



DEPARTMENT OF  
**HOUSING AND HUMAN CONCERNS**  
COUNTY OF MAUI

ALAN M. ARAKAWA  
Mayor  
CAROL K. REIMANN  
Director  
JAN SHISHIDO  
Deputy Director

RECEIVED

2015 SEP -8 AM 8: 00

2200 MAIN STREET • SUITE 546 • WAILUKU, HAWAII 96793 • PHONE (808) 270-7805 • FAX (808) 270-7165  
MAILING ADDRESS: 200 SOUTH HIGH STREET • WAILUKU, HAWAII 96793 • EMAIL: director@hlc@mauicounty.gov

OFFICE OF THE MAYOR

OFFICE OF THE  
COUNTY COUNCIL

2015 SEP -08 AM 8: 32

RECEIVED

September 8, 2015

Honorable Alan M. Arakawa  
Mayor, County of Maui  
200 S. High Street  
Wailuku, Hawaii 96793

APPROVED FOR TRANSMITTAL

*Alan Arakawa* 9/8/15

Mayor

Date

For Transmittal to:

Honorable Robert Carroll, Chair  
Land Use Committee  
Maui County Council  
200 S. High Street  
Wailuku, Hawaii 96793

Dear Chair Carroll:

**SUBJECT: AFFORDABLE HOUSING PROJECTS (CHAPTER 201H, HAWAII REVISED STATUTES) (KENOLIO APARTMENTS PROJECT) (LU-2(1))**

The Department of Housing and Human Concerns is transmitting for your review and action the Hawaii Revised Statutes (HRS) Chapter 201H affordable housing project application for the Kenolio Apartments Project.

The applicant, Pacific West Land Communities, INC., proposes a 186-unit housing project on property identified as TMK (2)3-9-01:157 and 158 in Kihei, Maui, Hawaii pursuant to Section 201H-38, HRS. The project is located on approximately 8.2 acres. The subject properties are located adjacent to the Piilani Highway at the intersection of Kaonoulu Road and Kenolio Road. Access to the project site will be from Kenolio Road.

The proposed Kenolio Apartments Housing Project will consist of a 186-unit (100% affordable) multi-family development including up to two (2) unrestricted on-site manager's units. Comments from the various federal, state and county agencies were received during the Chapter 343, HRS, process. Agency comments and responses to substantive comments are included in the Final Environmental Assessment included in Section 3 of the attached HRS Section 201H-38 application for your information.

Honorable Robert Carroll, Chair  
Land Use Committee  
September 8, 2015  
Page 2 of 2

Enclosed for consideration by your committee and the County Council are the following documents:

1. Sixteen (16) copies of the Application for Affordable Housing Development Pursuant to Section 201H-38, Hawaii Revised Statutes, Kenolio Apartments Project, (TMK (2) 3-9-01:157 and 158);
2. Proposed resolution entitled, "APPROVING THE KENOLIO APARTMENTS PROJECT PURSUANT TO SECTION 201H-38, HAWAII REVISED STATUTES";
3. Proposed resolution entitled, "APPROVING WITH MODIFICATION THE KENOLIO APARTMENTS PROJECT PURSUANT TO SECTION 201H-38, HAWAII REVISED STATUTES"; and
4. Proposed resolution entitled, "DISAPPROVING THE KENOLIO APARTMENTS PROJECT PURSUANT TO SECTION 201H-38, HAWAII REVISED STATUTES."

Thank you for your attention to this matter. If you have any questions or require additional information, please feel free to contact me at 270-7805.

Sincerely,



CAROL K. REIMANN  
Director of Housing and Human Concerns

Enclosures

xc: Buddy Almeida, Department of Housing and Human Concerns (w/enclosure)  
Shellan Rodriguez, Pacific West Communities, Inc. (w/enclosure)  
Jordan Hart, Chris Hart & Partners, Inc. (w/enclosure)

# Resolution

No. \_\_\_\_\_

## APPROVING THE KENOLIO APARTMENTS PROJECT PURSUANT TO SECTION 201H-38, HAWAII REVISED STATUTES

WHEREAS, Pacific West Communities, Inc., an Idaho corporation, proposes the development of the Kenolio Apartments (the "Project") for qualified residents on approximately 8.2 acres in Kihei, Maui, Hawaii, identified for real property tax purposes as Tax Map Key Nos. (2)3-9-001:157 and 158; and

WHEREAS, the proposed Project will provide a total of one hundred and sixty eight (168) rental units to families earning fifty (50) to eighty (80) percent of Maui County's median family income; and

WHEREAS, the Project will provide needed affordable housing to meet the current and growing demand for affordable housing; and

WHEREAS, on September 8, 2015, the Department of Housing and Human Concerns submitted the preliminary plans and specifications and accompanying Application for Affordable Housing Subdivision ("Application") to the Council of the County of Maui ("Council") recommending approval of the Project pursuant to Section 201H-38, Hawaii Revised Statutes ("HRS"); and

WHEREAS, pursuant to Section 201H-38, HRS, the Council shall approve, approve with modification, or disapprove the Project by resolution within forty-five (45) days after the Department of Housing and Human Concerns has submitted the preliminary plans and specifications for the Project to the Council, which submittal occurred on September 8, 2015; and

WHEREAS, pursuant to Section 4-1 of the Revised Charter of the County of Maui (1983), as amended, the Council is authorized to act by resolution; now, therefore,

BE IT RESOLVED by the Council of the County of Maui:

1. That based upon the transmittals and the representations of the Department of Housing and Human Concerns and Pacific West Communities, Inc., the Council approves the Project, including the Project's preliminary plans and specifications, as submitted to the Council on September 8, 2015, pursuant to Section 201H-38, HRS; provided that Pacific West Communities, Inc., shall comply with all statutes, ordinances, charter provisions, and rules of governmental agencies relating to planning, zoning and construction standards for subdivisions, development and improvement of land, and the construction of units thereon, except for the exemptions specified in Exhibit "1", attached hereto and made a part hereof; and

Resolution No. \_\_\_\_\_

2. That the final plans and specifications for the Project shall be deemed approved by the Council if the final plans and specifications do not substantially deviate, as determined by the Director of Housing and Human Concerns, from the preliminary plans and specifications submitted to the Council. Any substantial deviation from the preliminary plans and specifications shall be submitted to the Council for prior approval. The final plans and specifications shall constitute the zoning, building, construction, and subdivision standards for the Project; and

3. That certified copies of this resolution be transmitted to the Director of Public Works, the Planning Director, the Director of Housing and Human Concerns, and Pacific West Communities, Inc.

APPROVED AS TO FORM  
AND LEGALITY:

  
\_\_\_\_\_  
JEFFREY UEOKA  
Deputy Corporation Counsel  
County of Maui

S:\ALL\JTU\HOUSING\201H\Kenolio Apartments\Resos\Approval\_Kenolio Apartments\_201H.wpd  
2015-4825

**201H Exemption Requests  
for the proposed  
100% Affordable Kenolio Apartments**

The project is 100% affordable rental housing, including up to two on-site manager's units which are considered "common area". The project is seeking the following exemptions pursuant to Section 201H-38, Hawaii Revised Statutes.

