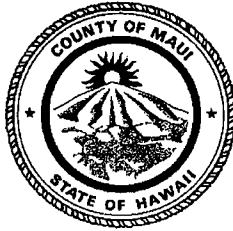


ALAN M. ARAKAWA  
Mayor



PATRICK K. WONG  
Corporation Counsel

EDWARD S. KUSHI  
First Deputy


LYDIA A. TODA  
Risk Management Officer  
Tel. No. (808) 270-7535  
Fax No. (808) 270-1761

DEPARTMENT OF THE CORPORATION COUNSEL  
COUNTY OF MAUI  
200 SOUTH HIGH STREET, 3<sup>RD</sup> FLOOR  
WAILUKU, MAUI, HAWAII 96793  
EMAIL: CORPCOUN@MAUICOUNTY.GOV  
TELEPHONE: (808) 270-7740  
FACSIMILE: (808) 270-7152

RECEIVED  
2017 FEB 28 PM 12:24  
OFFICE OF THE  
COUNTY COUNCIL

February 28, 2017

MEMO TO: Donald S. Guzman, Chair  
Parks, Recreation, Energy, and Legal  
Affairs Committee

FROM: Brian A. Bilberry   
Deputy Corporation Counsel

SUBJECT: Litigation Matter – Settlement Proposals re the *Matter of the Tax Appeals of Kaheawa Wind Power, LLC* [Tax Appeal Nos. 14-1-0266, 16-1-0272, 16-1-0326], and *Kaheawa Wind Power II, LLC* [Tax Appeal Nos. 14-1-0267, 16-1-0273, 16-1-0327] (PRL-1)

Our Department respectfully requests the opportunity to discuss with the Committee the above-referenced Tax Appeals, including settlement options following disposition of two related tax appeal cases. The Tax Appeal Court in *Kaheawa Wind Power, LLC v. County*, Tax Appeal No. 12-1-0394, *Kaheawa Wind Power, LLC v. County*, Tax Appeal No. 13-1-0314, *Kaheawa Wind Power, LLC v. County*, Tax Appeal No. 14-1-0266, *Kaheawa Wind Power, LLC v. County*, Tax Appeal No. 16-1-0272 granted appeals filed by the Tax Appellant regarding real property operated as a wind farm, identified as TMK No. 4-8-001-014-6001 and located at 3000 Honoapiilani Highway. Following the disposition of these related appeals, *Kaheawa Wind Power* and *Kaheawa Wind Power II, LLC* have requested stipulated judgments of the above-captioned tax appeals related for Phase I and Phase II of the wind farm located on the same property.

It is anticipated that an executive session may be necessary to discuss questions and issues pertaining to the powers, duties, privileges, immunities, and liabilities of the County, the Council, and the Committee. A proposed settlement resolution and a copy of the Notice of Appeals for Tax Appeal Nos. 14-1-0266, 16-1-0727, 16-1-0326, Tax Appeal Nos. 14-1-0267, 16-1-0267, and 16-1-0273 are attached.

Should you have any questions or concerns, please do not hesitate to contact me. Thank you for your anticipated assistance in this matter.

Attachments

# Resolution

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

AUTHORIZING SETTLEMENT IN THE MATTERS  
OF THE TAX APPEALS OF KAHEAWA WIND POWER, LLC  
AND KAHEAWA WIND POWER II, LLC, TAX APPEAL  
NOS. 14-1-0266, 16-1-0272, 16-1-0326,  
14-1-0267, 16-1-0273, 16-1-0327

WHEREAS, Tax Appellants KAHEAWA WIND POWER, LLC and KAHEAWA WIND POWER II, LLC have filed multiple tax appeals 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 years 2014, 2015 and 2016; 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 Parks, Recreation, Energy, and Legal Affairs Committee; and

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

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 Council wishes to authorize the settlement; now, therefore,

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

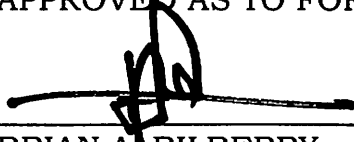
1. That it hereby approves settlement of these cases under the terms set forth in an executive meeting before the Parks, Recreation, Energy, and Litigation Affairs Committee; and

