

**PART 3**  
**ESTABLISHING STANDARDS FOR SUBDIVISION WATER SYSTEMS**

*within the County of Kauai  
and Providing Penalties for the Violations Thereof*

**SECTION I – DEFINITIONS**

For the purpose of these rules and regulations, unless it is plainly evident from the context that a different meaning is intended, certain words and phrases used herein are defined as follows.

1. The word “**DEPARTMENT**” shall mean the Department of Water, County of Kauai, consisting of a board of water supply, a manager and chief engineer and the necessary staff.
2. The word “**BOARD**” shall mean the Board of Water Supply of the Department.
3. The term “**MANAGER AND CHIEF ENGINEER**” shall mean the person holding the office of Manager and Chief Engineer of the Department.
4. The word “**SUBDIVIDER**” shall mean a person, firm, corporation, partnership, association, trust or other legal entity, or a combination of any thereof who or which causes land to be divided into a subdivision for himself, itself or for others.
5. The word “**SUBDIVISION**” shall mean improved or unimproved land or lands divided or proposed to be divided into two or more lots, parcels, sites, or other divisions of land for the purpose, whether immediate or future, of sale, lease, rental, transfer of title to or interest in, any or all of such parcels, and shall include re-subdivision, and when appropriate to the context shall related to the process of subdividing of the land or territory subdivided.
6. The word “**COMMISSION**” shall mean the Planning Commission of the Planning Department, County of Kauai.
7. The words “**PUBLIC WATER SYSTEM**” shall mean the water system owned and operated by the Board.
8. The words “**SUBDIVISION WATER SYSTEM**” shall mean the water system, to and within any subdivision, including mains, valves, hydrants, laterals, pumps, tanks, reservoirs and all appurtenances necessary to provide water and fire protection for such subdivision and, where necessary, sources of supply.
9. The word “**DIRECTOR**” shall mean the person holding the office of the Planning Director of the Planning Department, County of Kauai.
10. The term “**FACILITIES RESERVE CHARGE**” shall mean the fee to be paid by subdividers or, when applicable, new consumers as their proportionate share in improvements to the Department’s Water System.
11. The word “**MAIN**” or “**MAIN PIPE**” shall mean the Department’s supply or distribution pipe to which service connections are made.
12. The term “**SERVICE CONNECTION**” shall mean the main tap, pipe fittings, meter and valve from the water main to and including the shut-off valve on the consumer’s side of the meter.

## **SECTION II - AVAILABILITY OF WATER AND APPROVAL OF SUBDIVISION MAP**

1. Extensions from and connections to the public water system will be approved by the Department where pressure conditions permit, provided the following have been met:
  - a. The Department has a sufficient water system developed for domestic use and, if required by the Department, a sufficient water system for fire protection.
  - b. The additional service on the existing system will not be detrimental to people already being served in that area. In order to determine if the additional service will be detrimental to present consumers, the department may require the subdivider to estimate the amount of water to be consumed by the subdivision water system.
  - c. The subdivision water system complies with these rules and regulations, and is designed and constructed in compliance with (1) all applicable statutes, ordinances, rules, and regulations of the State of Hawai'i and the County of Kaua'i, and (2) the 2002 Water System Standards ("Standards") developed by Hawai'i's four county departments of water, as amended by the Department's 2005 Amendments ("2005 Amendments") to the Standards. The Standards and the 2005 Amendments are hereby incorporated by reference into the Department's rules. The Manager and Chief Engineer may, for good cause shown, permit departure from the Standards or 2005 Amendments, or both.
  - d. The facilities reserve charge for the subdivision has been paid, or a bond posted in lieu thereof, as provided under Section XIII of this Part.
2. In areas where there is no public water supply available, or where large quantities of water are required or a large investment is necessary to provide service, the subdivider will be informed as to the conditions under which the subdivision may be approved and, where appropriate, refunds made.
3. After the Director submits the subdivision map to the Department, the Department will inform the Director in writing of its approval, requirements for approval, or its disapproval of a subdivision map after taking the above into consideration.

