

COUNCIL OF THE COUNTY OF MAUI
COMMITTEE OF THE WHOLE

December 2, 2016

**Committee
Report No.** _____

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

Chair and Members:

Your Committee of the Whole, having met on November 18, 2016, makes reference to County Communication 15-6, from Councilmember Mike White, relating to litigation matters.

By correspondence dated November 7, 2016, the Department of the Corporation Counsel requested consideration of the possible settlement of The Matter of the Tax Appeal of Kaheawa Wind Power II, LLC, Tax Appeal 13-1-0313. Attached to the request is a proposed resolution, entitled "AUTHORIZING SETTLEMENT OF THE MATTER OF THE TAX APPEAL OF KAHEAWA WIND POWER II, LLC, TAX APPEAL NO. 13-1-0313," and a copy of the Notice of Appeal. The purpose of the proposed resolution is to authorize the Department to settle the tax appeal.

Your Committee notes the Notice of Appeal by Kaheawa Wind Power II, LLC, alleges the County of Maui improperly assessed the value of its real property located at 3000 Honoapiilani Highway for tax year 2013.

Your Committee notes Section 3.16.020(B), Maui County Code, requires Council authorization for any settlement in excess of \$7,500.

A Deputy Corporation Counsel provided a brief overview of the case. He said the tax appeal involves Phase 2 of the wind farm above Maalaea.

Because the case involves ongoing litigation, the Deputy requested the opportunity to convene an executive meeting.

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Your Committee voted to convene an executive meeting, closed to the public, to consult with legal counsel pursuant to Section 92-5(a)(4), Hawaii Revised Statutes.

Following the executive meeting, your Committee reconvened in regular session. Based on the information received and the recommendation of the Department, your Committee voted 5-0 to recommend adoption of the proposed resolution to authorize settlement of the tax appeal under the terms discussed in the executive meeting. Committee Chair Guzman and members Carroll, Cochran, Hokama, and White voted "aye." Committee Vice-Chair Crivello and members Baisa, Couch, and Victorino were excused.


Your Committee of the Whole RECOMMENDS that Resolution _____, attached hereto, entitled "AUTHORIZING SETTLEMENT OF THE MATTER OF THE TAX APPEAL OF KAHEAWA WIND POWER II, LLC, TAX APPEAL NO. 13-1-0313," be ADOPTED.

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



DON S. GUZMAN, Chair

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Resolution

No. _____

AUTHORIZING SETTLEMENT OF THE MATTER OF
THE TAX APPEAL OF KAHEAWA WIND POWER II, LLC,
TAX APPEAL NO. 13-1-0313

WHEREAS, Tax Appellant KAHEAWA WIND POWER II, LLC filed a tax appeal in the Tax Appeal Court of the State of Hawai'i, contesting Tax Appellee COUNTY OF MAUI'S assessment of real property operated as a wind farm, identified as Tax Map Key No. (2) 4-8-001:014-6001 and located at 3000 Honoapiilani Highway, for tax year 2013; and

WHEREAS, the County of Maui, to avoid incurring expenses and the uncertainty of a judicial determination of the parties' respective rights and liabilities, seeks to reach a resolution of this case by way of a negotiated settlement; and

WHEREAS, the Department of the Corporation Counsel has requested authority to settle this case under the terms set forth and discussed in an executive meeting before the Committee of the Whole; and

WHEREAS, having reviewed the facts and circumstances regarding this case and being advised of attempts to reach resolution of this case by way of a negotiated settlement by the Department of the Corporation Counsel, the

Resolution No. _____

Council wishes to authorize the settlement; now, therefore,

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

1. That it hereby approves settlement of this case under the terms set forth in an executive meeting before the Committee of the Whole; and
2. That it hereby authorizes the Mayor to execute a Release and Settlement Agreement on behalf of the County in this case, under such terms and conditions as may be imposed, and agreed to, by the Corporation Counsel; and
3. That it hereby authorizes the Director of Finance to satisfy said settlement of this case, under such terms and conditions as may be imposed, and agreed to, by the Corporation Counsel; and
4. That certified copies of this resolution be transmitted to the Mayor, the Director of Finance, and the Corporation Counsel.

APPROVED AS TO FORM AND LEGALITY:



BRIAN A. BILBERRY
Deputy Corporation Counsel
County of Maui