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

TORKILDSON, KATZ, MOORE  
HETHERINGTON & HARRIS  
Attorneys at Law  
A Law Corporation

RONALD I. HELLER 2721  
700 Bishop Street, 15th Floor  
Honolulu, Hawaii 96813-4187  
Telephone: (808) 523-6000

Attorney for Taxpayer-Appellant  
KAHEAWA WIND POWER, LLC

TAX APPEAL COURT  
STATE OF HAWAII  
FILED

2014 NOV 12 PM 3:11

KATHLEEN HANAWAHINE

CLERK

TAX APPEAL COURT  
OF THE STATE OF HAWAII

In the Matter of the Appeal of

KAHEAWA WIND POWER,  
LLC,

Taxpayer-Appellant.

4-8-001-001-6001  
(2014)

1 T. X. 14-1-0266

NOTICE OF APPEAL TO TAX  
APPEAL COURT FROM BOARD  
OF REVIEW; EXHIBIT A;  
CERTIFICATE OF SERVICE

NOTICE OF APPEAL TO TAX APPEAL COURT  
FROM BOARD OF REVIEW

I.

Appellant's name: KAHEAWA WIND POWER, LLC

Appellant's address: c/o First Wind Holdings, LLC  
179 Lincoln St., Suite 500  
Boston MA 02111

Appellant's Hawaii general excise tax license number: not relevant

II.

Date of notice of assessment: estimated date March 15, 2014

Date of decision of the Board of Review: October 31, 2014; copy attached as Exhibit A

III.

Nature of the tax: real property tax

Year or period for which determination was made: tax year 2014

IV.

Where real property tax is involved, furnish the following:

Location (Tax Map Key No.): 4-8-001-001-6001

Street Address: 3000 Honoapiilani Hwy

Appeal concerns (1) exemption, (2) improper and unlawful assessment procedure, (3) erroneous over-valuation, and (4) unjustified penalties

V.

The basis of this appeal is as follows:

1. The Assessor has erroneously and unlawfully treated personal property as "buildings" in determining the building value.

2. The legal issue of whether the towers and turbines on the Subject Property constitute real property has already been decided by this Court, for previous tax years. The Board of Review wrongly and improperly ignored this legal precedent.

3. The assessment is also erroneous by reason of overstating the fair market value of the subject property by more than ten percent. The assessed amount and the “correct” value (before any exemption) are as follows:

Tax Year	Value per Assessment	“Correct” Value
2014	\$76,911,700	\$3,077,940

4. There is a lack of uniformity or inequality brought about by illegality of the methods used or error in the application of the methods to the property.

5. There has been a denial of an exemption to which the taxpayer is entitled; and/or

6. The assessment is illegal under the Constitution or laws of the United States, the State of Hawaii, and/or the County of Maui.

7. In view of the clear law in Hawaii, the position taken by the Assessor in this case is not only wrong, but clearly frivolous and unjustified, and the Taxpayer should therefore receive an award of all of its costs and expenses in this action, including but not limited to attorneys’ fees.

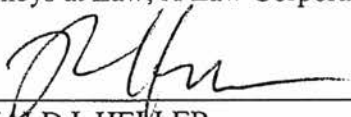
WHEREFORE, Taxpayer-Appellant prays that the Court enter its judgment herein:

- (1) declaring the real property assessment at issue in this case to be excessive, unlawful, null and void;
- (2) reducing the assessment to an amount that properly and correctly reflects the actual fair market value of the real property (excluding personal property).
- (3) finding and declaring that there is no tax (nor any penalty or interest) due from the Taxpayer-Appellant with respect to the subject property for the tax year at issue;

- (4) ordering a refund of any and all amounts paid on, or with respect to, the challenged assessments, together with interest as provided by law; and/or
- (5) granting all other and further relief as the Court may deem appropriate and proper.

DATED: Honolulu, Hawaii, November 12, 2014.