## **SECTION III - FACILITIES RESERVE CHARGE**

1. The subdivider shall pay to the Department the facilities reserve charge established in Part 5 of the Rules and Regulations of the Department, for each (additional) parcel created by the subdivision, including the first lot, except (as provided below) when facilities reserve charges have already been paid by the developer or subdivider.
2. No facilities reserve charge will be made for lots created by the subdivision which will not be served by the Department's water system. In the event that the Department determines that the subdivision will not be serviced by the Department's water system, but later water service is requested, full payment of the then applicable facilities reserve charge must be paid. A statement to this effect shall be clearly lettered on the subdivision map.
3. No facilities reserve charge will be made for any parcel which is already serviced by an existing meter or which was serviced by a meter within 365 days prior to formal submittal of the subdivision request to the Planning Department.
4. The subdivider shall pay the facilities reserve charge to the Department prior to subdivision approval by the Department except that subdivision approval may be given prior to construction

of required improvements and the payment of the facilities reserve charge by the posting of a bond, as described in Section XIII of this Part.

5. In the event the facilities reserve charge has been paid for a subdivision and subsequently the subdivision is consolidated, the facilities reserve charge will be returned provided the consolidation is completed within 365 days following the prior subdivision approval.

#### **SECTION IV - EXTENSIONS TO SUBDIVISION**

1. **General Requirement.** The subdivider shall install and pay for the subdivision water system required from the public water system to the subdivision. All such subdivision water systems shall be designed and located in accordance with the standards of the Department. The subdivider may be required to improve the public water system if the public water system is inadequate to serve the subdivision.
2. **Increase in Size of Water Main Extensions for Service to Other Areas.** Whenever the Department finds it necessary that the water mains proposed to deliver water to a subdivision should be of a greater capacity than is required to provide adequate service and fire protection for such subdivision, in order to supply water and fire protection to property not in the subdivision, the Department shall require the subdivider to install mains of such greater capacity.
3. **Reimbursement to Subdivider for Additional Costs of Mains to Subdivisions.** When the subdivider is required to install a larger sized main for the reasons set forth in the preceding paragraph, the Department will reimburse the subdivider, as soon as practicable after the acceptance by the Department of the completed work, the additional cost of the installation over and above the cost of the mains that would have been required; provided, that reimbursement will not be made to the subdivider where such larger main or mains will serve only areas under the same ownership as the subdivision under consideration.

Before the subdivider enters into a contract where a reimbursement to the subdivider for additional costs of mains to the subdivision will be made, the Department shall review and either approve or disapprove the contract. If the contract is disapproved, the subdivider shall revise the contract until its form and content is acceptable to the Department.

After the installation has been completed and accepted by the Department, the subdivider shall furnish the Department with an affidavit itemizing the costs incurred by him in the installation of the said larger mains. The said additional costs shall be determined by the Department.

#### **SECTION V - INSTALLATIONS WITHIN SUBDIVISION**

1. **General Requirement.** The subdivider shall install in accordance with these rules and regulations and the standards of the Department and pay for the subdivision water system required within a subdivision.
2. **Increase in Size of Water Mains with Subdivisions for Benefit of Other Areas.** Whenever, in order to provide for existing or future services beyond the boundaries of a subdivision, the Department finds that the mains to be installed within the subdivision should be of greater capacity than would be required to provide adequate service within such subdivision, the Department will require the subdivider to make installations of such greater capacity.
3. **Reimbursement to Subdivider for Additional Costs of Water Mains within Subdivisions.** When the subdivider is required to install a larger-sized main for the reasons set forth in the preceding paragraph, the Department will reimburse the subdivider, as soon as

practicable after acceptance by the Department of the completed work, the additional cost of the installation over and above the cost of the mains that would have been required; provided, however, that in no case will reimbursement be made of any portion of the cost of a main of less than 6-inch in diameter; provided, further, that reimbursement will not be made to the subdivider where such larger main or mains will serve only areas under the same ownership as the subdivision under consideration.

After the installation has been completed and accepted by the Department, the subdivider shall furnish the Department with an affidavit itemizing the costs incurred by him in the installation of the said larger mains. The said additional costs shall be determined by the Department.

