

## Article 1. - Water\*

\* Editor's Note: The title of article 1 of title 14 was amended by Ord. 3404 § 3.

### Chapter 14.01 - GENERAL PROVISIONS

#### Sections:

#### 14.01.010 - Title.

This article shall be known as the "County water code."

(Ord. 3404 § 4 (part), 2006)

#### 14.01.020 - Purpose.

The County water code is intended to comply with and complement the State water code, chapter 174C, Hawaii Revised Statutes. The County water code seeks to provide a just and fair distribution of water to the people of the County of Maui. It is the policy of the County of Maui to provide clean, healthful, and plentiful water to its residents. The County water code shall be liberally interpreted and applied in a manner that conforms to the general plan.

(Ord. 3404 § 4 (part), 2006)

#### 14.01.030 - Administration.

Except as otherwise provided in this article, the director shall administer, implement, and enforce the provisions herein. All powers granted to, or duties imposed upon, the director may be delegated by the director to personnel within the department. The director may promulgate administrative rules pursuant to the Hawaii Administrative Procedures Act to implement the provisions of this article.

(Ord. No. 3670, § 1, 2009; Ord. 3404 § 4 (part), 2006)

#### 14.01.040 - Definitions.

Unless otherwise expressly provided in separate provisions of this article, or unless plainly evident from the context that a different meaning is intended, for the purposes of this article the following words, terms, and phrases shall be defined as follows:

**Exhibit "4"**

"Agricultural consumer" means a consumer that actively engages in crop production, livestock raising, dairy farming, or aquaculture for commercial production, and whose minimum gross annual income from such activities is \$1,000.

"Applicant" means any person who causes, or applies to cause, land to be subdivided. It also means any person applying for water service or additional water service.

"Application" means a request for water service or additional water service.

"Approved engineering report" means a report prepared by a licensed professional engineer, experienced in such fields as water resources, hydrogeology, water supply, or environmental engineering, and approved by the director of the state department of health pursuant to department of health rules, for non-County water service.

"Board" means the Board of Water Supply of the County of Maui.

"Building permit" means the official document or certificate issued by the County of Maui authorizing the construction of any structure.

"Commission" means the Commission on Water Resource Management of the State of Hawaii.

"Community garden" means a parcel of land with a minimum lot size of 22,000 square feet, which is actively cultivated and engaged in crop production collectively by a group of no less than 15 people.

"Consolidated metering system" means water that is furnished to multiple dwellings through a centralized or single meter.

"Construction" means any work associated with development of a new water source.

"Consumer" means the person, firm, corporation, association, or governmental entity, whether owner or tenant, whose name appears on the records of the department as the party responsible and liable for receiving water service from the department.

"Consumer's supply pipe" means the pipe extending from the consumer's end of the service connection.

"Cost of service lateral" means the sum of the cost of the labor, materials, meter box, transportation, equipment, and road repair, if any, and other charges necessary for the complete installation of a service lateral, but excluding the cost of the meter.

"Council" means the Council of the County of Maui.

"County" means the County of Maui.

"Cumulative impact" means the impact on the environment and water supply that results from the incremental impact of the action when added to other past, present, and reasonably foreseeable future actions regardless of what agency or person undertakes such other actions. Cumulative impacts can result from individually minor but collectively significant actions taking place over a period of time.

"Dedicated water system improvements" means water system improvements that are privately designed, constructed, and dedicated to the department for operation, for which credits may be applied to all or a portion of the water system development fee.

"Department" means the department of water supply of the County, excluding the board of water supply unless the context so indicates.

"Department of Health" means the State of Hawaii Department of Health.

"Department of health rules" means Hawaii administrative rules, title 11, chapter 20, entitled "Rules Relating to Potable Water Systems."

"Director" means the director of the department of water supply of the County.

"Dwelling unit" means a dwelling unit as defined in title 19 of this code.

"Groundwater" means any water found beneath the surface, whether in perched supply, dike confined, flowing or percolating in underground channels or streams, under artesian pressure or not, or otherwise.

