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EXECUTIVE ORDER NO. 004 -2006

THE TERRITORY OF AMERICAN SAMOA FLOODPLAIN MANAGEMENT REGULATIONS

By the authority vested in the Governor of American Samoa under the Revised Constitution and laws of American Samoa, it is hereby ordered that the Territory of American Samoa Floodplain Management Regulations are set forth below:

SECTION 1.0

DEFINITIONS

Unless specifically defined below, words or phrases used in this ordinance shall be interpreted so as to give them the meaning they have in common usage and to give this ordinance its most reasonable application.

"*Appeal*" is a request for a review of an official interpretation of any provision of this ordinance or a request for a variance.

"Base Flood" is the flood having a one percent chance of being equaled or exceeded in any given year.

"Base Flood Discharge" is the flood event where the water level reaches and/or exceeds the base flood elevation level. (See *"Base Flood"* above.)

"Base Flood Elevation Determination" means a determination by the Floodplain Administrator of the water surface elevations of the base flood, that is, the flood level that has a one percent or greater chance of occurrence in any given year. Such determination shall be based on the data included in the "Flood Insurance Study."

"Basement" means any area of the building having its floor subgrade (below ground level) on all sides.

"Breakaway Wall" means a wall which is not part of the structural support of the building and is intended through its design and construction to collapse under specific

lateral loading forces, without causing damage to the elevated portion of the building, supporting foundation system, or any buildings to which they might be carried by flood waters.

"Building" – see "Structure"

"Coastal High Hazard Area" means an area of special flood hazard extending from offshore to the inland limit of a primary frontal dune along an open coast and any other area subject to high velocity wave action from storms or seismic sources.

"Critical Feature" means an integral and readily identifiable part of a flood protection system, without which the flood protection provided by the entire system would be compromised.

"Development" is any man-made change to improved or unimproved real estate, including but not limited to buildings or other structures, mining, dredging, filling, grading, paving, excavation or drilling operations or storage of equipment or materials.

"Elevated Building" means a non-basement building:

(1) built, in the case of a building in Zones A, AE, or X, to have the top of the elevated floor, or in the case of a building in Zone VE, to have the bottom of the lowest horizontal structural member of the elevated floor elevated above the ground level by means of pilings, columns (posts and piers), or shear walls constructed parallel to the flow of the water, and,
(2) adequately anchored so as not to impair the structural integrity of the building during a flood of up to the magnitude of the base flood. In the cases of Zones A, AE, or X, "elevated building" also includes a building elevated by means of fill or solid foundation perimeter walls with openings sufficient to facilitate the unimpeded movement of flood waters. In the case of Zone VE, "elevated building" also includes a building otherwise meeting the definition of "elevated building," even though the lower area is enclosed by means of breakaway walls if the breakaway walls meet the standards of Section 4.2.

"Existing Construction" means, for the purpose of determining rates, structures for which the "start of construction" commenced before the effective date of the FIRM (i.e. July 7, 1989). "Existing construction" may also be referred to as "existing structures."

"Fill" is the placement of fill material at a specified location to bring the ground surface up to a desired elevation.

"*Fill Material*" can be natural sand, cinders, coral rubble, dirt, soil, or rock. For the purpose of floodplain management, fill material may include concrete, cement, soil cement, brick, scrap metal, or other material as determined by the Floodplain Administrator.

"Flood or Flooding" is a general and temporary condition of partial or complete inundation of normally dry land areas from:

(1) the overflow of inland or tidal waters and/or

(2) the unusual and rapid accumulation of runoff of surface waters from any source.

"Flood Insurance Rate Map (FIRM)" is the official map on which the Federal Insurance Administration has delineated both the areas of special flood hazards and the risk premium zones applicable to the community.

"Flood Insurance Study" is the official report provided by the Federal Emergency Management Agency that includes flood profiles, the Flood Insurance Rate Maps (FIRM), and the water surface elevation of the base flood.

"Floodplain" or "Flood-prone Area" means any land area susceptible to being inundated by water from any source (see definition of "flooding").

"Flood Protection System" means those physical structural works for which funds have been authorized, appropriated and expended and which have been constructed specifically to modify flooding in order to the extent of the depths of associated flooding. Such a system typically includes features such as hurricane tidal barriers or seawalls, dams, reservoirs, levees, or dikes. These specialized flood modifying works are those constructed in conformance with sound engineering principals and standards.