## **SECTION VI - SIZES OF MAINS, HYDRANT SPACING, FIRE PROTECTION**

1. **Sizes of Mains.** Any subdivision, except where fire protection facilities are not required by the Department, hereafter to be laid out within the County shall provide 6-inch water mains or larger in residential districts and 8-inch water mains or larger in business, industrial and hotel and apartment districts. Sizing of mains within agricultural subdivisions and subdivisions where fire protection facilities are not required shall be determined by the Department.
2. **Hydrant Spacing.** Fire hydrants shall be spaced not more than 350 feet in business, industrial, hotel and apartment districts, 500 feet in urban residential districts and 600 feet in rural residential district (Urban and rural refer to boundaries established by the State Land Use Commission). Fire hydrants may not be required in agricultural subdivision as determined by the Department. The Department will determine the location of all hydrants. All fire hydrants required for adequate fire protection of a subdivision will normally be located within the subdivision.

If, in the interest of better fire protection, it is determined that one or more of the required hydrants will serve the subdivision to better advantage if located outside the subdivision, they may be so located and the cost shall still be borne by the subdivider, subject to the limitation that the cost to the subdivider shall not exceed the cost to him which would have resulted had all the hydrants been located inside the limits of the subdivision.

3. **Fire Protection.** In fixing the standards for fire protection insofar as water supply is concerned, the Department will be guided by the standards of the National Board of Fire Underwriters in "Grading Cities and Towns of the United States with Reference to Their Fire Defenses and Physical Conditions" and by any specific recommendations made by the said National Board with respect to the County.

## **SECTION VIII - SERVICE CONNECTIONS, DEAD-ENDS, ALTERATIONS TO PUBLIC WATER SYSTEMS, CONTOURS**

1. **Service Connections.** Where water main construction is necessary, the subdivider shall provide each lot in a subdivision with a service connection from the water main to the property line adjacent to the lot or as directed by the Department's engineer. As an alternate, one service connection may be installed for each two lots.

Where the lots to be created front along an existing water main, a service connections as required above shall be paid for by the subdivider and installed by the Board, except that the service connection installation may be deferred and paid for by the consumer at the time the request for water service is made for agricultural lots and other subdivisions for which the Department determines that it is impractical to require such installations prior to the request for water service.

2. **Dead-Ends.** Where water mains proposed by a subdivider would result in dead-ends, the subdivider shall correct the condition by the installation of such interconnections as may be required by the Board.
3. **Alterations to Public Water System.** All work and materials in connection with the change in location or grade of any part of the existing public water system made necessary by the subdivision shall be at the expense of the subdivider.
4. **Contours.** When required by the Board, contours or elevations shall be furnished by the subdivider, based upon mean sea level.

### **SECTION IX - PREPARATION OF PLANS, INFORMATION ON PLANS, ELEVATION AGREEMENT, APPROVAL OF PLANS, DELAYS IN CONSTRUCTION**

1. **Preparation of Plans.** All construction plans shall be prepared by a registered engineer to the extent of his professional qualifications under the laws of the State. Preliminary maps and final maps of subdivisions to be reviewed by the Department shall fully conform to the definitions and requirements of the Rules and Regulations of the Commission.
2. **Information to the be shown on Construction Plans.** The construction plans, insofar as the water system is concerned, shall show the following on County of Kauai standard size sheet or sheets:
  - a. Name of subdivision, name of subdivider, name of engineer and location of subdivision.
  - b. Date, north arrow, scale, tax key.
  - c. The proposed subdivision water system complete, in both plan and profile, and its inter-relationship with street lines, lot lines, curb grades, sewers and drains, both existing and proposed, as well as any other features natural or artificial necessary for a complete understanding of the water system design.
  - d. Plan and profile views drawn to a scale of one inch equals 40 feet and one inch equals 5 feet, respectively, or as approved by the Department. Manhole, fire hydrant, lateral and other details drawn to a scale of one-half equals one foot or larger.
  - e. The designation, including alignment and width, of all easements for parts of the water system which will not be in street areas to be dedicated to the public.
  - f. A general layout map showing the locations of lots and streets within the subdivision and its near vicinity together with existing and proposed water system.
  - g. A small key location inset or vicinity map showing the proposed subdivision in relationship to streets and water mains in the area.
  - h. In cases in which the owner or subdivider also owns areas contiguous to the proposed subdivision, or separated therefrom by a street, a sketch of the future street and lot pattern and the water system proposed to serve such contiguous areas shall be furnished for study with the construction plans.

