

COUNCIL OF THE COUNTY OF MAUI
LAND USE COMMITTEE

October 16, 2015

Committee
Report No. _____

Honorable Chair and Members
of the County Council
County of Maui
Wailuku, Maui, Hawaii

Chair and Members:

Your Land Use Committee, having met on September 15, 2015 (site inspection), September 16, 2015, and September 30, 2015, makes reference to County Communication 15-4, from Councilmember Mike White, relating to requests for Council approval of affordable housing projects pursuant to Chapter 201H, Hawaii Revised Statutes ("HRS").

By correspondence dated September 8, 2015, the Director of Housing and Human Concerns transmitted the following:

1. An application for the development of the proposed Kenolio Apartments Project in Kihei, Maui, Hawaii, pursuant to Section 201H-38, HRS. The proposed project would provide 184 multifamily rental units for individuals and families with annual incomes not exceeding 60 per cent of the County's median income and 2 on-site manager units (total of 186 units) on 8.274 acres, identified for real property tax purposes as tax map keys (2) 3-9-001:157 and 158, bounded by Piilani Highway, Kaonoulu Street, and Kenolio, with the southern boundary in the vicinity of Kulanihakoi Gulch.
2. A proposed resolution entitled "APPROVING THE KENOLIO APARTMENTS PROJECT PURSUANT TO SECTION 201H-38, HAWAII REVISED STATUTES." The purpose of the proposed resolution is to approve the proposed project with various exemptions from requirements contained in the Maui County Code ("MCC") and HRS relating to planning, zoning, construction standards for subdivisions, the development and improvement of land, and the construction of dwelling units.

COUNCIL OF THE COUNTY OF MAUI
LAND USE COMMITTEE

Page 2

Committee
Report No. _____

3. A proposed resolution entitled "APPROVING WITH MODIFICATION THE KENOLIO APARTMENTS PROJECT PURSUANT TO SECTION 201H-38, HAWAII REVISED STATUTES." The purpose of the proposed resolution is to approve the proposed project with the modifications in Exhibit "1" and various exemptions from requirements contained in the MCC and HRS relating to planning, zoning, construction standards for subdivisions, the development and improvement of land, and the construction of dwelling units.

4. A proposed resolution entitled "DISAPPROVING THE KENOLIO APARTMENTS PROJECT PURSUANT TO SECTION 201H-38, HAWAII REVISED STATUTES." The purpose of the proposed resolution is to disapprove the proposed project.

Pursuant to Section 201H-38, HRS, the Council shall approve, approve with modification, or disapprove affordable housing projects by resolution within 45 days after the preliminary plans and specifications for the project have been submitted to the Council, or the project shall be deemed approved. The Council has until October 23, 2015, to act on the application, or it will be deemed approved as submitted.

Your Committee notes the property is owned by Pacific West Communities, Inc., an Idaho corporation. EAH Housing will be a partner and property manager for the project upon completion, estimated to occur within five years.

According to the application, of the 186 units, 184 will be rented to individuals and families earning up to 60 per cent of the County's median income, with 2 unrestricted units for managers. The project will consist of 12 three-story buildings, containing 63 one-bedroom units, 100 two-bedroom units, and 23 three-bedroom units.

Your Committee also notes the State Land Use District classification is Urban, Kihei-Makena Community Plan designations

COUNCIL OF THE COUNTY OF MAUI
LAND USE COMMITTEE

Page 3

Committee
Report No. _____

include both Business/Commercial and Multi-Family, and zoning is both R-1 Residential District and A-1 Apartment District. The project site is located in a Special Management Area and will require further permitting by the Maui Planning Commission.

The Director of Housing and Human Concerns stated the Department is in favor of the project given the need for affordable rentals on the island, but could not support the applicant's request for 184 Residential Workforce Housing Credits because Section 2.96.050, MCC, would provide only half of that amount.

In response to your Committee's concerns, the applicant expressed willingness to increase the width of the roadway improvements fronting the property to allow for an on-grade bike path of 485 feet along the Kenolio frontage.

The applicant submitted a revised exemption list and proposed certain modifications to the project in response to your Committee's concerns.

At the request of the Chair of your Committee, the Department of the Corporation Counsel transmitted revised proposed approval resolutions, approved as to form and legality, incorporating the revised exemption list and the proposed modifications as well as nonsubstantive revisions.