These exemptions will automatically terminate if the Kenolio Apartment project has not commenced construction within three (3) years of the date of the 201H Approval or the completion of land use entitlements, whichever is later. For this purpose construction commencement will be defined as when the owner has obtained grading permits and has executed a construction contract for the project. Extensions to this termination will be granted at the discretion of the County Council and passed by Resolution.

As a 100% affordable housing project the project will seek to reduce fees as per Chapter 2.96.20 of the Maui County Code.

**A. Exemption from Title 2, Maui County Code (MCC) Administration and Personnel**

1. An exemption from Section 2.80B, MCC, General Plan and Community Plans.

*COMMENT: To permit the project without obtaining a Community Plan Amendment.*

2. An exemption from Section 2.96.040, C.2.a., MCC, Residential Workforce Housing Requirements, shall be granted to permit the project to have 100% of its units, with the exception of up to two managers' units, to be restricted to "low income" residents.

*COMMENT: The project is exceeding the affordability goals in the code by providing all of the units to low income residents. This exemption will be conditioned upon a Development Agreement that commits the Developer all but 2 units being available to residents at 60% of the area median income and below.*

3. An exemption from Section 2.96.050, A.2., MCC, Residential Workforce Housing Credits, shall be granted to allow the project to obtain a workforce housing credit for 100% of the affordable units rented, not solely those in excess of fifty percent of the total number of units constructed as affordable.

*COMMENT: To increase receivable credits by 50%, or from 92 to 184. Additional credits provide additional equity and greatly increases the economic feasibility of the project. This exemption can be conditioned upon a Development Agreement which would require the transfer or sale of such excess credits shall be used to either a) make the project financially feasible by paying for project development costs or b) fund additional future affordable housing opportunities elsewhere in Maui County.*

*project financially feasible by paying for project development costs or b) fund additional future affordable housing opportunities elsewhere in Maui County.*

**B. Exemption from Title 8, MCC, Health and Safety**

1. An exemption from Section 8.04, MCC, Refuse Collection and Landfills, shall be granted to exempt the project from construction waste disposal permit and fees during the construction phase of the project but not long term ongoing operations.

*COMMENT: Requesting exemption from fees for construction phase.*

**C. Exemption from Title 14, MCC, Public Services**

1. An exemption from Section 14.07.050, MCC, Water Service, shall be granted to allow the project to pay water meter fees out of the project's residual receipts as per the Fee Deferral Agreement in Exhibit A.

*COMMENT: Requesting exemption on water meter fees.*

2. An exemption from Section 14.34, MCC, Wastewater Assessment Fees for Facility Expansion of Kihei Regional Wastewater Treatment System, shall be granted to allow the project to pay wastewater assessment fees out of 5% of the project's residual receipts as per the Fee Deferral Agreement in Exhibit A.

*COMMENT: Exemption from Facility Expansion Fee.*

*\*Kihei Collection System Assessment Fee was discontinued on April 27, 2015 as defined in Maui County Code Chapter 14.34*

3. An exemption from Section 14.68, MCC, Impact Fees for Traffic and Roadway Improvements in Kihei and Makena Maui, Hawaii, shall be granted to exempt the project from traffic impact fees.

*COMMENT: The Project requests exemption from any future fees that are adopted prior to issuance of building permits and after 201H approval.*

**D. Exemptions from Title 16, MCC, Buildings and Construction**

1. The project shall conform to Sections 16.04C, Ordinance 4232, Fire Code, 16.18B, Electrical Code, 16.20B, Plumbing Code, and 16.26B, Building Code, as stated at the time of the filing of the 201H-38 application, despite any subsequent amendments to Sections 16.04C, Ordinance 4232 16.08A, or 16.26B, MCC, or any

updates to the Fire Code, Residential Code, or Building Code adopted prior to the issuance of the last building permit for the project. This does not pertain to future renovations of buildings or units, only to new construction.

*COMMENT: To exempt the Project from unforeseen code revisions that may occur after 201H approval but prior to Building Permit Issuance or Submittal.*

#### **E. Exemptions from Title 18, MCC, Subdivisions**

1. An exemption from Section 18.04.030, MCC, Administration, and related land use consistency and conformity requirements of Title 18, shall be granted to exempt the project from obtaining a change in zoning to enable subdivision approval.

*COMMENT: To permit the Project without obtaining a Community Plan Amendment.*

2. An exemption from Section 18.16, MCC, Design Standards, shall be granted to exempt the project from roadway design standards on the North South Collector Road adjacent to the project site.

*COMMENT: North South Collector Road improvements proposed to be curb gutter & sidewalk and ½ of pavement width (approximately 24 feet) from Kaonoulu Street to south project entrance. All other roads within the project are not applicable to this exemption (SEE ATTACHED: EXHIBIT B, "KENOLIO APARTMENT, PROPOSED SECTION DATED August 28, 2015").*

3. An exemption from Section 18.16.030, MCC, Creation of streets, shall be granted to exempt the project from roadway design standards on the North South Collector Road adjacent to the project site.

*COMMENT: North South Collector Road improvements proposed to be curb gutter & sidewalk and ½ of pavement width (approximately 24 feet) from Kaonoulu Street to south project entrance. All other roads within the project are not applicable to this exemption.*

4. An exemption from Section 18.16.040, MCC, Streets generally, and conformity requirements of Title 18, shall be granted to exempt the project from roadway design standards on the North South Collector Road adjacent to the project site.

*COMMENT: North South Collector Road improvements proposed to be curb gutter & sidewalk and ½ of pavement width (approximately 24 feet) from Kaonoulu Street to south project entrance. All other roads within the project are not applicable to this exemption.*

5. An exemption from Section 18.16.050, MCC, Minimum right-of-way and pavement widths, shall be granted to exempt the project from minimum

pavement width design standards on the North South Collector Road adjacent to the project site.

**COMMENT:** *North South Collector Road improvements proposed to be curb gutter & sidewalk and 1/2 of pavement width (approximately 24 feet) from Kaonoulu Street to south project entrance. All other roads within the project are not applicable to this exemption.*

6. An exemption from Section 18.16.320, MCC, Parks and Playgrounds, shall be granted to allow the project to defer fees and payback based on 5% of the project's residual receipts as per the Fee Deferral Agreement attached as Exhibit B.
7. An exemption from Section 18.20.140 MCC, Utility lines and facilities, shall be granted to allow for existing above ground utility lines (electric, telephone, street lighting, cable television, and other utilities, if any) on or near the project site to remain above ground. All proposed new lines will be located underground.