3. **Elevation Agreement.** Whenever a lot or lots within a subdivision are at such an elevation that they cannot be assured of a dependable water supply, the approval of the construction drawings will be subject to each owner of such lot or lots signing an “elevation agreement” whereby such lot owner agrees to accept such water service as the Department is able to render, and such owner agrees to construct, if necessary, and maintain at his expense, a tank or a pump with a tank, all in accordance with the standards and requirements of the Department, of sufficient capacity to furnish a supply of water at such times as the pressure in the water mains may be insufficient to supply such lot or lots with water. When required, a statement as to this conditional approval will be clearly lettered on the subdivision map.
  
4. **Approval of Plans.** No construction of a subdivision water system, or any portions thereof, shall be undertaken prior to approval of the final construction plans by the Manager and Chief Engineer, the Director, the County Engineer of the Department of Public Works, and the State Department of Health. After said approval, the subdivider shall transmit four sets of all final construction plans to the Manager and Chief Engineer.  
  
In areas where there is no public water supply available to serve the subdivision, plans and specifications for the development of water sources, including wells, tunnels, shafts, pumps, buildings, mains and other appurtenances structures and devices, shall be in conformance with the standards of the Department and shall be approved by the Department in their entirety prior to the construction.
  
5. **Delays in Construction.** If any period exceeding one year or such extension as may be granted passes without substantial progress in the construction of the water facilities, after approval of plans by the Department, the plans thereof shall be resubmitted to the Department for review and for making such changes as it deems proper because of changed conditions or revision of standards.

## **SECTION X - MATERIALS AND CONSTRUCTION STANDARDS, INSTALLATION OF WATER SERVICE, INSPECTION OF WORK**

1. **Materials and Construction Standards.** All materials, design and construction procedures, and workmanship, with respect to any subdivision water system, or any portion thereof shall be in accordance with the requirements of the “Standard Specifications for Waterworks Construction” of the Board of Water Supply, County of Kauai, dated 10/1/63 or as later amended and with the requirements of the State Department of Health and all applicable laws. The Manager and Chief Engineer shall determine the capacity and location of any of the component parts of the subdivision water system.
  
2. **Installation of Water Service.** No water service will be approved until the subdivision water system has been completed and accepted by the Department and the FRC has been paid to the Department. Service for subdivision construction purposes such as site work and roadways (excluding construction work for individual lots) may be approved.
  
3. **Inspection of Work.** The Manager and Chief Engineer or any employee representing him shall have free access at all times to all installations made for the subdivision and shall be given any assistance required and every facility, information and means of thoroughly inspecting the work to be done and the materials used or to be used.

## **SECTION XI - OWNERSHIP OF INSTALLED WATER SYSTEM**

Before the Department will provide water service within the subdivision, the subdivider shall convey the subdivision water system to the Department and said subdivision water system thereafter will be maintained and operated as a part of the public water system; provided, however, that the Department

may refuse to operate and maintain facilities installed without the Department's prior approval. Prior to the commencement of water service, and as a prerequisite to such service, the subdivider shall also deliver to the Department perpetual easements for all portions of the subdivision water system installed in other than publicly owned property. The subdivider shall also convey to the Department fee simple title to all sites on which are located tanks, reservoirs, sources of supply, and pumps constructed by the subdivider and connected to the public water system together with easements for ingress and egress. The subdivider shall also convey to the Department a breakdown of costs of the subdivision water system on forms provided by the Department.

