areas
immediately adjacent to the landward and seaward side of the mean
high tide line in relation to applicable territorial and federal natural
resource laws and regulations and in relation to the U.S. Army Corps of Engineers' permit application evaluation factors as contained in the ASCHP document; and,

(4) setting aside seashore beach areas which are of important ecological or recreational value.

(d) Flooding, to reduce the hazards to life and property from flooding, slides and shoreline erosion. This shall be promoted and accomplished by:

(1) permitting development in areas prone to stream and ocean flooding, slides and shoreline erosion only if there is a demonstrated public need and no other feasible, environmentally preferable alternative sites exist and the development is located and designed to maximize mitigation of risks to property and public safety;

(2) applying the following standards to the location and design of development activities or uses satisfying the conditions described in (1) for areas prone to flooding, slides and erosion:

(A) preferring activities or uses that will not require protection through dikes, dams and levees or other structures over uses that require such protection,

(B) preferring activities or uses that pose the least risk to loss of life and property damage over uses that pose such risks, and

(C) designing projects, activities, or uses in areas prone to flooding in such a manner that will allow passage of water to a feasible extent;

(3) permitting construction of structures intended to protect existing
development against flooding and erosion only if at the site or in the area that would be affected by the proposed structures:

(A) there is no significant risk to public health and safety,
(B) there are no feasible, environmentally preferable alternative sites,
(C) habitats that may be affected are identified and those of high value will not be impaired, and
(D) adverse effects on nearby areas, habitats, streams, drainage and alterations of the natural shoreline are minimized.

(e) Fisheries: to promote fisheries development and sound fisheries management. This shall be promoted and accomplished through:

(1) Reserving shoreline areas suitable and necessary for the support of fishery development for that use;
(2) Supporting only those fisheries management activities which conserve fishery stocks, protect native habitats, and maintain sustained yields.

(f) Slope and soil erosion: to reduce slope and soil erosion. This shall be promoted and accomplished by:

(1) Minimizing and controlling road building and construction activities that substantially alter land contours in steep areas or which otherwise may promote soil erosion;
(2) Avoiding clearing, grading or construction on slopes greater than 40% unless no feasible, environmentally preferable alternative sites exist;
(3) Using the best available techniques in clearing, grading or construction on slopes to avoid or minimize soil erosion, including but not limited to.
(A) carefully designed road drainage using knowledge of soils, vegetation, terrain, and other available techniques to minimize on-site disturbances,
(B) using retaining walls and other applicable techniques to minimize slope cutting, and
(C) replanting disturbed land immediately after construction with soil stabilizing plants and other available techniques to control off-site movement of soil.

- (g) Coral reefs: to protect and restore coral reefs. This shall be promoted and accomplished by:
  (1) preventing the dredging, filling, channeling or otherwise altering of coral reefs and other submerged land unless:
      (A) there is a demonstrated public need,
      (B) there are no feasible, environmentally preferable alternatives, and
      (C) measures are taken to minimize adverse impacts;
  (2) protecting coral reefs from sedimentation, overfishing, runoff, and the impacts resulting directly and indirectly from other activities to the extent feasible.
  (3) restoring damaged reefs whenever feasible;

- (h) Recreation: to improve and increase recreation opportunities and shorefront access for both residents and visitors. This shall be promoted and accomplished by:
  (1) promoting the acquisition, siting, development and maintenance of a range of recreation facilities that are compatible with their surrounding landscape and land uses and serve the recreation and shorefront access needs of villages and urban areas;
(2) promoting the acquisition of, or use agreements for, recreation sites which require a minimal amount of man-made development or construction of facilities, such as marine and wildlife conservation areas, scenic overlooks, trails, parks and historic sites;
(3) improving and increasing public access to and along the ocean, reserving beach areas suitable for recreation for such use and providing for public access to these areas where feasible, and maintaining where feasible, open public visibility to the ocean from the road parallel to and near the shoreline;
(4) discouraging, to the maximum extent practicable, visually objectionable uses which might otherwise significantly degrade scenic values.