"Floodproofing" means any combination of structural and non-structural additions, changes or adjustments to non-residential structures which reduce or eliminate flood damage to real estate or improved property, water and sanitary facilities, structures, and their contents.

"Flood-Related Erosion" is a condition that exists in conjunction with a flooding event that alters the composition of the shoreline or bank of a watercourse, or one that increase the possibility of loss due to the erosion of the land area adjacent to the shoreline or watercourse.

"Fraud and Victimization" related to Section 5, "Variances," of these regulations means that the variance granted must not cause fraud on or victimization of the public. In examining this requirement, the Floodplain Review Panel shall consider the fact that every newly constructed building adds to government responsibilities and remains a part of the community for decades. Buildings that are permitted to be constructed below the base flood elevation are subject during all those years to increased risk of damage from floods, while future owners of the property and the community as a whole are subject to all the costs, inconvenience, danger, and suffering that those increased flood damages bring. In addition, future owners may purchase the property, unaware that it is subject to potential flood damage, and can be insured only at very high flood insurance rates.

"Functionally Dependent Use" means a use which cannot perform its intended purpose unless it is located or carried out in close proximity to water. The term includes only docking facilities, port facilities that are necessary for the loading and unloading of cargo or passengers, and ship building and ship repair facilities, but does not include long-term storage or related manufacturing facilities.

"Hardship" as related to Section 5, "Variances," of these regulations means the hardship that would result from a failure to grant the requested variance. The Floodplain Review Panel shall require that the variance be related to some exceptional, unusual, or extraordinary circumstance that is peculiar to the property involved. Mere economic or financial hardship alone is not exceptional. Inconvenience, aesthetic considerations, physical handicaps, personal preferences, or the disapproval of one's neighbors likewise cannot, as a rule, qualify as exceptional hardships. All these problems can be resolved through other means, without granting a variance. This is so even if the alternative means are more expensive or complicated than building with a variance, or if they require the property owner to put the parcel to a different use than originally intended, or to build elsewhere.

"Highest Adjacent Grade" means the highest natural elevation of the ground surface prior to construction next to the proposed walls of a structure.

"Historic Structure" means any structure that is:

(1) listed individually in the National Register of Historic Places (a listing maintained by the Department of the Interior) or preliminarily determined by the Secretary of the Interior as meeting the requirements for individual listing on the National Register.

(2) Certified or preliminarily determined by the Secretary of the Interior as contributing to the historical significance of a registered historic district.

(3) Individually listed on a state or territorial inventory of historic places in states or territories with historic preservation programs which have been approved by the Secretary of the Interior.

(4) Individually listed on a local inventory of historic places in communities with historic preservation programs that have been certified either:

a. by an approved state or territorial program as determined by the Secretary of Interior, or

b. directly by the Secretary of Interior in states or territories with approved programs.

"Levee" means a man-made structure, usually an earthen embankment, designed and constructed in accordance with sound engineering practices, to contain, control, or divert the flow of water so as to provide protection from temporary flooding.

"Levee System" means a flood protection system which consists of a levee, or levees, and associated structures, such as closure and drainage devices, which are constructed and operated in accordance with sound engineering practices.

"Lowest Floor" means the lowest floor of the lowest enclosed area (including basement). An unfinished or flood resistant enclosure, usable solely for parking of vehicles, building access or storage in an area other than a basement area is not considered a building's lowest floor; provided, that such enclosure is not built so as to render the structure in violation of the applicable non-elevation design requirements of Section 4.1 of these regulations.

"Mangrove Stand" means an assemblage of mangrove trees which are mostly low trees noted for a copious development of interlacing adventitious roots above the ground.

"Manufactured Unit" is a prefabricated structure in one or more sections that is assembled on-site with permanent foundation.

"Manufactured Home, Park or Subdivision" means a parcel (or contiguous parcels) of land divided into two or more manufactured home lots for rent or sale.

"Mean Sea Level" means, for purposes of the National Flood Insurance Program, the National Geodetic Vertical Datum (NGVD) of 1929 or other datum, to which base flood elevations shown on the FIRM are referenced.

"Minimum Necessary" related to Section 5, "Variance," of these regulations means the minimum necessary to afford relief to the applicant of a variance with a minimum deviation from the requirements of these regulations. In the case of variances to an elevation requirement, this means the Floodplain Review Panel need not grant permission for the applicant to build at grade, for example, or even to whatever elevation the applicant proposes, but only that level that the Panel believes will both provide relief and preserve the integrity of these regulations.