## **SECTION XII - MODIFICATION OF REQUIREMENTS**

When conditions pertaining to any subdivision are such that the public may be properly served with water and with fire protection without full and strict compliance with these rules and regulations, or where the subdivision site or layout is such that the public interest will be adequately protected the Manager may waive or modify requirements of this rule when not contrary to the purpose of the rule or the public interest. In cases of exemption from or reduction of the FRC fee, the request must be brought to the Board for approval and the Board must apply the Board Requirements stated below.

**Manager Requirements:** In waiving or modifying the rules, the Manager must find that:

1. Strict application of the rule would cause an absurd, unfair, or unreasonably harsh result; and
2. The applicant's circumstance or condition is unique or exceptional, and the Manager would grant the same request if made by every similarly situated applicant; and
3. Such modification thereof as is reasonably necessary or expedient, and not contrary to law or the intent and purposes of these rules and regulations

Any waiver or modification made by the Manager and Chief Engineer will not be considered to have final approval until the Board is notified of the action through the Manager and Chief Engineer's monthly report. The Board may overturn or nullify the Manager's waiver or modification by a majority vote.

**Board Requirements:** Should the applicant request Board action after the Manager and Chief Engineer declined to waive or modify the requirements or should the applicant's request involve the exemption from or reduction of the FRC fee or should the Board decide to take action contrary to the Manager and Chief Engineer's action, the Board may, by a super majority vote, waive or modify requirements of these rules when not contrary to the purpose of the rules or the public interest. The Board, by a super majority vote, must find that:

1. Strict application of the rule would cause an absurd, unfair, or unreasonably harsh result; and
2. The applicant's circumstance or condition is unique or exceptional, and the Board would grant the same request if made by every similarly situated applicant; and
3. Such modification thereof as is reasonably necessary or expedient, and not contrary to law or the intent and purposes of these rules and regulations; and
4. In cases of exemption from or reduction of the FRC fee, the resulting financial impact upon the Department and future consumers is acceptable to the Board.

## **SECTION XIII - CONSTRUCTION AGREEMENT AND BOND**

To secure final approval prior to construction of the required improvements in a subdivision, the subdivider shall enter into a written agreement with the County and the Department to make, install and complete all of the required improvements within a specified time. In addition thereto, a Surety Bond or other security as hereinafter specified shall be filed with and attached to the agreement by the subdivider.

### **A. Construction Agreement:**

- (1) The Agreement shall specify that the subdivider will complete the subdivision to the satisfaction of the Manager and Chief Engineer.
- (2) The Agreement shall further specify that the Department may complete the work at the expense of the subdivider where the subdivider fails to complete the work to the satisfaction of the Manager and Chief Engineer, or fails to complete the work within the time specified.

### **B. Surety Bond:**

- (1) The Surety Bond shall be filed with the agreement and shall be for the following purposes:
  - (a) The Surety Bond shall assure to the County and the Department that the actual construction and installation of the improvements and utilities specified will be carried out.
  - (b) The Surety Bond shall further assure to the Department that the facilities reserve charge will be paid, if said charge is not already paid.
- (2) The Surety Bond shall be executed by the subdivider as principal and the surety shall be a company authorized to transact a surety business in the State of Hawaii.
- (3) The bond or other security shall be one of the following:
  - (a) A Surety Bond in a sum equal to the cost of the work required to be done as estimated by the Manager and Chief Engineer; payable to the County and the Department, and shall be conditioned upon the faithful performance of all work required to be done by the subdivider, and shall be further conditioned to the effect that should the subdivider fail to complete all work required to be done within a specified reasonable time, the Department may cause all required work which is not finished to be completed, and the parties executing the bond shall be firmly bound for the payment of all necessary costs, therefore; or
  - (b) Where the subdivider has entered into a contract with a reputable contractor, and has filed with the Director all three of the following: 1) a certified copy of his said contract and specifications; 2) a certified copy of the performance bond of his said contractor; and 3) a surety bond in a sum equal to at least 50 per cent of the cost of all work required to be done by the subdivider as estimated by the Manager and Chief Engineer, and shall be payable and conditioned as above set forth; or
  - (c) The subdivider shall make a deposit of money with the Director as agent of the County and the Department, in an amount equal to the cost of the construction of said improvements as estimated by the Manager and Chief Engineer. Under this arrangement, the agreement may provide for progress payments to be made to the contractor for materials used and services and labor performed, out of said deposit

as the work progresses; provided that said progress payments shall at no time exceed the value of the completed portion of said improvements as determined by the Manager and Chief Engineer and the County Engineer of the County; or