**COMMENT:** *Applicant requesting exemption from undergrounding existing infrastructure.*

**F. Exemptions from Title 19, MCC, Zoning**

1. An exemption from Section 19.12.050, MCC, Apartment District, shall be granted to exempt the project from the Apartment District Development standards. The following zoning standards shall apply to the proposed project:

	Permitted in A-1 Apartment District	Permitted in R-1 Residential District	Proposed Kenolio Apartments
<b>Minimum Lot Size</b>	10,000 SF	6,000 SF	360,415 SF (8.2 acres)
<b>Maximum Height</b>	35 feet	30 feet	38' 4" Max roof height
<b>Floor Area Ratio</b>	40% (144,167 SF)	-	69.4% (250,199 SF)
<b>Lot Coverage</b>	25% (90,105 SF)	-	24% (86,325 SF)
<b>Setbacks</b>			
Front	20	15	20
Rear	20	6-10	20
Side	15	6-10	15

**COMMENT:** *The Applicant is requesting a 29.4% increase in Floor Area Ratio and an allowance of an additional 3 feet & 4 inches in building height for the architectural roof design.*



**G. Exemptions from Title 20, MCC, Environmental Protection**

1. An exemption from Section 20.08.090, MCC, Grubbing and Grading Permit Fees shall be granted to exempt the project from payment of grading, grubbing, and excavation permit fees, as well as inspection fees.

*COMMENT: Request exemption from fees.*

**H. Exemptions from Section 237-29, Hawaii Revised Statutes (HRS)**

An exemption from Section 237-29, HRS, State General Excise Tax, shall be granted to exempt the project from State General Excise Tax (GET) during development and construction.

*COMMENT: Section 201H-36, HRS allows for exemption from Section 237-29 HRS for affordable housing projects. The applicable document is FORM G-37.*

**201H Exemption Requests  
for the proposed  
100% Affordable Kenolio Apartments**

The project is 100% affordable rental housing, including up to two on-site manager's units which are considered "common area". The project is seeking the following exemptions pursuant to Section 201H-38, Hawaii Revised Statutes.

These exemptions will automatically terminate if the Kenolio Apartment project has not commenced construction within three (3) years of the date of the 201H Approval or the completion of land use entitlements, whichever is later. For this purpose construction commencement will be defined as when the owner has obtained grading permits and has executed a construction contract for the project. Extensions to this termination will be granted at the discretion of the County Council and passed by Resolution.

As a 100% affordable housing project the project will seek to reduce fees as per Chapter 2.96.20 of the Maui County Code.

**A. Exemption from Title 2, Maui County Code (MCC) Administration and Personnel**

1. An exemption from Section 2.80B, MCC, General Plan and Community Plans.

*COMMENT: To permit the project without obtaining a Community Plan Amendment.*

2. An exemption from Section 2.96.040, C.2.a., MCC, Residential Workforce Housing Requirements, shall be granted to permit the project to have 100% of its units, with the exception of up to two managers' units, to be restricted to "low income" residents.

*COMMENT: The project is exceeding the affordability goals in the code by providing all of the units to low income residents. This exemption will be conditioned upon a Development Agreement that commits the Developer all but 2 units being available to residents at 60% of the area median income and below.*

3. An exemption from Section 2.96.050, A.2., MCC, Residential Workforce Housing Credits, shall be granted to allow the project to obtain a workforce housing credit for 100% of the affordable units rented, not solely those in excess of fifty percent of the total number of units constructed as affordable.

*COMMENT: To increase receivable credits by 50%, or from 92 to 184. Additional credits provide additional equity and greatly increases the economic feasibility of the project. This exemption can be conditioned upon a Development Agreement which would require the transfer or sale of such excess credits shall be used to either a) make the project financially feasible by paying for project development costs or b) fund additional future affordable housing opportunities elsewhere in Maui County.*

**B. Exemption from Title 8, MCC, Health and Safety**

1. An exemption from Section 8.04, MCC, Refuse Collection and Landfills, shall be granted to exempt the project from construction waste disposal permit and fees during the construction phase of the project but not long term ongoing operations.

*COMMENT: Requesting exemption from fees for construction phase.*

**C. Exemption from Title 14, MCC, Public Services**

1. An exemption from Section 14.07.050, MCC, Water Service, shall be granted to allow the project to pay water meter fees out of the project's residual receipts as per the Fee Deferral Agreement in Exhibit A.

*COMMENT: Requesting exemption on water meter fees.*

2. An exemption from Section 14.34, MCC, Wastewater Assessment Fees for Facility Expansion of Kihei Regional Wastewater Treatment System, shall be granted to allow the project to pay wastewater assessment fees out of 5% of the project's residual receipts as per the Fee Deferral Agreement in Exhibit A.

*COMMENT: Exemption from Facility Expansion Fee.*

*\*Kihei Collection System Assessment Fee was discontinued on April 27, 2015 as defined in Maui County Code Chapter 14.34*

3. An exemption from Section 14.68, MCC, Impact Fees for Traffic and Roadway Improvements in Kihei and Makena Maui, Hawaii, shall be granted to exempt the project from traffic impact fees.

*COMMENT: The Project requests exemption from any future fees that are adopted prior to issuance of building permits and after 201H approval.*

**D. Exemptions from Title 16, MCC, Buildings and Construction**

1. The project shall conform to Sections 16.04C, Fire Code, 16.18B, Electrical Code, 16.20B, Plumbing Code, and 16.26B, Building Code, as stated at the time of the filing of the 201H-38 application, despite any subsequent amendments to Sections 16.04C, Ordinance 4232 16.08A, or 16.26B, MCC, or any updates to the Fire Code, Residential Code, or Building Code adopted prior to the issuance of the last building permit for the project. This does not pertain to future renovations of buildings or units, only to new construction.

*COMMENT: To exempt the Project from unforeseen code revisions that may occur after 201H approval but prior to Building Permit Issuance or Submittal.*

**E. Exemptions from Title 18, MCC, Subdivisions**

1. An exemption from Section 18.04.030, MCC, Administration, and related land use consistency and conformity requirements of Title 18, shall be granted to exempt the project from obtaining a change in zoning to enable subdivision approval.

*COMMENT: To permit the Project without obtaining a Community Plan Amendment.*

2. An exemption from Section 18.16, MCC, Design Standards, shall be granted to exempt the project from roadway design standards on the North South Collector Road adjacent to the project site.

*COMMENT: North South Collector Road improvements proposed to be curb gutter & sidewalk and ½ of pavement width (approximately 24 feet) from Kaonoulu Street to south project entrance. All other roads within the project are not applicable to this exemption (SEE ATTACHED: EXHIBIT B, "KENOLIO APARTMENT, PROPOSED SECTION DATED August 28, 2015").*

3. An exemption from Section 18.16.030, MCC, Creation of streets, shall be granted to exempt the project from roadway design standards on the North South Collector Road adjacent to the project site.

*COMMENT: North South Collector Road improvements proposed to be curb gutter & sidewalk and ½ of pavement width (approximately 24 feet) from Kaonoulu Street to south project entrance. All other roads within the project are not applicable to this exemption.*

4. An exemption from Section 18.16.040, MCC, Streets generally, and conformity requirements of Title 18, shall be granted to exempt the project from roadway design standards on the North South Collector Road adjacent to the project site.