"Mobile Home" is a structure that is transportable in one or more sections, built on a permanent chassis, and designed to be used with or without a permanent foundation when connected to the required utilities. It does not include recreational vehicles or travel trailers, or manufactured unit housing on permanent slab foundation.

"New Construction" means structures for which the "start of construction" commenced on or after April 25, 1991.

"100 Year Flood" see "Base Flood"

"Public Safety and Nuisances" as related to Section 5.0, "Variances," of these regulations means the granting of a variance must not result in additional threats to public safety or create nuisances. These regulations are intended to help protect the health, safety, well-being, and property of the local citizens. This is a long-range community effort made up of a combination of approaches such as adequate drainage systems, warning and evacuation plans, and keeping new structures above the flood levels. These long-term goals can only be met if exceptions to the requirements of these regulations are kept to a bare minimum.

"Riverine" means relating to, formed by, or resembling a river or stream.

"Special Flood Hazard Area" (SFHA) means an area having special flood or flood-related erosion hazards, and shown on the FIRM as Zone A, AE, or VE.

"Start of Construction" includes substantial improvement and other proposed new development and means the date the Building Permit was issued, provided the actual start of construction, repair, reconstruction, rehabilitation, addition, placement, or other improvement was within 180 days from the date of the permit. The actual start means either the first placement of permanent construction of a structure on a site, such as the pouring of slabs or footings, the installation of piles, the construction of columns, or any work beyond the stage of excavation. Permanent construction does not include land preparations, such as clearing, grading, and filling, nor does it include the installation of streets and/or walkways; not does it include excavation for a basement, footings, piers, or foundations or the erection of temporary forms; nor does it include the installation on the property of accessory buildings, such as garages or sheds not occupied as dwelling units or not part of the main structure. For substantial improvement the actual start of construction means the first alteration of any wall, ceiling, floor, or other structural part of a building, whether or not that alteration affects the external dimensions of the building.

"Structure" means a walled and roofed building, including a manufactured or mobile home and gas or liquid storage tanks, that is principally above ground.

"Substantial Damage" means damage of any origin sustained by a structure whereby the cost of restoring the structure to its before damaged condition would equal or exceed 50 percent of the market value of the structure before the damage occurred.

"Substantial Improvement" means any repair, reconstruction, or improvement to a structure, the cost of which equals or exceeds 50 percent of the market value of the structure either:

(1) Before the improvement or repair is started, or

(2) If the structure has been damaged and is being restored, before "substantial improvement" is considered to occur when the first alteration of any wall, ceiling,

floor, or other structural part of the building commences, whether or not that alteration affects the external dimensions of the structure.

This term does not, however, include either:

(1) Any project for improvements of a structure to comply with existing state or local health, sanitary, or safety code specifications which are solely necessary to assure safe living conditions, or

(2) Any alteration of a structure listed on the National Register of Historic Places or a State Inventory of Historic Places.

"Variance" means a grant of relief from the requirements of these regulations which permits construction in a manner that would otherwise be prohibited by this ordinance.

SECTION 2.0

- GENERAL PROVISIONS -

2.1 LANDS TO WHICH THESE REGULATIONS APPLY

These regulations shall apply to all areas of special flood hazards within the jurisdiction of the Territory of American Samoa, including property owned or leased by the American Samoan Government.

2.2 BASIS FOR ESTABLISHING THE AREAS OF SPECIAL FLOOD HAZARD

The areas of special flood hazard (Zones A, AE, and VE) identified by the Federal Insurance Administration, through the Federal Emergency Management Agency in scientific and engineering report entitled "The Flood Insurance Study for the Territory of American Samoa," dated May 2, 1991 with an accompanying Flood Insurance Rate Map and all subsequent amendments and revisions are hereby adopted by reference and declared to be a part of these regulations. The Flood Insurance Study is on file at the Department of Commerce, American Samoa Government, Pago Pago, American Samoa.