TORKILDSON, KATZ, MOORE  
HETHERINGTON & HARRIS  
Attorneys at Law, A Law Corporation



---

RONALD I. HELLER  
Attorneys for Taxpayer-Appellant  
KAHEAWA WIND POWER, LLC

Filing Fee Paid \$100.00

ALAN M. ARAKAWA  
Mayor

REAL PROPERTY ASSESSMENT DIVISION  
BOARD OF REVIEW

DANILO F. AGSALOG  
Director of Finance

BRUCE ERFER  
Chair, Board of Review

In the Matter of the Tax Appeal of:  
**KAHEAWA WIND POWER, LLC**  
C/O FIRST WIND ENERGY, LLC ATTEN: TAX DEPT  
179 LINCOLN ST, #500  
BOSTON MA 02111



Tax Map Key No.: (2) 480010016001

Case No.: 14014477

**DECISION AND ORDER:** Having heard the above entitled appeal and having considered all of the evidence presented thereon, the Board of Review ("Board") has determined that the classification and value of the property as of January 1, 2014 is:

Land Classification: 600  
CONSERVATION

	<u>VALUE</u>	<u>EXEMPTION</u>	<u>NET TAXABLE</u>
Building/Improvements	\$76,335,700	\$0	\$76,335,700
Land	\$576,000	\$0	\$576,000
Total	\$76,911,700	\$0	\$76,911,700

Upon consideration of all the facts before the Board, oral argument, and all submissions, the board finds:

EVIDENCE PRESENTED BY THE APPELLANT DOES NOT DEMONSTRATE THAT THE APPELLANT IS ENTITLED TO AN ADJUSTMENT.

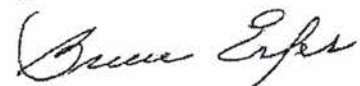
The Appellant offered no evidence in support of its requests to (1) adjust the assessed value; (2) that the Department's assessment or valuation methods lacked uniformity or equality; or (3) Appellant's entitlement to any class of exemption.

After having carefully reviewed all of the Appellant's evidence, the Board concurred with the Department's determination that wind turbines and towers are "real property," pursuant to Section 3.48.005, Maui County Code, and further that the Department properly included such wind turbines and towers in the value of the buildings/improvements and deemed the Director's assessed value prima facie correct pursuant to Section 3.48.630, Maui County Code. The Appellant's appeal is therefore DENIED.

1. The Board met on October 15, 2014 to consider Appellant's Real Property Tax Appeal ("Hearing").
2. The appellant's representative, Attorney Ronald I Heller, was not present at the Hearing.
3. Senior Real Property Technical Officer, Marcy Martin and Maui County Corporation Counsel Attorney, Richard Rost, appeared at the Hearing on behalf of the Department of Finance and presented an Appeal Report and oral testimony to the Board on the subject property.

October 31, 2014

Decision Filed:

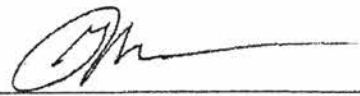
  
Bruce Erfer, Chair, Board of Review

**CERTIFICATION**

I hereby certify this to be a true and correct copy of the original document which is on file in the office of the Director of Finance, County of Maui, Hawaii.

October 31, 2014

Date:

  
Gery Madriaga, for Director of Finance

Further Right of Appeal: Decisions of the Board of Review may be appealed to the State of Hawaii, Tax Appeal Court pursuant to Chapter 232, Hawaii Revised Statutes.

Exhibit A



TAX APPEAL COURT  
OF THE STATE OF HAWAII

In the Matter of the Appeal of

KAHEAWA WIND POWER,  
LLC,

Taxpayer-Appellant.