The Director of Water Supply opposed the applicant's request to defer payment of water system development fees. He stated the estimated fees would be \$496,460, pursuant to Chapter 14.07, MCC. The Director instead proposed that the Council consider either amending the MCC to allow all affordable projects to be exempt from the fees or to fund the fees through the Affordable Housing Fund, rather than granting a deferral for this project alone.

Your Committee further revised the revised proposed resolution to approve the project with modification by deleting the third modification, which would have allowed a deferral of water system development fees

COUNCIL OF THE COUNTY OF MAUI
LAND USE COMMITTEE

Page 4

Committee
Report No. _____

set for the project in Section 14.07.050, MCC. Your Committee also revised Exemption G(3) and the final Modification to clarify that existing above-ground utility lines could be relocated and not subject to Section 18.20.140, MCC. Finally, your Committee added an exemption from Section 16.26B.3600, MCC, to clarify that the construction of the portion of the North South Collector Road adjacent to the project site would be in conformance with Exhibit "B" of the Modifications.

Your Committee expressed support for the other proposed modifications and exemptions, including the granting of the request for 184 Residential Workforce Housing Credits, stating the need for affordable rental housing outweighed any negative consequences of such actions.

Your Committee voted 5-0 to recommend adoption of the revised proposed resolution approving the project with modifications and filing of the two remaining resolutions. Committee Chair Carroll, Vice-Chair Victorino, and members Baisa, Crivello, and Guzman voted "aye." Committee members Cochran and Couch were excused.

Your Committee is in receipt of a further revised proposed resolution approving the project with modifications, approved as to form and legality by the Department of the Corporation Counsel, incorporating your Committee's recommended revisions and nonsubstantive revisions.

Your Land Use Committee RECOMMENDS the following:

1. That Resolution _____, attached hereto, entitled "APPROVING WITH MODIFICATIONS THE KENOLIO APARTMENTS PROJECT PURSUANT TO SECTION 201H-38, HAWAII REVISED STATUTES," be ADOPTED;
2. That the resolution, attached hereto, entitled "APPROVING THE KENOLIO APARTMENTS PROJECT PURSUANT TO SECTION 201H-38, HAWAII REVISED STATUTES," be FILED; and

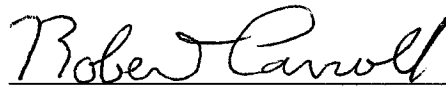
COUNCIL OF THE COUNTY OF MAUI
LAND USE COMMITTEE

Page 5

Committee
Report No. _____

3. That the resolution, attached hereto, entitled "DISAPPROVING THE KENOLIO APARTMENTS PROJECT PURSUANT TO SECTION 201H-38, HAWAII REVISED STATUTES," be FILED.

This report is submitted in accordance with Rule 8 of the Rules of the Council.



ROBERT CARROLL, Chair

lu:cr:15002(1)aa:scj

Resolution

No. _____

APPROVING WITH MODIFICATIONS 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 have a total of one hundred and eighty six (186) units, with 2 units being considered "common area" to be used as on-site manager's units and the remaining units being rented to families earning up to sixty (60) 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


Resolution No. _____

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

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 UEOKA
Deputy Corporation Counsel
County of Maui

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2015-4825

MODIFICATIONS

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" and will remain at the determined affordable rates for a duration of no less than 55 years after issuance of a Certificate of Occupancy.

These modifications will automatically terminate if the Kenolio Apartment project has not commenced construction within four (4) years of the date of the 201H Approval . For this purpose construction commencement will be defined as when the owner has obtained building permits and has executed a construction contract for the project. Extensions to this termination may be granted at the discretion of the County Council and passed by Resolution.