- (d) In lieu of said surety bond or deposit in escrow mentioned in Paragraphs 3 (a) (b) (c) above, the subdivider may deposit with the Director bonds or other negotiable securities in the amount as provided by Paragraphs 3 (a) (b) (c) respectively of this Section and acceptable to the Manager and Chief Engineer.
- (4) Facilities Reserve Charge. All bonds or other securities as provided in Paragraphs 3 (a) (b) (c) (d) above shall include the assurance of payment of the facilities reserve charge except for the following:
  - (a) This paragraph shall not be applied where the facilities reserve charge has already been paid.
  - (b) A separate bond primarily for the purpose of paying the facilities reserve charge may be filed by the subdivider.
- (5) All bonds or securities posted under this Section shall not be canceled except with approval of the County and the Department

## **SECTION XIV – NON-DEVELOPMENT AGREEMENTS**

1. **Purpose.** The purpose of this section is to assist families who wish to transfer interests in real property between themselves without immediately complying with Departmental rules and construction standards and specifications imposed when family members request subdivision approval.
2. **Definitions.** As used within this section:
  - “**Development**” includes, but is not limited to:
    - (1) the construction, reconstruction, alteration, remodeling, renovation, or repairing of single-family residences, additional dwelling units, or any other dwelling, building, or structure of any kind on or within the property being subdivided, or
    - (2) the construction of additions or extensions to any dwelling, structure, or building existing as of the date of this agreement, or
    - (3) the construction, reconstruction, installation, alteration, or repair of piping, waste-water systems, landscaping or irrigation systems.

which result in increased fire protection requirements arising because of the property’s development, increased consumption of water upon the property being subdivided, calculated from the date of the agreement described in this section, or which may, in the Department’s judgment, possibly contaminate existing potable water-well sources located in the vicinity of the property being subdivided.

“**Hanai child**” means a person for whom an adult once provided food, nourishment, and support for a minimum period of at least one year prior to the time that the applicant applied for subdivision approval and who is generally acknowledged as the adult’s child among friends, relatives, and the community.

“**H.R.S**” means Hawaii Revised Statutes, as amended.

**“Non-development agreement”** means the agreement required to be executed under this section.

**“Rule”** or **“Rules”** mean the Rules and Regulations of the County of Kauai Department of Water.

**“Water System Facilities”** means all water infrastructure of the Department determines to be necessary to provide adequate residential water service and fire protection for the property being subdivided and shall include, but not be limited to, any and all necessary wells, pumps, storage tanks, water transmission and distribution lines and related meters, valves, and other water system improvements and equipment.

3. **Authorization to defer subdivision improvements under certain terms and**

**conditions.** The Manager and Chief Engineer may approve requests for subdivision approval and temporarily defer subdivision requirements imposed by the Department’s rules and construction standards and specifications for the sole and limited purpose of allowing a subdivision applicant to transfer interests in real property from the applicant to others, provided the applicant satisfies or complies with the following conditions:

- a. Property interests may be transferred only between: natural persons who are related to the applicant by birth, blood, adoption, marriage, or prior marriage. Eligible transferees are limited to:

- Spouse,
- Ex-spouse,
- Parents,
- Grandparents,
- Children,
- Hanai children,
- Grandchildren,
- Brothers, and
- Sisters.

The preceding list of terms shall be understood according to their most widely-known and usual significance, without attending so much to the literal and strictly grammatical construction as to their general, ordinary, or popular use or meaning.