*COMMENT: North South Collector Road improvements proposed to be curb gutter & sidewalk and ½ of pavement width (approximately 24 feet) from Kaonoulu Street to south project entrance. All other roads within the project are not applicable to this exemption.*

5. An exemption from Section 18.16.050, MCC, Minimum right-of-way and pavement widths, shall be granted to exempt the project from minimum pavement width design standards on the North South Collector Road adjacent to the project site.

**COMMENT:** North South Collector Road improvements proposed to be curb gutter & sidewalk and ½ of pavement width (approximately 24 feet) from Kaonoulu Street to south project entrance. All other roads within the project are not applicable to this exemption.

6. An exemption from Section 18.16.320, MCC, Parks and Playgrounds, shall be granted to allow the project to defer fees and payback based on 5% of the project's residual receipts as per the Fee Deferral Agreement attached as Exhibit B.
7. An exemption from Section 18.20.140 MCC, Utility lines and facilities, shall be granted to allow for existing above ground utility lines (electric, telephone, street lighting, cable television, and other utilities, if any) on or near the project site to remain above ground. All proposed new lines will be located underground.

**COMMENT:** Applicant requesting exemption from undergrounding existing infrastructure.

**F. Exemptions from Title 19, MCC, Zoning**

1. An exemption from Section 19.12.050, MCC, Apartment District, shall be granted to exempt the project from the Apartment District Development standards. The following zoning standards shall apply to the proposed project:

	<b>Permitted in A-1 Apartment District</b>	<b>Permitted in R-1 Residential District</b>	<b>Proposed Kenolio Apartments</b>
<b>Minimum Lot Size</b>	<b>10,000 SF</b>	<b>6,000 SF</b>	<b>360,415 SF (8.2 acres)</b>
<b>Maximum Height</b>	<b>35 feet</b>	<b>30 feet</b>	<b>38' 4" Max roof height</b>
<b>Floor Area Ratio</b>	40% (144,167 SF)	-	69.4% (250,199 SF)
<b>Lot Coverage</b>	25% (90,105 SF)	-	24% (86,325 SF)
<b>Setbacks</b>			
Front	20	15	20
Rear	20	6-10	20
Side	15	6-10	15

**COMMENT:** The Applicant is requesting a 29.4% increase in Floor Area Ratio and an allowance of an additional 3 feet & 4 inches in building height for the architectural roof design.

**G. Exemptions from Title 20, MCC, Environmental Protection**

1. An exemption from Section 20.08.090, MCC, Grubbing and Grading Permit Fees shall be granted to exempt the project from payment of grading, grubbing, and excavation permit fees, as well as inspection fees.

*COMMENT: Request exemption from fees.*

**H. Exemptions from Section 237-29, Hawaii Revised Statutes (HRS)**

An exemption from Section 237-29, HRS, State General Excise Tax, shall be granted to exempt the project from State General Excise Tax (GET) during development and construction.

*COMMENT: Section 201H-36, HRS allows for exemption from Section 237-29 HRS for affordable housing projects. The applicable document is FORM G-37.*

## EXHIBIT A

### FEE DEFERRAL AGREEMENT

THIS FEE DEFERRAL AGREEMENT is entered into as of \_\_\_\_\_, 2015 by and between the County of Maui ("County") and Pacific West Communities, Inc. and/ or its Assigns ("Developer") with reference to the following facts:

#### RECITALS

- A. Developer intends to construct an 186-unit affordable housing project to be located at Kenolio Road, Kihei, Maui and known as The Kenolio Apartments ("Project").
- B. The County's fees for the Project are estimated to be \$3,067,000 (the "Fees"), which County has agreed to defer pursuant to the terms of this Agreement.

NOW THEREFORE, in consideration of the promises and covenants set forth hereinbelow and for good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the parties hereby agree as follows:

#### AGREEMENT

1. Fee Deferral. The Fees for the Project shall be no greater than \$3,100,000. So long as the Project receives financing commitments from other sources, which are sufficient to permit Developer to construct the Project, all Fees will be deferred. Pursuant to such deferral, all Connection Fees will accrue interest at a rate of one percent (1%) per annum and be paid by Developer pursuant to the Note.
2. Payment. The payment terms for the Connection Fees shall be as set forth in that certain Promissory Note dated as of even date herewith made by Developer in favor of County ("Note"). To the extent of any conflict between the terms of this Agreement and the Note, the Note shall prevail.
3. Execution in Counterparts. This Agreement may be executed in any number of counterparts, each of which when so executed and delivered shall be deemed to be an original and all of which taken together shall constitute but one and the same instrument. Delivery of an executed counterpart of a signature page by facsimile or PDF transmission shall be as effective as delivery of a manually executed counterpart.
4. Governing Law. This Agreement will be construed and enforced in accordance with, and the rights of the parties shall be governed by, the laws of the State of Hawaii, without regard to conflicts of laws principles that would require the application of the law of another jurisdiction, such that to the extent that the provisions of this Agreement are contrary to Hawaii law or decision of a court of proper jurisdiction in Hawaii, such law or court decision shall govern.
5. Indemnification. Developer shall indemnify and hold harmless County from and against any and all third party claims, actions, lawsuits, or other causes of action which challenges the validity of this Agreement (collectively, the "Claims"). The foregoing indemnity shall include

without limitation all reasonable attorney fees and other costs and expenses incurred by County to defend such Claims.

6. Notices. All notices given pursuant to this Agreement and the Note shall be sent by personal delivery, express or courier service, electronic means of transmitting written material (so long as an original is simultaneously transmitted by the United States Postal Service or express or courier service) or United States Postal Service. Notices shall be deemed to be delivered the earlier of: (a) the first (1st) business day after deposited for delivery with FedEx, UPS, or other reputable delivery company if sent for same day or next day delivery; or (b) three (3) business days after the date deposited with the United States Postal Service if sent certified mail, return receipt requested addressed to each party at the following address (or at such other address as such party may request in writing:

If to County:                 INSERT NAME& MAILING ADDRESS  
  Wailuku, Hawaii

If to Developer:             c/o Pacific West Communities, Inc.  
  430 E. State Street, Suite 100  
  Eagle, ID 83616  
  Attn: Caleb Roope

And to:                         INSERT NAME/ ADDRESS  
  Attn: Director of LIHTC Asset Management

Investor may, but shall not be obligated to, cure defaults hereunder and under the Note in the same manner as Developer.

7. Successors and Assigns. The provisions of this Agreement will be binding upon and inure to the benefit of the parties hereto and their respective successors and assigns.

8. Amendment. This Agreement may only be amended, modified, superseded or canceled and any of the terms, covenants, representations, warranties or conditions hereof may be waived only by an instrument in writing signed by each of the parties hereto.