1. Developer shall enter into a Residential Workforce Housing Agreement ("RWHA") with the County, said RWHA shall be subject to the approval of the Director of the Department of Housing and Human Concerns ("Director") and shall be consistent with Chapter 2.96, Maui County Code ("MCC"), to the greatest extent practicable, as determined by the Director.
2. This project shall be eligible for up to 184 Residential Workforce Housing Credits which shall be issued in accordance with Chapter 2.96, MCC, and may only be used to satisfy the requirements of Chapter 2.96, MCC. Credits may only be issued upon completion of this project, which shall be evidenced by a certificate of occupancy. The RWHA shall include language limiting the use of the credits to any of the following:
 - Pay for the development of the Kenolio Apartment project by reimbursing short term loans or;
 - Fund future affordable housing developments in Maui County at the County's discretion or;
 - Return excess credits to the County of Maui at the County's discretion.
3. This project shall be allowed to defer payment of the Facility Expansion Assessment Fee set forth in Section 14.34.060, MCC. The fees shall be paid out of the project's residual receipts as per the Fee Deferral Agreement, attached hereto and made a part hereof, as Exhibit "A".
4. The North South Collector Road adjacent to the project site shall be improved with curbs, gutters, and sidewalk, with a pavement width of approximately 28 feet in width and 485 feet in length, from Kaonoulu Street to the south project entrance as shown in Exhibit "B", attached hereto and made apart hereof. The 28 feet of pavement will include an at-grade striped bike lane and sharrows as determined by the Department of Public Works. Prior to the

granting of a permanent or temporary certificate of occupancy for the final building in the project, the applicant shall have completed improvements, deeds, and related subdivision processing requirements to the satisfaction of the Department of Public Works for all road-widening lots and North South Collector Roadway lots and have these roadway lots dedicated to the County of Maui at no cost to the County. Prior to the granting of a permanent or temporary certificate of occupancy for the final building in the project, the applicant shall have completed the installation of no parking signs along the North South Collector Road to the satisfaction of the Department of Public Works. This modification shall not be applicable to any other roads within the project.

5. The project shall not be eligible for the exemption from park assessment fees as provided for in Section 18.16.320(I)(5). The project shall not be required to provide land for park purposes or improve a park, but shall instead pay the in -lieu fee set forth in Section 18.16.320(C), MCC. This project shall be allowed to defer payment of the park assessment fees set forth in Section 18.16.320(C), MCC. The fees shall be paid out of the project's residual receipts as per the Fee Deferral Agreement.
6. The County of Maui does not object to the Developer seeking an exemption under Section 201H-37, HRS.
7. All proposed new utility lines shall be underground to the extent practicable as determined by the Director of the Department of Public Works. This modification shall not apply to any existing utility lines that may be relocated.

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

- 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.
- 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.
- 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.
- 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.
- 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:

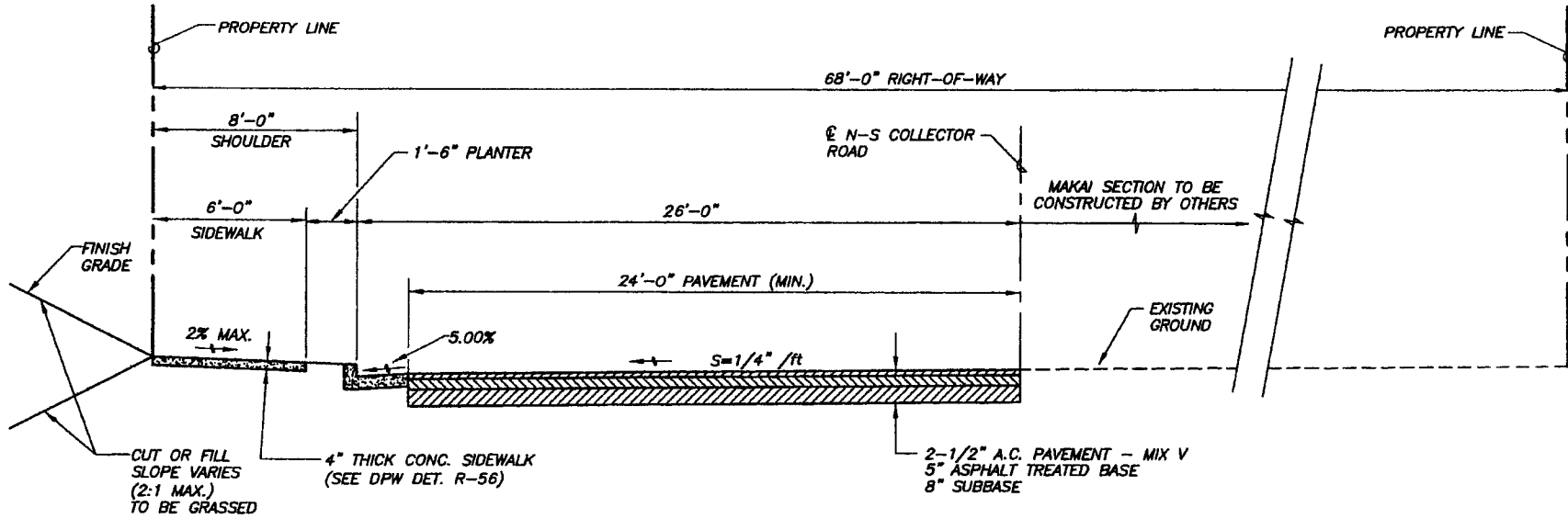
Pacific West Communities, Inc. and/ or Assigns

By: _____

Name: Caleb Roope

Its: President

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

EXHIBIT "B"

Exemptions 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".