- b. The Manager and Chief Engineer shall not approve subdivision requests under this section if development will occur as a result of the subdivision.
- c. With respect to the property being subdivided, the Department shall not approve further subdivision requests, requests for water service when apartments within the property have been created pursuant to Chapter 514A, H.R.S., or development of any kind, unless and until adequate water system facilities, as may be determined by the Department when development occurs, are constructed, in place and complete, to provide adequate residential water service and fire protection for the property being subdivided.
- d. The Department shall not approve residential building permits for any property which is subject to a non-development agreement unless adequate water-system facilities are constructed pursuant to subparagraph 3.c. of this section.

If the Department erroneously or inadvertently approves a building permit before necessary water-system facilities are constructed, the Department shall, upon learning of its action, immediately rescind its approval.

- e. If, before necessary water-system facilities are constructed to service the property being subdivided, the Department erroneously or inadvertently approves the issuance of a building permit for any development within the subdivision and development occurs, the developer

shall either construct the necessary water-system facilities or remove the development at the developer's own cost and expense.

Should the Department be required to enforce the provisions of this subparagraph through civil court action, the developer shall pay to the Department and be jointly and severally liable for any and all attorneys' fees, court costs, and other related fees, costs, and expenses necessary to prosecute and defend such an action.

- f. The subdivision applicant and all persons to whom an interest in the property may be transferred shall release the Department of any and all liability arising from the Department's decision to recommend subdivision approval under this section.

The applicant and all persons to whom an interest in the property may be transferred shall also forever indemnify, defend, save, and hold harmless the Department from and against any and all injury to persons and damage to property, deaths, claims, fines, suits, actions, economic and non-economic damages, costs, losses, and liabilities of every nature and kind arising or growing out of the Department's decision to recommend subdivision approval of the applicant's property under this section.

- g. The provisions of this section shall be implemented through an agreement executed between 1) the Manager and Chief Engineer, and 2) the subdivision applicant and all persons to whom an interest in the property may be transferred. The agreement shall contain terms and conditions determined to be necessary by the Manager and Chief Engineer and the County Attorney. The covenants and servitudes created by the agreement shall constitute covenants which shall run with the land and constitute notice to all who may claim an interest in the property being subdivided.

Any subdivision approval granted under this section shall be null, void, and of no legal effect unless 1) the Department receives a non-development agreement containing original signatures executed by all of the parties to the agreement, and 2) the agreement has been recorded in the State of Hawaii Land Court or Bureau of Conveyances.

- h. The documents conveying title or an interest in real property shall specifically incorporate by reference the non-development agreement. Further, the agreement shall be attached to the conveyance documents as an exhibit.
- i. The final subdivision map shall contain a brief and concise statement stating that the lots created by the subdivision are subject to a non-development agreement. The statement shall further summarize the major terms and conditions of the agreement.

4. **Applicability.** This section shall apply only to subdivisions served by County water systems, and not to private water systems not served by the County.
5. **Fees, Charges, and costs under this section.** Notwithstanding any other section or provision in the Rules to the contrary including, but not limited to, Paragraph 1, Section III, Part 3 of the Rules, any and all applicable Departmental fees, charges, and costs, including facilities reserve charges, shall be paid at such future time that development occurs at the amount in effect at the time that development occurs, and not at the time that the non-development agreement is entered into by the County.
6. **Changed development conditions.** The applicant or subsequent transferees of the applicant shall be responsible for checking with the Department and determining whether water infrastructure development requirements have so changed such that necessary water-system facilities no longer need to be constructed. The Department shall not be responsible for informing the applicant or subsequent transferees of the applicant of such changed development conditions."

## **SECTION XV - SEVERABILITY**

If any rule, section, sentence, clause, or phrase of these rules and regulations or its application to any person or circumstance or property is held to be unconstitutional or invalid, the remaining portions of these rules and regulations or the application of these rules and regulations to other persons or circumstances or property shall not be affected. The Department hereby declares that it would have adopted these rules and regulations and each and every rule, section, sentence, clause or phrase thereof, irrespective of the fact that any one or more other rules, sections, sentences, clauses, or phrases be declared unconstitutional or invalid.

## **SECTION XVI - PENALTIES**

Any person, firm or corporation which violates any rule or regulation herein shall be fined not more than \$500.00, except that in cases where the offense shall be of a continuing nature, each day's continuance of the same, shall constitute a separate offense.