(i) Water quality: to maintain and, where possible, restore water quality. This shall be promoted and accomplished by:
(1) incorporating the territorial and federal water pollution control requirements into the planning, activities, decisions, and any permits issued through the ASGMP;
(2) restoring degraded water quality to acceptable standards;
(3) preventing potential threats to water quality wherever feasible, including the control of erosion, sedimentation, runoff, siltation, sewage and other discharges.

(ii) Marine and terrestrial resources: to protect marine and terrestrial resources for present and future generations. This shall be promoted and accomplished by:
(1) protecting the living marine and terrestrial resources and their habitats from damage, destruction, or taking of any marine or
terrestrial resource by line, net, trap, weapon or any other means beyond the quantity reasonably expected to be the sustainable yield of that resource or any other resource dependent on, or depended on, by that resource;

• (2) prohibiting the taking of federal or territorially listed endangered or threatened species including, but not limited to, the species known as the green and hawksbill sea turtles, Pacific boa, Australian duck, many colored fruit dove, puzzlenut tree and the Intsia bijuga or "lifelele;"

(3) giving special management protection to designated and potential pristine marine or terrestrial plant or animal communities as identified by territorial and federal agencies;

(4) prohibiting the taking of sand, mud, gravel, coral cubble or any other material prohibited under 18.0208(a) and 15.0302(c).

(k) Drinking water: to protect the surface and subsurface freshwater resources, developed and undeveloped, which may provide the Territory's safe water supplies. This shall be promoted and accomplished by:

(1) protecting freshwater sources both above and below ground from contamination due to sedimentation, salt water intrusion or other sources of pollution;

(2) improving drinking water systems to protect public health and welfare.

(1) Unique areas: to protect unique areas from destructive or insensitive development. This shall be promoted and accomplished by:

(1) protecting all unique areas, including but not limited to:

(A) wetlands, particularly Fainuulivi Marsh and Aunu'u Island,
(B) mangrove swamps, including those remaining at Pala mud lake on Aunu'u Island, Masefau, Vatia as well as Leone,
(C) aquifer recharge areas, giving special attention to Tafuna plain and Malaeimi,
(D) critical habitat areas, particularly the last remaining stands of lowland rainforest found on Tafuna plain, the montane rainforest of Te'u and limited rainforest stands near Aaloow Fou, Tutuila, the cloud forests of Te'u and Olooseg, the montane scrub found on Olstanoe Crater and Late Mountain of Te'u and in isolated areas of Tutuila, particularly Pola Islet and Polaua Ridge, Fagatele Point, Anape'ope'a Cove and Nu'usetoa Islet, as well as Nu'utele Islet, Ofu and Late Mountain, Levanio Cove and Ulufale Point, Te'u, and
(E) areas where major perennial and intermittent streams enter nearshore waters,
(F) watersheds, particularly those containing streams which supply village water needs as identified by the department of public works,
(G) nearshore waters as identified in the 1980 U.S. Army Corps of Engineers' coral reef inventory and current inventories conducted by the office of marine and wildlife resources, and
(H) designated and potential historic, cultural or archaeological sites as identified by the department of parks and recreation or the National Parks Service,
(1) managing and siting uses, activities and developments in, and adjacent to, unique areas so as to maintain the natural productivity of the areas and to mitigate to the maximum extent

- 17 -
possible any adverse impacts on the physical, chemical and biological characteristics of the unique areas by permitting only those projects for which there is:

(A) a demonstrated public need,

(B) no other feasible, environmentally preferable alternative site, and

(C) an appropriate design which will prevent alterations to the unique area which would significantly damage its values or natural productivity.

(m) Historic resources: to protect the archaeological, cultural and historic resources of American Samoa. This shall be promoted and accomplished by:

(1) protecting and preserving significant Samoan archaeological, cultural and historic sites, artifacts and life-styles;

(2) recognizing and respecting areas of cultural significance and rigorously reviewing any use, activity or development which would disrupt the cultural practices associated with such areas.