2.3 COMPLIANCE

No structure or land shall hereafter be constructed, located, extended, converted, or altered without full compliance with the terms of these regulations and other applicable regulations. Violation of these regulations (including violations of conditions and safeguards established in connection with conditions) may subject violators to the sanctions, both civil and criminal, imposed by Title 24, Chapter 05, and Title 26, Chapters 02 and 10 of the American Samoa Code Annotated. Nothing herein shall

prevent the Floodplain Administrator or the American Samoa Government from taking such lawful action as is necessary to prevent or remedy any violation.

2.4 ABROGATION AND GREATER RESTRICTIONS

These regulations are not intended to repeal, abrogate, or impair any existing easements, covenants, or deed restrictions. However, where these regulations conflict or overlap with other regulations, ordinances, easements, covenants, or deed restrictions, whichever imposes the more stringent restrictions shall prevail.

2.5 INTERPRETATION

In the interpretation and application of these regulations, all provisions shall be:

(1) Considered as minimum requirements.

(2) Liberally construed in favor of the governing body; and,

(3) Deemed neither to limit nor repeal any other power granted under American Samoa or Federal law.

2.6 WARNING AND DISCLAIMER OF LIABILITY

The degree of flood protection required by these regulations is considered reasonable for regulatory purposes and is based on scientific and engineering considerations. Larger floods can and will occur on rare occasions. Flood heights may be increased by man-made or natural causes. These regulations do not imply that land outside the areas of special flood hazards or uses permitted within such areas will be free from flooding or flood damages. These regulations shall not create liability on the part of the American Samoa government, any officer or employee thereof, or the Federal Insurance Administration, for any flood damages that results from reliance on these regulations of any administrative decision lawfully made thereunder.

2.7 SEVERABILITY

These regulations and various parts thereof are hereby declared to be severable. Should any section of these regulations be declared by the courts to be unconstitutional or invalid, such decision shall not affect the validity of the regulations as a whole, or any portion thereof other than the section so declared to be unconstitutional or invalid.

SECTION 3.0

- ADMINISTRATION -

3.1 DESIGNATION OF THE FLOODPLAIN ADMINISTRATOR

The Director of the Department of Commerce is hereby appointed to administer and implement these regulations by granting or denying development permit applications in accordance with its provisions.

3.2 DUTIES AND RESPONSIBILITIES OF THE FLOODPLAIN ADMINISTATOR

The duties and responsibilities of the Floodplain Administrator shall include, but not be limited to:

A. Permit Review

1) Review of all development permits to determine that the requirements of these regulations have been satisfied.

2) Review of all development permits to determine that the site is reasonably safe from flooding.

3) Review of all development permits to determine that all other required Government and federal permits have been obtained.

B. Use of Other Base Flood Data

When Base Flood Elevation data has not been provided in accordance with Section 2.2, the Floodplain Administrator shall obtain, review, and reasonably utilize any base flood elevation and floodway data available from any federal, state, territorial, village, or other source in order to administer Section 4.0 of these regulations.

C. Information to be Obtained and Maintained

The Floodplain Administrator shall obtain and maintain for public inspection and make available as needed for flood insurance purposes:

1) The certification required in Section 4.1.C.1 (floor elevations).

2) The certification required in Section 4.1.C.2 (elevation or floodproofing of nonresidential structures).

3) The certification required in Section 4.1.C.3 (wet floodproofing standard).

4) The certification required in Section 4.6.B (Subdivision standards).

5) The certification required in Section 4.3 (floodway encroachments).

6) The certification required in Section 4.2 (coastal construction standards)

D. Alteration of Watercourses

It is the responsibility of the Floodplain Administrator to:

1) Notify the community and applicable federal agencies prior to any alteration or relocation of a watercourse, and submit evidence of such notification to the Federal Emergency Management Agency.

2) Require that the flood carrying capacity of the altered or relocated portion of said watercourse is maintained.

E. Interpretation of Flood Insurance Rate Map (FIRM) Boundaries

The Floodplain Administrator shall make interpretations, where needed, as to the exact location of the boundaries of the Special Flood Hazard Areas. The person contesting the location of the boundary shall be given a reasonable opportunity to appeal the interpretation as provided in Section 5.0.

F. The Floodplain Administrator shall take action to remedy violations of these regulations as specified in Section 2.3 herein.

G. The Floodplain Administrator shall require that changes in Base Flood Elevation (BFE) that result from physical changes affecting flooding conditions are incorporated into the FIS and FIRM. Within 6 months of the date, such information becomes available or of the date of project completion, the floodplain administrator or the permit applicant must submit technical or scientific data to FEMA for a Letter of Map Revision (LOMR).