These exemptions will automatically terminate if the Kenolio Apartment project has not commenced construction within four (4) years of the date of the 201H Approval. For this purpose construction commencement will be defined as when the owner has obtained building 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.

- 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, shall be granted to permit the project without obtaining a Community Plan Amendment

- B. Exemption from Section 2.96.050(A)(2), MCC, as it pertains to a limitation on the number of residential workforce housing credits a project developed pursuant to section 201H-38, Hawaii Revised Statutes, is eligible for.**

- C. Exemption from Section 14.34.070, MCC, Collection/transmission system project assessment fee.**

- D. 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.

- E. Exemption from Title 14, MCC, Public Services**
 - 1. 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.

- F. 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.

2. An exemption from Section 16.26B.3600, MCC, Improvements to Public Streets, to allow for construction of the portion of the North South Collector Road adjacent to the project site, to be in conformance with Exhibit "B" to the Modifications.

G. 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 or Community Plan Amendment to enable subdivision approval.
2. An exemption from Chapter 18.16, MCC, Design Standards, to allow for the construction of the portion of the North South Collector Road adjacent to the project site, to be in conformance with Exhibit "B" to the Modifications.
3. An exemption from Section 18.20.140, MCC, Utility lines and facilities, shall be granted to allow for existing and the relocation of existing above ground utility lines (electric, telephone, street lighting, cable television, and other utilities, as may be applicable) on or near the project site to remain above ground. All proposed new lines will be located underground.

H. 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
Minimum Lot Size	10,000 SF	6,000 SF	360,415 SF (8.2 acres)
Maximum Height	35 feet	30 feet	38' 4" Max roof height
Floor Area Ratio	40% (144,167 SF)	-	69.4% (250,199 SF)
Lot Coverage	25% (90,105 SF)	-	24% (86,325 SF)
Setbacks			
Front	20	15	20
Rear	20	6-10	20
Side	15	6-10	15
Note: 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.			

I. 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.

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 have a total of one hundred and eighty six (186) units with 2 units being considered "common area" to be used as on-site manager's units and the remaining units being rented to families earning up to sixty (60) 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


Resolution No. _____

units thereon, except for the exemptions specified in Exhibit "1", attached hereto and made a part hereof; and

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

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2015-4825

Exemptions 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".

These exemptions will automatically terminate if the Kenolio Apartment project has not commenced construction within four (4) years of the date of the 201H Approval. For this purpose construction commencement will be defined as when the owner has obtained building 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.

- 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, shall be granted to permit the project without obtaining a Community Plan Amendment

- B. Exemption from Section 2.96.050(A)(2), MCC, as it pertains to a limitation on the number of residential workforce housing credits a project developed pursuant to section 201H-38, Hawaii Revised Statutes, is eligible for.**

- C. Exemption from Section 14.034.070, MCC, Collection/transmission system project assessment fee.**

- D. 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.

- E. Exemption from Title 14, MCC, Public Services**
 - 1. 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.

- F. 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.

G. 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 or Community Plan Amendment to enable subdivision approval.
2. An exemption from Chapter 18.16, MCC, Design Standards.
3. 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, as may be applicable) on or near the project site to remain above ground. All proposed new lines will be located underground.

H. 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
Minimum Lot Size	10,000 SF	6,000 SF	360,415 SF (8.2 acres)
Maximum Height	35 feet	30 feet	38' 4" Max roof height
Floor Area Ratio	40% (144,167 SF)	-	69.4% (250,199 SF)
Lot Coverage	25% (90,105 SF)	-	24% (86,325 SF)
Setbacks			
Front	20	15	20
Rear	20	6-10	20
Side	15	6-10	15
Note: 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.			

I. 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.

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 LEOKA
Deputy Corporation Counsel
County of Maui

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