9. This Agreement and the Note are subject and subordinate to any construction and permanent loans or deed(s) of trust for which any indebtedness, liabilities and obligations exist for the Project. That certain Deed of Trust, Assignment of Leases and Rents, Security Agreement and Fixture Filing (as amended from time to time, "Senior Deed of Trust") executed by Trustor in favor of \_\_\_\_\_ ("Senior Lender") and securing promissory note(s) executed by Trustor in favor of Senior Lender in the aggregate face principal amount of \$ \_\_\_\_\_ (collectively, as amended from time to time, the "Senior Note"). Notwithstanding anything to the contrary set forth herein, Beneficiary agrees that neither Senior Lender, any successor to Senior Lender under the Senior Deed of Trust, nor any successor to Senior Lender as owner of the Property following any foreclosure or acceptance of a deed in lieu of foreclosure of the Senior Deed of Trust (collectively, the "Senior Lender Parties"; each a "Senior Lender Party")



shall have any obligation to pay any Fee deferred and/or waived pursuant to this Agreement (and no utility connection, approval, consent, concession or other entitlement issued or granted for the benefit of the Property under or in connection with this Agreement shall be revoked, invalidated, withdrawn or terminated as the result of any foreclosure or acceptance of a deed in lieu of foreclosure by any Senior Lender Party or the failure of any Senior Lender Party to pay any Connection Fee deferred and/or waived pursuant to this Agreement). Senior Lender is a third party beneficiary to this paragraph and this agreement may not be modified without Senior Lender's express written consent.

[Signature page follows]

IN WITNESS WHEREOF, the undersigned have executed, or have caused to be executed, this Agreement as of the date first written above

**County:**

County of Maui

By: \_\_\_\_\_

Name: \_\_\_\_\_

Its: \_\_\_\_\_

**DEVELOPER:**

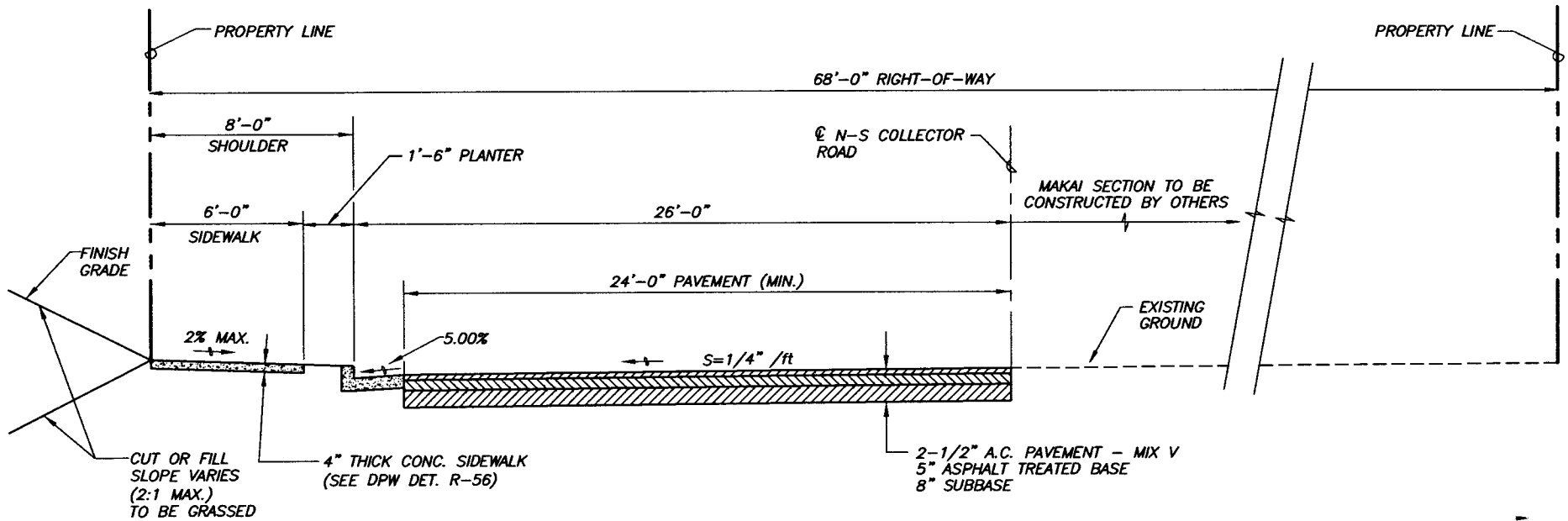
Pacific West Communities, Inc. and/ or Assigns

By: \_\_\_\_\_

Name: Caleb Roope

Its: President

G:\2013 PROJECTS\2013-23\dwg\EXHIBIT\TYPESEC1.dwg Aug. 28, 2015 - 7:57am



KENOLIO APARTMENT  
PROPOSED SECTION - 68 FT. RIGHT-OF-WAY (N-S COLLECTOR ROAD)

SCALE: 1/4 INCH = 1 FEET

EXHIBIT " B "

# Resolution

No. \_\_\_\_\_

## APPROVING WITH MODIFICATION THE KENOLIO APARTMENTS PROJECT PURSUANT TO SECTION 201H-38, HAWAII REVISED STATUTES

WHEREAS, Pacific West Communities, Inc., an Idaho corporation, proposes the development of the Kenolio Apartments (the "Project") for qualified residents on approximately 8.2 acres in Kihei, Maui, Hawaii, identified for real property tax purposes as Tax Map Key Nos. (2)3-9-001:157 and 158; and

WHEREAS, the proposed Project will provide a total of one hundred and sixty eight (168) rental units to families earning fifty (50) to eighty (80) percent of Maui County's median family income; and

WHEREAS, the Project will provide needed affordable housing to meet the current and growing demand for affordable housing; and

WHEREAS, on September 8, 2015, the Department of Housing and Human Concerns submitted the preliminary plans and specifications and accompanying Application for Affordable Housing Subdivision ("Application") to the Council of the County of Maui ("Council") recommending approval of the Project pursuant to Section 201H-38, Hawaii Revised Statutes ("HRS"); and

WHEREAS, pursuant to Section 201H-38, HRS, the Council shall approve, approve with modification, or disapprove the Project by resolution within forty-five (45) days after the Department of Housing and Human Concerns has submitted the preliminary plans and specifications for the Project to the Council, which submittal occurred on September 8, 2015; and

WHEREAS, pursuant to Section 4-1 of the Revised Charter of the County of Maui (1983), as amended, the Council is authorized to act by resolution; now, therefore,

BE IT RESOLVED by the Council of the County of Maui:


1. That based upon the transmittals and the representations of the Department of Housing and Human Concerns and Pacific West Communities, Inc., the Council approves the Project with the modifications specified in Exhibit "1", including the Project's preliminary plans and specifications, as submitted to the Council on September 8, 2015, pursuant to Section 201H-38, HRS; provided that Pacific West Communities, Inc., shall comply with all statutes, ordinances, charter provisions, and rules of governmental agencies relating to planning, zoning and construction standards for subdivisions, development and improvement of land, and the construction of units thereon, except for the exemptions specified in Exhibit "2", attached hereto and made a part hereof; and

Resolution No. \_\_\_\_\_

2. That the final plans and specifications for the Project shall be deemed approved by the Council if the final plans and specifications do not substantially deviate, as determined by the Director of Housing and Human Concerns, from the preliminary plans and specifications approved by the Council. Any substantial deviation from the preliminary plans and specifications shall be submitted to the Council for prior approval. The final plans and specifications shall constitute the zoning, building, construction, and subdivision standards for the Project; and

3. That certified copies of this resolution be transmitted to the Director of Public Works, the Planning Director, the Director of Housing and Human Concerns, and Pacific West Communities, Inc.