(n) Air quality: to maintain high air quality. This shall be promoted and accomplished by:

(1) incorporating the federal and territorial requirements of the federal Clean Air Act, as amended, into the ASCMP;

(2) allowing variances from such clean air standards where justified, pursuant to 24.0140 through 24.0144, if the variance would not significantly decrease air quality.

(o) Major facilities: to assure the proper siting of major facilities. This shall be promoted and accomplished by:

(1) designing and locating major facilities to minimize adverse
environmental and social impacts and to promote orderly and efficient economic development;

(2) accommodating water-dependent major facilities through planning and ensuring that major facilities not dependent on direct access to the sea be located elsewhere unless no feasible, environmentally sound alternative sites exist;

(3) making conservation of natural resources a primary territorial goal;

(4) recognizing and identifying the regional benefits and national interests in the siting of major facilities and adequately considering them in major facility siting decisions.

(p) Agricultural development: to promote agricultural development in a manner consistent with sound conservation practices. This shall be promoted and accomplished by:

(1) encouraging and improving commercial and subsistence agriculture on lands suitable for cultivation;

(2) reserving the most fertile, critical agricultural lands for agricultural purposes;

(3) promoting and providing technical assistance to achieve sound agricultural practices which will protect land and water resources and maintain crop yields, including but not limited to:

(A) cultivation on suitable slopes,

(B) use of adequate ground cover to prevent soil erosion,

(C) coordination with the ASEPA's pesticide program as authorized by executive order 12-85 to ensure the proper use of pesticides, herbicides and fertilizers, and

(D) techniques to maintain soil fertility such as utilization of
crop rotation cycles to allow natural recovery of productivity through fallow periods.

(4) Special management areas: to establish priority uses, special management programs, and focused restrictions for designated special management areas; and, to designate the Pago Pago harbor and the Pago lagoon as special management areas. This shall be promoted and accomplished by:

(1) including in the regulations provided under 24.0506 specific procedures whereby areas may be designated as special management areas for the purpose of preserving, restoring or managing them for their conservation, recreational, ecological, aesthetic or commercial values;

(2) developing the Pago Pago harbor in a way that emphasizes its irreplaceable value as a working port and safe harbor and protects its natural resources by adhering to the following priorities:

(A) water-dependent uses and activities shall have the highest priority for use of shoreline land areas,

(B) water-related uses and activities shall have second priority for use of shoreline land areas,

(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 shall receive third priority for land uses in shoreline areas, and

(D) all other uses and activities shall have lowest priority and shall be encouraged to locate or relocate in other designated commercial, industrial or residential areas;

(3) restoring and enhancing the water quality, fish, wildlife and
recreation value of the Pala lagoon by adhering to the following priorities:

(A) nonpolluting and nondestructive uses and activities including, but not limited to, fishing, swimming, shellfishing, mariculture, small craft boating under 16 feet in length, when such craft are used in conjunction with the preceding activities and are operated at a safe speed that does not adversely affect the natural resources of Pala lagoon, and, any necessary restoration measures shall receive highest priority,

(B) those uses and activities which would interfere with the natural characteristics of the lagoon and are not necessary for restoration or recreation shall be rigorously reviewed and shall receive the lowest priority, and

(C) the villages adjacent to the lagoon shall receive high priority for hook up to the government sewer system.

24.0505 Office of development planning - Duties and authority.

(a) The office is the designated territorial agency, as required by applicable federal laws and rules, for the management of the ASCMP and shall be the lead agency for all program implementation.

(b) The office shall receive, administer and account for all ASCMP grants and funds received and dispensed.
The director shall, after public hearings, adopt, pursuant to the provisions of the Administrative Procedures Act, 4.1001 et seq., such rules as are deemed necessary for the efficient and effective administration of the ASCMP. The rules shall be promulgated and take effect no later than 120 days after the effective date of this act, and shall at a minimum:

(a) provide clear administrative, monitoring, and enforcement responsibilities for attainment of the goals and objectives of the program by each of the territorial agencies which have activities or jurisdiction which may affect the natural resources of the coastal zone;