3.3 REQUIRED PERMITS FOR DEVELOPMENT

A Land Use Permit and a Building Permit shall be obtained before construction or development begins within any area of special flood hazard established in Section 2.2. Application for a Land Use Permit shall be made on forms furnished by the Department of Commerce. Application for a Building Permit shall be made on forms furnished by the Department of Public Works.

3.4 DETERMINATION OF BASE FLOOD ELEVATION

When it has been determined during the preliminary review of the Land Use Permit that a proposed structure will be located with a Special Flood Hazard Area, the Floodplain Administrator shall determine the Base Flood Elevation for the proposed location and so inform the applicant in writing within 5 working days from the date of the application submittal.

3.5 DETERMINATION OF ACTUAL ELEVATION

When the applicant receives the ~~Base Flood~~ Elevation Determination from the Floodplain Administrator, the applicant may submit a request to the Survey Branch of the Civil Highways Division of the Department of Public Works for a determination of the actual elevation of the proposed construction site as described by the applicant. The Survey Branch shall provide the applicant with a determination of the actual elevation of the construction site within 10 working days from the date of the applicant's request. A charge of $50.00 shall be added to the Building ~~Permit~~ fee and paid by the applicant to the ASG for this service.

3.6 SUBMITTAL OF SUPPLEMENTAL INFORMATION

When the applicant has received the Base Flood Elevation Determination and the determination of the actual elevation of the proposed construction site, a final plan may be prepared and submitted to the Floodplain Administrator for review prior to issuance of the Land Use Permit. The plan may include, but not be limited to: vicinity map; site plan drawn to scale showing the location, dimensions, and elevation of the area in question, existing or proposed structures, proposed grading, and drainage facilities; and architectural elevations of the proposed structure showing the method by which the building is to be elevated. Specifically, the following information is required:

1) The proposed elevation in relation to mean sea level, of the lowest floor (including basement) of all structures.

2) Proposed elevation in relation to mean sea level to which any structure will be floodproofed.

3) Certification by a registered professional engineer or architect that the floodproofing methods for any non-residential structure meet the floodproofing criteria in Section 4.1-3(3).

4) Description of the extent to which any watercourse will be altered or relocated as a result of proposed development.

3.7 DUTIES AND RESPONSIBILITIES OF THE DEPARTMENT OF PUBLIC WORKS

A. Review all applications for Building Permits to determine that the requirements of these regulations have been met.

B. Conduct the necessary field investigations and provide to the applicant and the Floodplain Administrator a determination of the actual elevation of the proposed construction site as set forth in Section 3.5 of these regulations.

C. Conduct the necessary field investigations and provide to the applicant and Floodplain Administrator written elevation certifications as set forth in Section 4.1.C.1 of these regulations.

D. Conduct the necessary field investigations and provide to the applicant and Floodplain Administrator written elevation certifications as set forth in Section 4.2.G of these regulations.

SECTION 4.0

- PROVISIONS FOR FLOOD HAZARD REDUCTION -

4.1 STANDARDS OF CONSTRUCTION

In all areas of special flood hazard, the following standards are required:

A. Anchoring

1) All new construction and substantial improvements shall be anchored to prevent flotation, collapse or lateral movement of the structure resulting from hydrodynamic and hydrostatic loads, including the effects of buoyancy.

2) All mobile home units shall meet the anchoring standards of Section 4.7.

B. Construction Materials and Methods

1) All new construction and substantial improvements shall be constructed with materials and utility equipment resistant to flood damage.

2) All new construction and substantial improvements shall use methods and practices that minimize flood damage.

3) All electrical, heating, ventilation, plumbing, and air-conditioning equipment and other service facilities shall be designed and/or located so as to prevent water from entering or accumulating within the components during conditions of flooding.

C. Elevation and Floodproofing

1) New construction and substantial improvement of any structure shall have the lowest floor, including basement, elevated to or above the base flood elevation. Nonresidential structures may meet the standards in Section 4.1.C.3. The elevation of the lowest floor, including basement, shall be certified by a Department of Public

Works registered professional engineer or surveyor or verified by the local building inspector:

a. when the footings are set, formwork is in place, and prior to placement of concrete, and

b. after completion of the structure.

Such certifications shall be submitted to the Floodplain Administrator.