APPROVED AS TO FORM  
AND LEGALITY:

  
\_\_\_\_\_  
JEFFREY GEOKA  
Deputy Corporation Counsel  
County of Maui

S:\ALL\JTU\HOUSING\201H\Kenolio Apartments\Resos\Modification\_Kenolio Apartments\_201H.wpd

# MODIFICATIONS

EXHIBIT "1"

**201H Exemption Requests  
for the proposed  
100% Affordable Kenolio Apartments**

The project is 100% affordable rental housing, including up to two on-site manager's units which are considered "common area". The project is seeking the following exemptions pursuant to Section 201H-38, Hawaii Revised Statutes.

These exemptions will automatically terminate if the Kenolio Apartment project has not commenced construction within three (3) years of the date of the 201H Approval or the completion of land use entitlements, whichever is later. For this purpose construction commencement will be defined as when the owner has obtained grading permits and has executed a construction contract for the project. Extensions to this termination will be granted at the discretion of the County Council and passed by Resolution.

As a 100% affordable housing project the project will seek to reduce fees as per Chapter 2.96.20 of the Maui County Code.

**A. Exemption from Title 2, Maui County Code (MCC) Administration and Personnel**

1. An exemption from Section 2.80B, MCC, General Plan and Community Plans.

*COMMENT: To permit the project without obtaining a Community Plan Amendment.*

2. An exemption from Section 2.96.040, C.2.a., MCC, Residential Workforce Housing Requirements, shall be granted to permit the project to have 100% of its units, with the exception of up to two managers' units, to be restricted to "low income" residents.

*COMMENT: The project is exceeding the affordability goals in the code by providing all of the units to low income residents. This exemption will be conditioned upon a Development Agreement that commits the Developer all but 2 units being available to residents at 60% of the area median income and below.*

3. An exemption from Section 2.96.050, A.2., MCC, Residential Workforce Housing Credits, shall be granted to allow the project to obtain a workforce housing credit for 100% of the affordable units rented, not solely those in excess of fifty percent of the total number of units constructed as affordable.

*COMMENT: To increase receivable credits by 50%, or from 92 to 184. Additional credits provide additional equity and greatly increases the economic feasibility of the project. This exemption can be conditioned upon a Development Agreement which would require the transfer or sale of such excess credits shall be used to either a) make the project financially feasible by paying for project development costs or b) fund additional future affordable housing opportunities elsewhere in Maui County.*

**B. Exemption from Title 8, MCC, Health and Safety**

1. An exemption from Section 8.04, MCC, Refuse Collection and Landfills, shall be granted to exempt the project from construction waste disposal permit and fees during the construction phase of the project but not long term ongoing operations.

*COMMENT: Requesting exemption from fees for construction phase.*

**C. Exemption from Title 14, MCC, Public Services**

1. An exemption from Section 14.07.050, MCC, Water Service, shall be granted to allow the project to pay water meter fees out of the project's residual receipts as per the Fee Deferral Agreement in Exhibit A.

*COMMENT: Requesting exemption on water meter fees.*

2. An exemption from Section 14.34, MCC, Wastewater Assessment Fees for Facility Expansion of Kihei Regional Wastewater Treatment System, shall be granted to allow the project to pay wastewater assessment fees out of 5% of the project's residual receipts as per the Fee Deferral Agreement in Exhibit A.

*COMMENT: Exemption from Facility Expansion Fee.*

*\*Kihei Collection System Assessment Fee was discontinued on April 27, 2015 as defined in Maui County Code Chapter 14.34*

3. An exemption from Section 14.68, MCC, Impact Fees for Traffic and Roadway Improvements in Kihei and Makena Maui, Hawaii, shall be granted to exempt the project from traffic impact fees.

*COMMENT: The Project requests exemption from any future fees that are adopted prior to issuance of building permits and after 201H approval.*

**D. Exemptions from Title 16, MCC, Buildings and Construction**

1. The project shall conform to Sections 16.04C, Fire Code, 16.18B, Electrical Code, 16.20B, Plumbing Code, and 16.26B, Building Code, as stated at the time of the filing of the 201H-38 application, despite any subsequent amendments to Sections 16.04C, Ordinance 4232 16.08A, or 16.26B, MCC, or any updates to the Fire Code, Residential Code, or Building Code adopted prior to the issuance of the last building permit for the project. This does not pertain to future renovations of buildings or units, only to new construction.



*COMMENT: To exempt the Project from unforeseen code revisions that may occur after 201H approval but prior to Building Permit Issuance or Submittal.*

**E. Exemptions from Title 18, MCC, Subdivisions**

1. An exemption from Section 18.04.030, MCC, Administration, and related land use consistency and conformity requirements of Title 18, shall be granted to exempt the project from obtaining a change in zoning to enable subdivision approval.

*COMMENT: To permit the Project without obtaining a Community Plan Amendment.*

2. An exemption from Section 18.16, MCC, Design Standards, shall be granted to exempt the project from roadway design standards on the North South Collector Road adjacent to the project site.

*COMMENT: North South Collector Road improvements proposed to be curb gutter & sidewalk and ½ of pavement width (approximately 24 feet) from Kaonoulu Street to south project entrance. All other roads within the project are not applicable to this exemption (SEE ATTACHED: EXHIBIT B, "KENOLIO APARTMENT, PROPOSED SECTION DATED August 28, 2015").*

3. An exemption from Section 18.16.030, MCC, Creation of streets, shall be granted to exempt the project from roadway design standards on the North South Collector Road adjacent to the project site.

*COMMENT: North South Collector Road improvements proposed to be curb gutter & sidewalk and ½ of pavement width (approximately 24 feet) from Kaonoulu Street to south project entrance. All other roads within the project are not applicable to this exemption.*

4. An exemption from Section 18.16.040, MCC, Streets generally, and conformity requirements of Title 18, shall be granted to exempt the project from roadway design standards on the North South Collector Road adjacent to the project site.

*COMMENT: North South Collector Road improvements proposed to be curb gutter & sidewalk and ½ of pavement width (approximately 24 feet) from Kaonoulu Street to south project entrance. All other roads within the project are not applicable to this exemption.*

5. An exemption from Section 18.16.050, MCC, Minimum right-of-way and pavement widths, shall be granted to exempt the project from minimum pavement width design standards on the North South Collector Road adjacent to the project site.