4-8-001-001-6001  
(2010)

T. A. No.

CERTIFICATE OF SERVICE

CERTIFICATE OF SERVICE

I hereby certify that copies of the foregoing Notice of Appeal to Tax Appeal Court will be mailed or delivered to the following parties immediately following filing and receipt of said Notice:

**Richard Rost, Esq.**  
Deputy Corporation Counsel, County of Maui  
200 S. High St.  
Kalana O Maui Bldg  
Wailuku, HI 96793

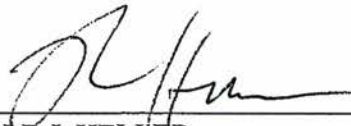
**Real Property Tax Assessor**  
County of Maui, Real Property Tax Division  
70 East Kaahumanu Ave, Suite A-16  
Kahului, HI 96732

**Real Property Tax Administrator**  
County of Maui, Real Property Tax Division  
70 East Kaahumanu Ave, Suite A-16  
Kahului, HI 96732

**Frederick D. Pablo**  
Director of Taxation  
830 Punchbowl Street  
Honolulu, HI 96813

DATED: Honolulu, Hawaii, 11/12, 2014.

TORKILDSON, KATZ, MOORE  
HETHERINGTON & HARRIS  
Attorneys at Law  
A Law Corporation



---

RONALD I. HELLER  
Attorneys for Taxpayer-Appellant  
KAHEAWA WIND POWER, LLC

TORKILDSON, KATZ, MOORE  
HETHERINGTON & HARRIS  
Attorneys at Law  
A Law Corporation

RONALD I. HELLER 2721  
700 Bishop Street, 15th Floor  
Honolulu, Hawaii 96813-4187  
Telephone: (808) 523-6000

Attorney for Taxpayer-Appellant  
KAHEAWA WIND POWER, LLC

1966939-V1  
FEB 5 11:39

TAX APPEAL COURT  
OF THE STATE OF HAWAII

In the Matter of the Appeal of

KAHEAWA WIND POWER,  
LLC,

Taxpayer-Appellant.

4-8-001-001-6001  
(2015 tax year)

Case No. 1 T.X. 16-1-0272

**NOTICE OF APPEAL TO TAX  
APPEAL COURT FROM BOARD  
OF REVIEW; EXHIBIT A;  
CERTIFICATE OF SERVICE**

NOTICE OF APPEAL TO TAX APPEAL COURT  
FROM BOARD OF REVIEW

I.

Appellant's name: KAHEAWA WIND POWER, LLC

Appellant's address: c/o First Wind Holdings, LLC  
179 Lincoln St., Suite 500  
Boston MA 02111

Appellant's Hawaii general excise tax license number: not relevant

RECEIVED  
CORPORATION COUNSEL  
2016 FEB -5 PM 3: 25

II.

Date of notice of assessment: estimated date March 15, 2015

Date of decision of the Board of Review: January 29, 2016; copy attached as Exhibit A

III.

Nature of the tax: real property tax

Year or period for which determination was made: tax year 2015

IV.

Where real property tax is involved, furnish the following:

Location (Tax Map Key No.): 4-8-001-001-6001

Street Address: 3000 Honoapiilani Hwy

Appeal concerns (1) exemption, (2) improper and unlawful assessment procedure, (3) erroneous over-valuation, and (4) unjustified penalties

V.

The basis of this appeal is as follows:

1. The Assessor has erroneously and unlawfully treated personal property as “buildings” in determining the building value.

2. The legal issue of whether the towers and turbines on the Subject Property constitute real property has already been decided by this Court, for previous tax years. The Board of Review wrongly and improperly ignored this legal precedent. No change in the County ordinance can give the County the power to tax personal property, nor can it transmute personal property into real property.

3. The assessment is also erroneous by reason of overstating the fair market value of the subject property by more than ten percent. The assessed amount and the “correct” value (before any exemption) are as follows:

Tax Year	Value per Assessment	“Correct” Value
2015	\$82,195,500	\$3,077,940

4. There is a lack of uniformity or inequality brought about by illegality of the methods used or error in the application of the methods to the property.

5. There has been a denial of an exemption to which the taxpayer is entitled; and/or

6. The assessment is illegal under the Constitution or laws of the United States, the State of Hawaii, and/or the County of Maui.

7. In view of the clear law in Hawaii, the position taken by the Assessor in this case is not only wrong, but clearly frivolous and unjustified, and the Taxpayer should therefore receive an award of all of its costs and expenses in this action, including but not limited to attorneys’ fees.