(b) establish a single, clear and streamlined, permit system, integrating the activities and regulatory authorities of each of the territorial agencies which may affect the natural resources of the coastal zone; the resulting system shall provide for:
   (1) the determination of fair and equitable permit application fees,
   (2) effective public participation, including provisions for public hearings as necessary,
   (3) technical analysis of the environmental, economic, energy, social and cultural impacts or consequences of any proposed project,
   (4) compliance with all local or federal laws and regulations pertaining to air and water quality, drinking water quality, solid or hazardous waste disposal, pesticide use, or any other environmental regulations effecting the coastal zone management area,
   (5) appropriate prevention and mitigation measures to the extent
practicable to protect against adverse impacts, including those on reefs, nearshore waters, beaches, mangroves, estuaries, watersheds, aquifers, cultural or historic properties and other coastal resources;

(c) provide clear definition of responsibility and mechanisms through which the office will implement the ASCMP policy objectives through consultation and coordination with the activities and regulatory authorities of any of the territorial agencies which have activities or authorities which may affect the natural resources of the coastal zone; the office shall also conduct periodic meetings or conferences between all agencies which are affected by the ASCMP and the office to review the purposes, responsibilities, rules, procedures, technical assistance, and future direction of the ASCMP;

(d) provide clear indication that this act and the rules adopted pursuant to this act do not diminish any other responsibilities and authorities of any territorial agency to perform their functions within the requirements of law to meet the goals and objectives of this act;

(e) establish a process with specified deadlines for action by each territorial agency on any private application for a regulated activity within the coastal zone in order to ensure that such applicant will receive timely and fair consideration of such application, including a written record of proceedings and decisions and findings of fact for each application reviewed by any agency or agencies under this act;

(f) establish the following activities as prohibited within the coastal zone:

(i) sand mining on the beaches pursuant to 18.028(b) and 15.032(c),
(2) cutting or filling mangrove trees or habitat,

(3) dumping, depositing, or storing toxic or hazardous materials in a special management area,

(4) possession of a junked vehicle pursuant to 22.1402;

(5) abandonment of airtight or semi-airtight containers pursuant to 46.4506, and,

(6) such other uses or activities as the office may determine adversely affects coastal resources, have feasible alternatives, and are not dependent on direct access to coastal waters;

(g) establish a procedure and criteria through which an applicant may apply for, and receive if the criteria are satisfied, a special exception to undertake an activity otherwise prohibited in paragraph f;

(h) establish procedures and criteria for the determination of whether any proposed project has the potential to have a major impact on the natural resources of the coastal zone, or, whether such a proposed project has the potential to have a minor impact on the natural resources of the coastal zone;

(i) establish procedures and criteria for streamlined and coordinated interagency review, analysis, consideration, and permitting of any proposed project based on whether such project has the potential of having a major or a minor impact on the natural resources of the coastal zone;

(j) establish procedures and criteria for nominating, reviewing, and establishing special management areas as provided in 24.0509.
24.0507 Director of development planning – Federal consistency rules.

The director shall, after public hearings, and pursuant to the Administrative Procedures Act, 41001, et seq., adopt such rules as are necessary to govern review of any activity, program, project, license, permit, or funding of the government of the United States, or from the government of the United States to any agency of the Territory, to determine if such activity, program, project, or funding will significantly affect the coastal zone management area, and to determine whether such activity, program, project, or funding is consistent with the goals, purposes, and requirements of this act pursuant to 307 of the federal Coastal Zone Management Act of 1972, as amended. The rules shall provide for adequate consideration of the national interest, including consideration of the national interest in the planning and siting of facilities which are necessary to meet requirements that are other than territorial in nature. The director shall promulgate such rules within 120 days of the effective date of this act.