*COMMENT: North South Collector Road improvements proposed to be curb gutter & sidewalk and ½ of pavement width (approximately 24 feet) from Kaonoulu Street to south project entrance. All other roads within the project are not applicable to this exemption.*

6. An exemption from Section 18.16.320, MCC, Parks and Playgrounds, shall be granted to allow the project to defer fees and payback based on 5% of the project's residual receipts as per the Fee Deferral Agreement attached as Exhibit B.
7. An exemption from Section 18.20.140 MCC, Utility lines and facilities, shall be granted to allow for existing above ground utility lines (electric, telephone, street lighting, cable television, and other utilities, if any) on or near the project site to remain above ground. All proposed new lines will be located underground.

*COMMENT: Applicant requesting exemption from undergrounding existing infrastructure.*

**F. Exemptions from Title 19, MCC, Zoning**

1. An exemption from Section 19.12.050, MCC, Apartment District, shall be granted to exempt the project from the Apartment District Development standards. The following zoning standards shall apply to the proposed project:

	<b>Permitted in A-1 Apartment District</b>	<b>Permitted in R-1 Residential District</b>	<b>Proposed Kenolio Apartments</b>
<b>Minimum Lot Size</b>	<b>10,000 SF</b>	<b>6,000 SF</b>	<b>360,415 SF (8.2 acres)</b>
<b>Maximum Height</b>	<b>35 feet</b>	<b>30 feet</b>	<b>38' 4" Max roof height</b>
<b>Floor Area Ratio</b>	40% (144,167 SF)	-	69.4% (250,199 SF)
<b>Lot Coverage</b>	25% (90,105 SF)	-	24% (86,325 SF)
<b>Setbacks</b>			
Front	20	15	20
Rear	20	6-10	20
Side	15	6-10	15

*COMMENT: The Applicant is requesting a 29.4% increase in Floor Area Ratio and an allowance of an additional 3 feet & 4 inches in building height for the architectural roof design.*

**G. Exemptions from Title 20, MCC, Environmental Protection**

1. An exemption from Section 20.08.090, MCC, Grubbing and Grading Permit Fees shall be granted to exempt the project from payment of grading, grubbing, and excavation permit fees, as well as inspection fees.

*COMMENT: Request exemption from fees.*

**H. Exemptions from Section 237-29, Hawaii Revised Statutes (HRS)**

An exemption from Section 237-29, HRS, State General Excise Tax, shall be granted to exempt the project from State General Excise Tax (GET) during development and construction.

*COMMENT: Section 201H-36, HRS allows for exemption from Section 237-29 HRS for affordable housing projects. The applicable document is FORM G-37.*

EXHIBIT A

FEE DEFERRAL AGREEMENT

THIS FEE DEFERRAL AGREEMENT is entered into as of \_\_\_\_\_, 2015 by and between the County of Maui ("County") and Pacific West Communities, Inc. and/ or its Assigns ("Developer") with reference to the following facts:

RECITALS

- A. Developer intends to construct an 186-unit affordable housing project to be located at Kenolio Road, Kihei, Maui and known as The Kenolio Apartments ("Project").
- B. The County's fees for the Project are estimated to be \$3,067,000 (the "Fees"), which County has agreed to defer pursuant to the terms of this Agreement.

NOW THEREFORE, in consideration of the promises and covenants set forth hereinbelow and for good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the parties hereby agree as follows:

AGREEMENT

1. Fee Deferral. The Fees for the Project shall be no greater than \$3,100,000. So long as the Project receives financing commitments from other sources, which are sufficient to permit Developer to construct the Project, all Fees will be deferred. Pursuant to such deferral, all Connection Fees will accrue interest at a rate of one percent (1%) per annum and be paid by Developer pursuant to the Note.
2. Payment. The payment terms for the Connection Fees shall be as set forth in that certain Promissory Note dated as of even date herewith made by Developer in favor of County ("Note"). To the extent of any conflict between the terms of this Agreement and the Note, the Note shall prevail.
3. Execution in Counterparts. This Agreement may be executed in any number of counterparts, each of which when so executed and delivered shall be deemed to be an original and all of which taken together shall constitute but one and the same instrument. Delivery of an executed counterpart of a signature page by facsimile or PDF transmission shall be as effective as delivery of a manually executed counterpart.
4. Governing Law. This Agreement will be construed and enforced in accordance with, and the rights of the parties shall be governed by, the laws of the State of Hawaii, without regard to conflicts of laws principles that would require the application of the law of another jurisdiction, such that to the extent that the provisions of this Agreement are contrary to Hawaii law or decision of a court of proper jurisdiction in Hawaii, such law or court decision shall govern.
5. Indemnification. Developer shall indemnify and hold harmless County from and against any and all third party claims, actions, lawsuits, or other causes of action which challenges the validity of this Agreement (collectively, the "Claims"). The foregoing indemnity shall include

without limitation all reasonable attorney fees and other costs and expenses incurred by County to defend such Claims.

6. Notices. All notices given pursuant to this Agreement and the Note shall be sent by personal delivery, express or courier service, electronic means of transmitting written material (so long as an original is simultaneously transmitted by the United States Postal Service or express or courier service) or United States Postal Service. Notices shall be deemed to be delivered the earlier of: (a) the first (1st) business day after deposited for delivery with FedEx, UPS, or other reputable delivery company if sent for same day or next day delivery; or (b) three (3) business days after the date deposited with the United States Postal Service if sent certified mail, return receipt requested addressed to each party at the following address (or at such other address as such party may request in writing:

If to County:                   INSERT NAME& MAILING ADDRESS  
Wailuku, Hawaii

If to Developer:               c/o Pacific West Communities, Inc.  
430 E. State Street, Suite 100  
Eagle, ID 83616  
Attn: Caleb Roope

And to:                         INSERT NAME/ ADDRESS  
Attn: Director of LIHTC Asset Management

Investor may, but shall not be obligated to, cure defaults hereunder and under the Note in the same manner as Developer.

7. Successors and Assigns. The provisions of this Agreement will be binding upon and inure to the benefit of the parties hereto and their respective successors and assigns.

8. Amendment. This Agreement may only be amended, modified, superseded or canceled and any of the terms, covenants, representations, warranties or conditions hereof may be waived only by an instrument in writing signed by each of the parties hereto.