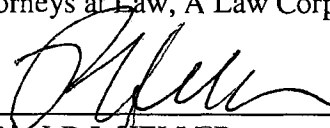
WHEREFORE, Taxpayer-Appellant prays that the Court enter its judgment herein:

- (1) declaring the real property assessment at issue in this case to be excessive, unlawful, null and void;
- (2) reducing the assessment to an amount that properly and correctly reflects the actual fair market value of the real property (excluding personal property).
- (3) finding and declaring that there is no tax (nor any penalty or interest) due from the Taxpayer-Appellant with respect to the subject property for the tax year at issue;

- (4) ordering a refund of any and all amounts paid on, or with respect to,  
the challenged assessments, together with interest as provided by law;  
and/or
- (5) granting all other and further relief as the Court may deem appropriate  
and proper.

DATED: Honolulu, Hawaii, February 3, 2016.

TORKILDSON, KATZ, MOORE  
HETHERINGTON & HARRIS  
Attorneys at Law, A Law Corporation



---

RONALD I. MELLER  
Attorneys for Taxpayer-Appellant  
KAHEAWA WIND POWER, LLC

Filing Fee Paid \$100.00



# **EXHIBIT A**

# **EXHIBIT A**



BEFORE THE BOARD OF REVIEW

COUNTY OF MAUI

STATE OF HAWAII

In the Matter of the  
Appeal of  
KAHEAWA WIND POWER II LLC

TMK NO. (2) 3-6-001-014-6001  
Address 3000 HONOAPIILANI HWY.,  
WAILUKU HI 96793

In the Matter of the  
Appeal of  
KAHEAWA WIND POWER, LLC

TMK NO. (2) 4-8-001-001-6001  
Address UKUMEHAME, LAHAINA HI 96761

Appeals of the Director of the Department of  
Finance, Real Property Assessment Division  
for year 2015

APPEAL NOS. 015939 and 015940

FINDINGS OF FACT, CONCLUSIONS OF  
LAW, AND DECISION AND ORDER;  
CERTIFICATE OF SERVICE

**FINDINGS OF FACT, CONCLUSIONS OF LAW, DECISION AND ORDER**

Appellant KAHEAWA WIND POWER II LLC, being the owner of real property located at 3000 HONOAPIILANI HWY., WAILUKU, Hawaii, and described for real property tax purposes as Tax Map Key No. (2) 3-6-001-014-6001 and Appellant KAHEAWA WIND POWER, LLC, being the owner of real property located at UKUMEHAME, LAHAINA, Hawaii, and described for real property tax purposes as Tax Map Key No. (2) 4-8-001-001-6001, timely filed their appeals, pursuant to §3.48.595, Maui County Code ("MCC") and §5-203-17, Rules of Practice and Procedure of the Board of Appeals ("Rules") of the real property tax assessments issued by the Director of the Department of Finance ("Director") by the Real Property Assessment Division, for the 2015 assessment year.

The appeals came on for hearing before the Board of Review (the "Board") on November 18, 2015, and the Board granted the Department's request to consolidate the appeals

for hearing as the issues raised were identical and the properties are similarly situated. Appellant did not appear at the hearing. Senior Real Property Technical Officer Marcy Martin and Deputy Corporation Counsel Brian Bilberry appeared on behalf of the Department of Finance, Real Property Assessment Division.

After hearing testimony presented by or on behalf of the Director, and review and consideration of the exhibits and other submittals by the parties, and after due deliberation, the Board hereby enters the following Findings of Fact, Conclusions of Law, and Decision and Order.