24.0508 Conformance and cooperation of executive agencies and employees.

Nothing in this act intends to limit, reduce, or remove any of the activities or authorities of any territorial executive or legislative departments, offices or instrumentalities, or employees of the government, except that:

(1) all agencies shall conform to the requirements of this act and any regulations promulgated pursuant to the requirements of this act;
(2) all agencies shall endeavor to ensure their activities or the possible indirect result of their activities further the purposes, goals and objectives of this act; and,

(3) memoranda of understanding executed under executive order 3-50 between the office and the environmental quality commission, department of agriculture, department of public health, department of parks and recreation, department of public works and zoning board shall be revised and updated to reflect duties and responsibilities imposed by this act within one year of the effective date of the act.

24.0509 Designation of special management areas.

(a) The director shall have exclusive authority to establish special management areas. The may nominate areas for special management area status and may establish such areas pursuant to procedures and criteria established pursuant to 24.0506, and the Administrative Procedures Act, 4.1001, et seq.

(b) Pago Pago harbor and Palaieagoon are hereby designated special management areas and therefore subject to the priorities of use established by the ASCMP.

24.0510 Annual report.

The director shall submit to the Governor and Legislature an annual report on the activities of the ASCMP within 60 days after the end of each fiscal year. The report shall be made available to the public.
24.0511 Enforcement and monitoring for compliance.

(a) The provisions of this act shall be cumulative and not exclusive and shall be in addition to any other remedies available at law or in equity.

(b) The director shall adopt specific procedures for monitoring, notification of violation, and enforcement pursuant to 24.0506 of this act. Any person may initiate an action in the trial division of the High Court of American Samoa to compel the performance of the duties specifically imposed upon the office, provided, however, that no such action shall be brought prior to 30 days after written notice has been given to the director and other affected agencies by the complainant specifying the facts of the case and the duties which the complainant alleges have not been performed. No bond shall be required for an action under this subsection.

(c) The rules adopted pursuant to 24.0506 shall provide for regular monitoring of prohibited, unpermitted, and permitted activity for compliance with the requirements of this act and any terms and conditions which may have been imposed by the government on any permit issued by the government; and, the rules shall provide for periodic inspection of approved projects during and after they are completed to ensure that they are being conducted in a manner consistent with the ASCMP and any terms and conditions established by the government as part of an approval of the project.

(d) The rules adopted pursuant to 24.0506 shall provide procedures whereby the office will monitor and enforce any situation where the office or any affected government agency has reason to believe that
any person has undertaken, or is threatening to undertake, any activity that may be inconsistent with the policies of this act, or may undertake any activity that may require a permit or other government approval, or, that may be inconsistent with any permit previously issued; the procedures established shall at a minimum:
(1) establish procedures for the office to issue, and deliver by certified mail or hand delivery, a written order to cease and desist, including reasons therefore, and, such terms and conditions as the office deems necessary to ensure compliance with the policies and requirements of this act; and,
(2) provide remedy for, and penalties associated with, any use, activity, or development for which the office issued the cease and desist order, including but not limited to: immediate removal of any fill structure, or other material, suspension of the permits, or establishing a schedule within which steps must be taken to obtain a permit pursuant to this act.
(e) In addition to any other remedy provided herein or at law or in equity, the Attorney general and the office, as the lead agency, may institute a civil action in the court; such an action may seek an order to prevent any person from violating the provisions of the act or the rules promulgated thereunder, including an action to enforce any cease and desist order issued by the office pursuant to this act.

24.0512 Penalties.

(e) Any person who materially violates any provision of this act or any rules or any order issued hereunder is guilty of a Class A
misdemeanor, except as may be otherwise specifically provided. Individuals shall also be subject to a civil fine imposed by the High Court of American Samoa not to exceed $5,000 per violation. Corporations shall also be subject to a civil fine imposed by the High Court of American Samoa not to exceed $10,000 per violation.

(b) For the purposes of this section, a violation shall constitute an offense committed on any single calendar day, and offenders may be cited on subsequent violations if the objectionable practice or activity persists beyond one calendar day and is not righted or stopped.

(c) In addition to the foregoing and in order to deter violations of the provisions of this act, or rules issued pursuant to this act, the Attorney General may maintain an action for exemplary damages, the amount of which is left to the discretion of the court, against any person who intentionally and knowingly violates any provision of this act or these rules.