9. This Agreement and the Note are subject and subordinate to any construction and permanent loans or deed(s) of trust for which any indebtedness, liabilities and obligations exist for the Project. That certain Deed of Trust, Assignment of Leases and Rents, Security Agreement and Fixture Filing (as amended from time to time, "Senior Deed of Trust") executed by Trustor in favor of \_\_\_\_\_ ("Senior Lender") and securing promissory note(s) executed by Trustor in favor of Senior Lender in the aggregate face principal amount of \$ \_\_\_\_\_ (collectively, as amended from time to time, the "Senior Note"). Notwithstanding anything to the contrary set forth herein, Beneficiary agrees that neither Senior Lender, any successor to Senior Lender under the Senior Deed of Trust, nor any successor to Senior Lender as owner of the Property following any foreclosure or acceptance of a deed in lieu of foreclosure of the Senior Deed of Trust (collectively, the "Senior Lender Parties"; each a "Senior Lender Party")

shall have any obligation to pay any Fee deferred and/or waived pursuant to this Agreement (and no utility connection, approval, consent, concession or other entitlement issued or granted for the benefit of the Property under or in connection with this Agreement shall be revoked, invalidated, withdrawn or terminated as the result of any foreclosure or acceptance of a deed in lieu of foreclosure by any Senior Lender Party or the failure of any Senior Lender Party to pay any Connection Fee deferred and/or waived pursuant to this Agreement). Senior Lender is a third party beneficiary to this paragraph and this agreement may not be modified without Senior Lender's express written consent.

[Signature page follows]

IN WITNESS WHEREOF, the undersigned have executed, or have caused to be executed, this Agreement as of the date first written above

**County:**

County of Maui

By: \_\_\_\_\_

Name: \_\_\_\_\_

Its: \_\_\_\_\_

**DEVELOPER:**

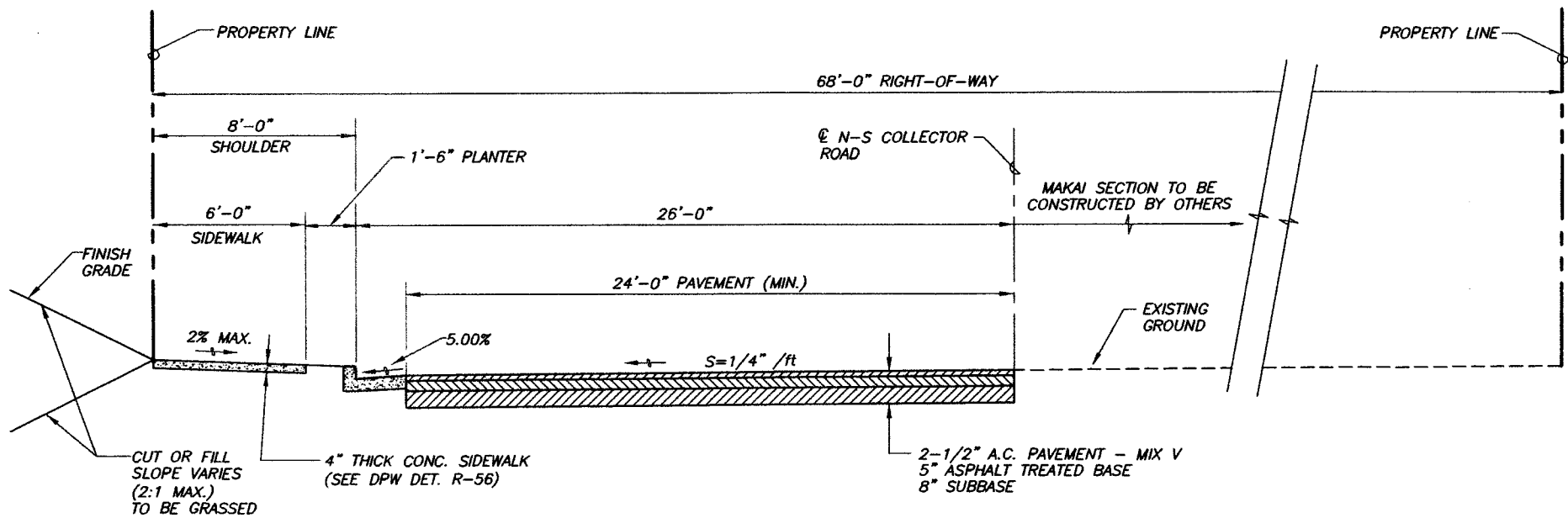
Pacific West Communities, Inc. and/ or Assigns

By: \_\_\_\_\_

Name: Caleb Roope

Its: President

C:\2013 PROJECTS\2013-23\dwg\EXHIBIT\TYPESECT.dwg Aug. 28, 2015 - 7:57am



**KENOLIO APARTMENT**  
**PROPOSED SECTION - 68 FT. RIGHT-OF-WAY (N-S COLLECTOR ROAD)**  
SCALE: 1/4 INCH = 1 FEET

EXHIBIT " B "



# Resolution

No. \_\_\_\_\_

## DISAPPROVING THE KENOLIO APARTMENTS PROJECT PURSUANT TO SECTION 201H-38, HAWAII REVISED STATUTES

WHEREAS, Section 201H-38, Hawaii Revised Statutes ("HRS"), provides a process for the review and development of affordable housing subdivision projects, where suitable projects can be exempted from statutes, ordinances, charter provisions, and rules of governmental agencies relating to planning, zoning, and construction standards for subdivisions, development and improvement of land, and the construction of units thereon, provided that such projects meet minimum requirements for health and safety and fulfill affordability criteria; and

WHEREAS, Pacific West Communities, Inc., an Idaho corporation, submitted an application for the development of the proposed Kenolio Apartments (the "Project") for qualified residents on approximately 8.2 acres in Kihei, Maui, Hawaii, identified for real property tax purposes as Tax Map Key Nos. (2)3-9-001:157 and 158, pursuant to Section 201H-38, HRS, to the Department of Housing and Human Concerns of the County of Maui; and

WHEREAS, on September 8, 2015, the Department of Housing and Human Concerns submitted the preliminary plans and specifications and accompanying Application for Affordable Housing Subdivision ("Application") to the Council of the County of Maui ("Council") recommending approval of the Project pursuant to Section 201H-38, HRS; and

WHEREAS, pursuant to Section 201H-38, HRS, the Council shall approve, approve with modification, or disapprove the Project by resolution within forty-five (45) days after the Department of Housing and Human Concerns has submitted the preliminary plans and specifications for the Project to the Council, which submittal occurred on September 8, 2015; and

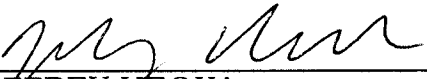
WHEREAS, pursuant to Section 4-1 of the Revised Charter of the County of Maui (1983), as amended, the Council is authorized to act by resolution; now, therefore,

Resolution No. \_\_\_\_\_

BE IT RESOLVED by the Council of the County of Maui:

1. That the Council disapproves the Project submitted to the Council on September 8, 2015, pursuant to Section 201H-38, HRS; and
2. That certified copies of this resolution be transmitted to the Director of Public Works, the Planning Director, the Director of Housing and Human Concerns, and Pacific West Communities, Inc.

APPROVED AS TO FORM  
AND LEGALITY:

  
\_\_\_\_\_  
JEFFREY UEOKA  
Deputy Corporation Counsel  
County of Maui

S:\ALL\JTU\HOUSING\201H\Kenolio Apartments\Resos\Disapproval\_Kenolio Apartments\_201H.wpd  
2015-4825