### **FINDINGS OF FACT**

1. To the extent that any finding of fact is more properly characterized as a conclusion of law, the Board adopts it as such.
2. Appellants, respectively, are the owner of the parcels of property identified hereinabove.
3. The assessment year being appealed is 2015.
4. Appellants allege:
  - a. That the assessment of each of the Properties exceeds by more than twenty (20) percent the assessment of market value used by the Director.
  - b. Lack of uniformity or inequality, brought about by the inability of the methods used or error in the application of the methods to the Properties.
  - c. Denial of an exemption to which the owners are entitled, namely "towers and turbines are not real property."
  - d. Illegality, or any ground arising under the Constitution or laws of the United States or the laws of the State or the ordinances of the County in addition to the illegality of the methods used.
5. Appellants stated that the Tax Appeal Court of the State of Hawaii has already ruled in the taxpayers' favor on this issue for prior tax years, and attached copies of a First Amended Final Judgment issued by the Tax Appeal Court to the appeals. The Appellants assert that the County is erroneously treating the towers and turbines as real property included in "building value" for real property tax purposes. The towers and turbines are actually machinery and equipment which is movable, and which is not real property.
6. The Department and its legal representative provided information related to an amendment of Chapter 3.48, Maui County Code ("Real Property Tax"), which took effect for tax

years beginning after January 1, 2014, which is relevant to the instant Appeal. The amendment to Section 3.48.005 added "any and all wind energy conversion property that is used to convert wind energy to a form of usable energy, including, but not limited to, a wind charger, windmill, wind turbine, tower and electrical equipment, pad mount transformers, power lines, and substation, and other such components" to the definition of "Property" or "Real property."

### **CONCLUSIONS OF LAW**

1. To the extent that any conclusion of law is more properly characterized as a finding of fact, the Board adopts it as such.
2. The Applicants timely filed each of the appeals, pursuant to §5-203-17, Board Rules.
3. Pursuant to §3.48.065, MCC, the assessments made by the Director are prima facie correct.
4. Notice of the hearing of the appeals was provided by the Director pursuant to §5-203-20.
5. The Board may not hear the Appellants' objections involving the Constitution or laws of the United States, pursuant to §3.48.655(C), MCC, and any such objections and claims have not been considered or determined herein.
6. Pursuant to §3.48.605, the Appellants have not shown that the Appellants are entitled to a reduction in the value as assessed by the Department.
7. The Appellants did not meet the burden of proof, being a preponderance of the evidence, pursuant to §5-203-23(f), Board Rules.

### **DECISION AND ORDER**

1. Upon consideration of all of the facts before the Board, oral argument and all submission, Board hereby denies the appeals.
2. As to the appeal of KAHEAWA WIND POWER II LLC, owner of real property located at 3000 HONOAPIILANI HWY., WAILUKU, Hawaii, and described for real property tax

purposes as Tax Map Key No. (2) 3-6-001-014-6001 for the tax year 2015, the Land Classification is CONSERVATION and Value of the Property is:

	VALUE	EXEMPTION	NET TAXABLE
Building	\$75,566,500	\$ 0	\$75,566,500
Land	\$486,400	\$ 0	\$486,400
<b>Total</b>	<b>\$76,052,900</b>	<b>\$ 0</b>	<b>\$76,052,900</b>

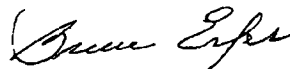
3. As to the appeal of KAHEAWA WIND POWER, LLC, being the owner of real property located at UKUMEHAME, LAHAINA, Hawaii, and described for real property tax purposes as Tax Map Key No. (2) 4-8-001-001-6001, for the tax year 2015, the Land Classification is CONSERVATION and Value of the Property is:

	VALUE	EXEMPTION	NET TAXABLE
Building	\$81,619,500	\$ 0	\$81,619,500
Land	\$576,000	\$ 0	\$576,000
<b>Total</b>	<b>\$82,195,500</b>	<b>\$ 0</b>	<b>\$82,195,500</b>

4. Any party may appeal this decision and order to the State of Hawaii, Tax Appeal Court, within 30 days after the filing of the Decision and Order, pursuant to §232-17, Hawaii Revised Statutes.

DATED: Wailuku, Maui, Hawaii, January 29, 2016.