2) Non-residential construction shall either be elevated to conform with Section 4.1.C.1 or together with attendant utility and sanitary facilities:

a. be floodproofed so that below the Base Flood Elevation the structure is watertight with walls substantially impermeable to the passage of water;

b. have structural components capable of resisting hydrostatic and hydrodynamic loads and effects of buoyancy; and

c. be certified by a registered professional engineer or architect that the standards of this subsection are satisfied. Such certification shall be supplied to the Floodplain Administrator.

3) For all new construction and substantial improvement, fully enclosed areas below the lowest floor that are usable solely for parking of vehicles, building access or storage in an area other than a basement and which are subject to flooding shall be designed to automatically equalize hydrostatic flood forces on exterior walls by allowing for the entry and exit of floodwater. Designs for meeting this requirement must either be certified by a registered professional engineer or architect or meet or exceed the following minimum criteria:

a. Either a minimum of two openings having a total net area of not less than one square inch for every square foot of enclosed area subject to flooding shall be provided, the bottom of all openings shall be no higher than one foot above grade (openings may be equipped with screens, louvers, valves or other coverings or devices provided that they permit the automatic entry and exit of floodwater); or

b. Be certified to comply with a local floodproofing standard approved by FEMA.

4) Manufactured or mobile homes shall meet the above standards and also the standards in Section 4.6.

5) Structure in Coastal High Hazard Areas shall meet the Standards of Section 4.2.

4.2 COASTAL HIGH HAZARD AREA

Within coastal high hazard areas (VE Zones on the FIRM) established in Section 2.2, the following standards also apply:

A. All buildings or structures shall be located on the landward side of the reach of mean high tide.

B. All new construction and substantial improvement shall be elevated on pilings or columns so that the bottom of the lowest horizontal structural member of the lowest floor is elevated to or above the Base Flood Elevation.

C. The pile or column foundation and structure attached thereto shall be anchored to resist flotation, collapse and lateral movement due to the effects of wind and water loads acting simultaneously on all building components. Water loading values used shall be those associated with the base flood. Wind loading values used shall be those required by the current Uniform Building Code.

D. All new construction and substantial improvement shall have the space below the lowest floor free of obstructions or constructed with non-supporting breakaway walls, open wood lattice-work, or screening intended to collapse under wind and water loads without causing collapse, displacement or other structural damage to the elevated portion of the building or supporting foundation system. For the purposes of this section, a breakaway wall shall have a design safe loading resistance of not less than 10 and no more than 20 pounds per square foot. Use of breakaway walls which exceed a design safe loading resistance of 20 pounds per square foot may be permitted only if a registered professional engineer or architect certifies that the designs proposed meet the following conditions:

   1) Breakaway wall collapse shall result from a water load less than that which would occur during the base flood; and,

   2) The elevated portion of the building and supporting foundation system shall not be subject to collapse, displacement, or other structural damage due to the effects of wind and water loads acting simultaneously on all building components (structural and non-structural). Maximum wind and water loading values to be used in this determination shall each have one percent chance of being equaled or exceeded in any given year (100-year mean recurrence interval).

   Such enclosed space shall not be used for human habitation and will be useable solely for parking of vehicles, building access, or storage.

E. Fill shall not be used for structural support of buildings.

F. Man-made alteration of mangrove stands that would increase flood damage is prohibited.

G. The elevation of the bottom of the lowest horizontal structural member of the lowest floor shall be certified by a Department of Public Works registered professional engineer or surveyor or verified by the local building inspector:

1) prior to placement of attachment of the lowest horizontal structural member of the lowest floor to the pilings, columns, or foundation system.

2) after completion of the structure.

Such certification shall be submitted to the Floodplain Administrator.

4.3 FLOODWAYS

Located within areas of special flood hazard established in Section 2.2 are areas termed floodways. The floodway is an extremely hazardous area due to the velocity of flood waters which carry debris, potential projectiles, and erosion potential.

Until a regulatory floodway is adopted, no new construction, substantial development, or other development (including fill) shall be permitted within Zones A1-30 and AE, unless it is demonstrated that the cumulative effect of the proposed development, when combined with all other development, will not increase the water surface elevation of the base flood more than 1 foot at any point within American Samoa, during the occurrence of the base flood discharge.