"Infill development" means a development composed of:

1. Five or fewer residential dwelling units, including accessory dwellings, on one or more contiguous vacant parcels that meet the following requirements:
  - a. A minimum of fifty percent of the parcel's or combined parcels' perimeter, or at least two sides of a four-sided parcel, is bordered by already developed land;
  - b. The development is located in the service area of the department's central Maui water system or west Maui water system;
  - c. Infrastructure for public services and facilities is already in place and immediately available; and

- d. The proposed development is consistent with the general plan, community plans, and zoning requirements; or
2. Six to ten residential dwelling units, including accessory dwellings, on one or more contiguous vacant parcels that meet the following requirements:
  - a. A minimum of seventy-five percent of the parcel's or combined parcels' perimeter, or at least three sides of a four-sided parcel, is bordered by already developed land;
  - b. The development is located in the service area of the department's central Maui water system or west Maui water system;
  - c. Infrastructure for public services and facilities is already in place and immediately available; and
  - d. The proposed development is consistent with the general plan, community plans, and zoning requirements.
3. For purposes of this definition:
  - a. "Already developed land" means all State and County parks, public or private schools, and residential parcels with a structure that has received all appropriate permits before March 1 of the preceding fiscal year.
  - b. Conservation and agricultural lands, and land fronting the ocean, shall not be considered "already developed land" regardless of the presence of any structure.
  - c. If the development's parcel or combined parcels are bordered by a roadway, stream, or gulch, then the parcel or parcels across the roadway, stream, or gulch, shall be considered in determining whether the parcel or parcels are already developed land.

"Irrigation" means the use of water for grazing, agricultural, or landscaping purposes.

"Long-term, reliable supply of water" means:

1. A County water meter reservation, as established by a receipt for payment of a County water meter reservation verifying that the proposed subdivision will be provided source and service; or
2. The total water supplies from a private, non-County source that will meet the projected demand associated with a proposed development, in addition to existing and planned future demand, as established by an approved engineering report.

"Main" or "main pipe" means the department's supply or distribution pipe from which service connections are made.

"Off-site water improvements" means that portion of a subdivision water system from the point

of adequacy to the point of entry of such system into the subdivision or premises boundaries.

"On-site water improvements" means that portion of the subdivision water system constructed within the property limits of the subdivision or development, to include all fire hydrant assemblies and service laterals whether on or off the property and as required by the department.

"Plan" means the water use and development plan.

"Point of adequacy" means that point in the public water system, as determined by the director or the director's duly authorized representative, where there is adequate pressure, storage, and pipeline size to supply water to meet the fire flow, domestic, and irrigation demands for water without detriment to the existing consumers.

"Potable water" means water that has been certified by the department of health as suitable for cooking or drinking purposes.

"Premises" means a parcel of real property and any structures thereon which have water service, will require water service, or requires additional water service.

"Private water system" means a water system constructed, owned, operated, and maintained by private individuals, corporations, or organizations.

"Public water system" means the water system owned, operated, and maintained by the department of water supply.

"Run" means the distance of water main and appurtenances to be installed from the point of adequacy to the point in question.

"Service lateral" means the connection to a water main, pipes, fittings, valves, and other appurtenances from the water main up to and including the consumer shut-off valve and water-meter box, but not including the water meter.

"Source development" means the construction of any structure to capture, convey, store, and treat currently unutilized, non-potable surface waters; or the construction of facilities for currently unutilized ground water and its treatment, including pumps, motor control stations, pump control, or disinfection contact time tanks; or the construction of desalination facilities; or any other technique which provides or recaptures water acceptable by the State of Hawaii department of health, together with any easements required for the improvements.

"State water code" means chapter 174C, Hawaii Revised Statutes.

"Storage tank" means a reservoir to store water.

"Structure" shall have the same meaning as defined in the building code as amended and adopted by the County.

"Subdivider" means a subdivider as defined in title 18 of this code.

"Subdivision" means improved or unimproved land or lands divided into two or more lots, parcels, sites, or other divisions of land for the purpose, whether immediate or in the future, of sale, lease, rental, transfer of title to or interest in, any or all of such parcels, and includes the process of consolidation and resubdivision, and, when appropriate to the context, shall relate to the process of subdividing land. The term also includes the construction of a building or group of buildings, other than a hotel, on a single lot, parcel, or site which will contain, result, or be divided into four or more dwelling units, including planned developments pursuant to chapter 19.32 of this code, condominium projects established pursuant to Hawaii Revised Statutes, or other forms of development, provided, that unless requested by the developer, condominium projects shall not be required to install separate water meters for each condominium unit.