(d) Any individual or corporation who knowingly and willfully makes a false statement, representation, or certification in any application for a permit, or in any record, plan or other document filed or required to be maintained under this act or rules issued hereunder, or in any permit or order issued pursuant to this act, or who falsifies, tempers with or knowingly renders inaccurate any monitoring device or method required to be maintained pursuant to this act or rules issued hereunder or any permit or order issued pursuant to this act, shall be subject to permit revocation or suspension and subject to a civil fine by the High Court of American Samoa of not more than
$5,000 for individuals and $10,000 for corporations for each violation.

240513 Citation authority.

The ASCMP manager, other ASCMP employees authorized by him, or any other persons authorized by the commissioner of public safety, shall have the authority to issue citations for violations of this chapter and any rules hereunder.

240514 Citation - Form and contents.

(a) The form of the citation shall be approved by the Attorney General, and copies of the form shall be stocked, ordered, and paid for by the office.

(b) It shall be signed by the authorized person who effects the service.

(c) No code sections need be cited if the charge and violation are specifically designated therein. It may also contain other information pertinent to the offense charged.

240515 Citation - Service.

A citation must be served by personal delivery or a copy thereof to the defendant.

- 30 -
240516 Citation — Appearance in court.

The defendant must appear in the district court at the time and date indicated on the citation.

240517 Citation contents — Motion for further information

A complaint signed and sworn to by the person who issued the citation must be filed with the clerk of the court before any offense may be heard or plea taken in court. The complaint shall be substantially in the form prescribed for a citation in 24.0514. It may also contain other information pertinent to the alleged offense.

240518 Arrest for failure to answer citation

A warrant may be served by a police officer for the arrest of any person who fails to answer a citation. It shall be supported by a sworn complaint as set out in 24.0517.

240519 Plea and trial.

(a) After reading the complaint to the defendant, the court shall ask the defendant to plead. If the defendant pleads guilty, the court shall proceed with sentencing. If the defendant pleads not guilty, the person who issued the citation shall present the court with the grounds on which it was issued, adding evidence to this end. The Attorney General will assist to the extent he deems necessary.
(b) The defendant may then introduce evidence to establish the fact that he is not guilty.

(c) The court may examine the evidence and question the parties and their witnesses at any time.

24.0520 Abstract of case

Upon disposition of the case, the court shall prepare a "Coastal Zone Management Abstract of Court Record" in substantially the form known as an "Abstract of Court Record for Violations Bureau" and transmit it to the violations bureau. The violations bureau shall keep records to show when a person fails to pay any fine imposed by the district court.

24.0521 Failure to answer citation or pay a fine

Regardless of the disposition of the charge upon which a citation is issued or fine imposed, a person is guilty of a misdemeanor if he willingly fails to:

1. answer a lawful citation; or
2. pay a fine imposed under this chapter within the time required, unless retrial is requested.

24.0522 Violations bureau - Duties

The violations bureau shall accept payment of fines for offenses described under this chapter. It shall operate under the direction and control of the clerk of the High Court of American Samoa.
24.0523 The American Samoa coastal management program fund - Revenues from fines, application fees, and gifts.

(a) There is established, separate and apart from any other fund of the government, an ASCMP fund which shall be used to further the monitoring, enforcement, hazard mitigation, and environmental restoration duties of the ASCMP. The fund shall be managed by the office, which shall submit financial reports at the end of each fiscal year to the Governor and Legislature pursuant to 24.0510.

(b) Fines and application fees collected pursuant to the rules promulgated under this chapter are to be deposited in the fund. All money or proceeds donated or bequeathed for the benefit of the ASCMP are to be deposited in the fund; provided that money or proceeds donated or bequeathed for specific purposes shall be held in trust and may only be used for the purposes described in subsection (a) above.

(c) The fund shall not exceed $10,000, except as provided in this subsection. All surplus funds shall be deposited in the general fund of the government. The Legislature shall appropriate additional monies to the fund as it determines necessary.

24.0524 Executive order vacated.

Executive order 3-1900 is hereby vacated in its entirety.