Because floodways have not been specifically delineated on the FIRM for American Samoa, a setback of twenty (20) feet from the banks of a watercourse is hereby established. No encroachment, including fill, new construction, substantial improvements, and other development is permitted within the setback area unless the applicant provides certification from a registered professional engineer or architect demonstrating that encroachments shall not result in any increase in flood levels during the occurrence of the base flood discharge.

4.4 STANDARDS FOR STORAGE OF MATERIALS AND EQUIPMENT

The storage or processing of materials that are, in time of flooding, buoyant, flammable, explosive, or could be injurious to humans, animal, or plant life, is prohibited. Storage of other material or equipment may be allowed if not subject to major damage by floods and firmly anchored to prevent flotation or readily removable from the area within the time available after flood warning.

4.5 STANDARDS FOR UTILITIES

All new and replacement water supply and sanitary sewage systems shall be designed to minimize or eliminate infiltration of flood waters into the system and discharge from systems into flood waters. On-site waste disposal systems shall be located to avoid impairment to them or contamination from them during flooding.

4.6 STANDARDS FOR SUBDIVISIONS

A. All preliminary subdivision proposals shall identify the flood hazard area and the elevation of the base flood.

B. All subdivision plans will provide the elevation of proposed structures, and pads. If the site is filled above the Base Flood Elevation, the final first floor and pad elevation shall be certified by a registered professional engineer or surveyor. Such certification shall be submitted to the Floodplain Administrator.

C. All subdivision proposals shall be consistent with need to minimize flood damage.

D. All subdivision proposals shall have public utilities and facilities such as sewer, gas, electrical, and water systems located and constructed to minimize flood damage.

E. All subdivision proposals shall have adequate drainage provided to reduce exposure to flood hazard.

4.7 STANDARDS FOR MOBILE HOMES AND MOBILE HOME PARKS

A. All manufactured or mobile homes that are placed or substantially improved within i) a Special Flood Hazard Area, ii) outside of a mobile home park or subdivision, iii) in a new mobile home park or subdivision, iv) in an expansion to an existing mobile home park or subdivision, or v) in an existing mobile home park or subdivision on which a mobile home has incurred "substantial damage" as the result of a flood, shall be elevated on a permanent foundation such that the lowest floor of the mobile home is elevated to or above the Base Flood Elevation and be securely anchored to an adequately anchored foundation system to resist flotation, collapse, and lateral movement.

B. All manufactured or mobile homes to be placed or substantially improved on sites in an existing mobile home park or subdivision that are not subject to the provisions of Section 4.5.A above will be elevated so that either:

1) The lowest floor of the mobile homes is at or above the Base Flood Elevation, or

2) The mobile home chassis is supported by reinforced piers or other foundation elements of at least equivalent strength that are no less than 36 inches in height above grade and be securely anchored to an adequately anchored foundation system to resist flotation, collapse, and lateral movement.

C. All manufactured or mobile homes to be placed or substantially improved on sites within Zone VE shall meet the applicable standards of A and B above as well as the standards of Section 4.2.

4.8 STANDARDS FOR RECREATIONAL VEHICLES

A. All recreational vehicles placed on sites within Zones A1-30, AH, and AE on the

community's Flood Insurance Rate Map will either:

1. Be on the site for fewer than 180 consecutive days; or
2. Be fully licensed and ready for highway use – a recreational vehicle is ready for highway use if it is on its wheels or jacking system, is attached to the site only by quick disconnect type utilities and security devices, and has no permanently attached additions; or
3. Meet the permit requirements of Section 4 of this ordinance and the elevation and anchoring requirements for manufactured homes in Section 4.7.

B. Recreation vehicles placed on sites within Zones V1-30, V, and VE on the community's Flood Insurance Rate Map will meet the requirements of Section 4.2 and Section 4.7.

SECTION 5.0

- VARIANCE PROVISIONS –

5.1 FLOODPLAIN REVIEW PANEL

The Floodplain Review Panel (FRP) is hereby established to hear and decide appeals and requests for variances from the requirements of these regulations. The FRP shall hear and decide appeal when it is alleged there is an error in any requirement, decision or determination made by the Floodplain Administrator with regard to these regulations. The FRP shall hear and approve or disapprove all requests for Variance from the provisions of these regulations.