"Subdivision water system" means that water system from the point of adequacy, as determined by the director or the director's duly authorized representative, 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.

"Surface water" means both contained surface water, that is, water upon the surface of the earth in bounds created naturally or artificially, including, but not limited to, streams, other watercourses, lakes, reservoirs, and coastal waters subject to state jurisdiction, and diffused surface water, that is, water occurring upon the surface of the ground other than in contained water bodies. Water from natural springs is surface water when it exits from spring onto the earth's surface.

"Sustainable yield" means the maximum rate at which water may be withdrawn from a water source without impairing the utility or quality of the water source, as determined by the commission, and set forth in the plan.

"Temporary meter" means any meter connected to a fire hydrant or a service lateral used less than one year in accordance with an agreement with the department.

"Traditional and customary native Hawaiian rights and practices" means the rights of Ahupuaa tenants who are descendents of native Hawaiians who inhabited the Hawaiian Islands prior to 1778, including the cultivation or propagation of taro on one's own Kuleana and the gathering of Hihiwai,

Opae, Oopu, Limu, Thatch, Ti Leaf, Aho Cord, and medicinal plants for subsistence, cultural, and religious purposes, as set forth in article XII, section 7 of the Hawaii State Constitution, and section 174C-101, Hawaii Revised Statutes.

"Transmission pipeline" means a pipeline that delivers water from a source development to a storage tank or distribution system, including any booster pump stations and appurtenances to the transmission pipeline system to increase its capacity, and any easements required for the improvements.

"Water meter" means a device that measures the volume of water delivered to any premises.

"Water service" means the complete installation of pipes, fittings, appurtenances, and meter necessary to provide service to a consumer. This term also refers to the delivery of water to any premises.

"Water system" means a network of pipelines, storage, facilities, pumps, and other appurtenances, wells, water filtration treatment facilities, or other sources which furnishes a supply of water to the premises.

"Water system development fee" ("WSDF") means a monetary rate imposed on any applicant to fund a portion of costs to construct water system improvements or to recover the cost of existing water system improvements made in anticipation of additional demand on the water system.

"Water system improvements" means improvements or developments which will construct facilities to provide additional source development capacity, additional transmission or distribution pipeline capacity, or additional storage tank capacity for any of the department's water systems.

(Ord. No. 4158, § 1, 2014; Ord. No. 3934, § 1, 2012; Ord. No. 3759, § 1, 2010; Ord. No. 3670, § 1, 2009; Ord. 3502 § 1, 2007; Ord. 3404 § 4 (part), 2006)

#### 14.01.050 - Hamakuapoko Wells.

- A. Water from Hamakuapoko Wells 1 and 2 shall only be used for the following:
  1. Agricultural purposes.
  2. Consumers of the department's upcountry water system as defined in section 14.13.030 of this title when a water shortage is declared pursuant to chapter 14.06A of this title.
  3. Backup to the department's existing upcountry water system.
- B. Water quality sampling schedules shall comply with department of health regulations and with standards set by the United States Environmental Protection Agency.

(Ord. No. 4178, § 1, 2014; Ord. No. 3859, § 1, 2011; Ord. 3404 § 4 (part), 2006)

#### 14.01.060 - Water source development agreements with private entities.

The council shall approve by resolution any water source development agreement with private entities. For purposes of this section, a "water source development agreement with a private entity" means an agreement, executed by the County and any person, to develop water resources by constructing a structure to capture, convey, store, and treat currently unutilized, nonpotable surface waters; constructing facilities for currently unutilized ground water and its treatment, including pumps, motor control stations, pump controls, or disinfection contact time tanks; constructing desalination facilities; or using any other technique that provides or recaptures water that is acceptable to the State of Hawaii, department of health, together with any easements required for the improvements. This section shall not apply to County contracts that are subject to the Hawaii public procurement code, as set forth in chapter 103D, Hawaii Revised Statutes.

(Ord. No. 4178, § 2, 2014)

#### 14.01.070 - Native Hawaiian water rights.

Article 1 of this title shall not be construed to amend or modify rights or entitlements to water as provided for in section 221 of the Hawaiian Homes Commission Act, 1920, as amended, and native Hawaiian rights customarily and traditionally exercised for subsistence, cultural, and religious purposes in accordance with article XII, section 7, of the Constitution of the State of Hawaii.

(Ord. 3514 § 1, 2007)