The members of the Floodplain Review Panel shall be appointed by the Governor and shall include one registered professional engineer or architect from the Department of Public Works, one planner from the Department of Commerce, one permanent staff member from the Territorial Emergency Management and Coordination Office and the Manager of the American Samoa Disaster Recovery Office. The Attorney General shall provide legal counsel to the Panel. Staff support for the FRP shall be provided by the Department of Commerce, the Department of Public Works, and the Attorney General's Office as required.

5.2 VARIANCE FACTORS

A. In passing upon applications for Variance, the FRP shall consider all technical evaluations, all relevant factors, standards, etc., specified in other Sections of this ordinance, and the following:

1) the danger that materials may be swept onto other lands to the injury of others.

2) the danger to life and property due to flooding or erosion damage.

3) the susceptibility of the proposed facility and its contents to flood damage and the effect of such damage on the individual owner.

4) the importance of the services provided to the community by the proposed facility.

5) the necessity to the facility of a waterfront location, where applicable.

6) the availability of alternative locations, for the proposed uses that are not subject to flooding or erosion damage.

7) the compatibility of the proposed use with existing and anticipated development.

8) the relationship of the proposed use to any adopted specific or general plan, or floodplain or wetland management program for that area.

9) the safety of access to the property in times of flood for ordinary and emergency vehicles.

10) the expected heights, velocity, duration, rate of rise, and sediment transport of the flood waters and the effects of wave action, if applicable, reasonably expected at the site.

11) the cost of providing governmental services during and after flood conditions, including maintenance and repair of public utilities and facilities such as sewer, gas, electrical, and water system and street and bridges.

B. Generally, variances may be issued for new construction and substantial improvements to be erected on a lot of one-half acre or less in size contiguous to and surrounded by lots with existing structures constructed below the base flood level, providing items 1-11 in Section 5.2.A have been fully considered. As the lot size increases beyond one-half acre, the technical justification required for issuing the variance must increase.

C. Variances may be issued for the reconstruction, rehabilitation, or restoration of "Historic Structures" upon a determination that the proposed repair or rehabilitation will not preclude the structure's continued designation as a historic structure, and that the variance is the minimum necessary to preserve the historic character and design of the structure.

D. Variances may be granted for new construction, substantial improvement and other proposed new development necessary for the conduct of a "functionally dependent use" provided that items 1-11 of Section 5.2.A have been fully considered and the Finding of Fact listed in Section 5.3 have been made, and that the structure or other

development is protected by methods that minimize flood damages during the base flood and create no additional threats to public safety.

E. Variances shall not be granted within any designated floodway or floodway setback area as described in Section 4.3 if any increase in flood levels during the base flood discharge would result.

5.3 FINDINGS OF FACT

Before any application for Variance may be approved, the FRP shall make all of the following Findings of Fact:

A. As granted, the Variance is the "minimum necessary," considering the flood hazard, to afford relief.

B. The Variance is granted upon a showing of good and sufficient cause.

C. The Variance is granted upon a determination that failure to grant the variance would result in exceptional "hardship" to the applicant, and

D. The Variance is granted upon a determination that granting the variance will not result in increased flood heights, additional threats to public safety, extraordinarily public expense, create "nuisances," cause "fraud and victimization" of the public, or conflict with existing local laws.

5.4 CONDITIONS FOR VARIANCES

Upon consideration of the factors of Section 5.2 and the purpose of these regulations, the Floodplain Review Panel may attach such conditions to the granting of variances as it deems necessary to further the purpose of these regulations.

5.5 NOTIFICATION

Any applicant to whom a variance is granted shall be given written notice over the signature of the Floodplain Administrator that

A. The issuance of a variance to construct a structure below the base flood level will result in increased premium rates for flood insurance, and

B. Such construction below the base flood level increases risk to life and property.

A copy of the notice shall be provided by the Floodplain Administrator to the Territorial Registrar and shall be recorded in manner so that it appears in the chain of title of the registered parcel of land.

5.6 RECORDS

The Floodplain Administrator shall maintain the records of all appeal actions and report any variances to FEMA upon request.

SECTION 6.0

- SUPERSEDES PREVIOUS ORDER OR MEMORANDA -

This Executive Order supersedes Executive Order 02-1991. This Order further supersedes any other executive orders or general memoranda pertaining to Floodplain Management.

SECTION 7.0

- EXECUTIVE ORDER TO BE EFFECTIVE IMMEDIATELY -

This Executive Order becomes effective immediately.

Dated: July 3, 2006

TOGIOLA T.A. TULAFONO
Governor of American Samoa