BOARD OF REVIEW  
COUNTY OF MAUI



By: Bruce Erfer  
Chairman, Board of Review  
County of Maui

BEFORE THE BOARD OF REVIEW  
COUNTY OF MAUI  
STATE OF HAWAII

In the Matter of the  
Appeal of KAHEAWA WIND POWER II LLC

TMK NO. (2) 3-6-001-014-6001  
Address 3000 HONOAPIILANI HWY.,  
WAILUKU HI 96793

In the Matter of the  
Appeal of KAHEAWA WIND POWER, LLC

TMK NO. (2) 4-8-001-001-6001  
Address UKUMEHAME, LAHAINA HI 96761

Appeals of the Director of the Department of  
Finance, Real Property Assessment Division  
for year 2015

APPEAL NOS. 015939 and 015940

CERTIFICATE OF SERVICE

**CERTIFICATE OF SERVICE**

I HEREBY CERTIFY that on this date a true and correct copy of the foregoing document was duly served upon the following party by U.S. mail, postage prepaid, as follows:

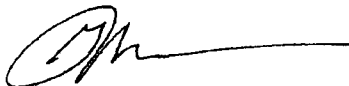
Name: KAHEAWA WIND POWER II LLC  
KAHEAWA WIND POWER, LLC

Address: C/O FIRST WIND ENERGY LLC  
179 LINCOLN ST, STE 500  
BOSTON MA 02111

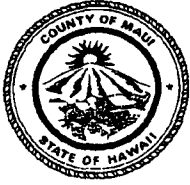
DATED: Waituku, Maui, Hawaii, January 29, 2016.

DEPARTMENT OF FINANCE  
REAL PROPERTY ASSESSMENT DIVISION  
COUNTY OF MAUI

Gery Madriaga



for: Danilo F. Agsalog  
Director of Finance  
County of Maui



COUNTY OF MAUI  
 REAL PROPERTY ASSESSMENT DIVISION  
 70 E. KAAHUMANU AVENUE, SUITE A16  
 KAHULUI, HI 96732  
 TELEPHONE: (808)270-7297

TB538HI

AMENDED NOTICE OF PROPERTY ASSESSMENT

Date: 01/29/2016

TMK/PARCEL ID	YEAR	OWNER	CLASS VAL OVR	LAND AREA	TYPE	CASE NUM
3-6-001-014-6001	2015	KAHEAWA WIND POWER II LLC	6	135.10	B	015939

ORIGINAL	VALUATION	EXEMPTION	NET TAXABLE	TAX RATES	TAXES
BLDG	75,566,500.00	0.00	75,566,500.00	5.90	445,842.35
LAND	486,400.00	0.00	486,400.00	5.90	2,869.76
TOTAL			76,052,900.00		448,712.11

AMENDED	VALUATION	EXEMPTION	NET TAXABLE	TAX RATES	TAXES
BLDG	75,566,500.00	0.00	75,566,500.00	5.90	445,842.35
LAND	486,400.00	0.00	486,400.00	5.90	2,869.76
TOTAL			76,052,900.00		448,712.11

PENALTY	0.00
OTHER	0.00
NET CHANGE	0.00
DEPOSIT	0.00

REASON: Board of Review

Board of Review Decision MCC 3.48.630 If you do not agree with the stipulated assessment or the Board of Review's decision you may appeal to the State of Hawaii Tax Appeal Court. The appeal deadline to Tax Appeal Court is 30 days from the date of this notice. Please contact the State of Hawaii, Tax Appeal Court, for the appropriate forms.

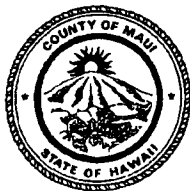
NOTES: BOR DECISION

KAHEAWA WIND POWER II LLC  
 C/O FIRST WIND ENERGY LLC  
 179 LINCOLN ST, STE 500  
 BOSTON MA 02111

ADMINISTRATOR

01/29/2016

Auth ID: RGF



COUNTY OF MAUI  
 REAL PROPERTY ASSESSMENT DIVISION  
 70 E. KAAHUMANU AVENUE, SUITE A16  
 KAHULUI, HI 96732  
 TELEPHONE: (808)270-7297

TB538HI

AMENDED NOTICE OF PROPERTY ASSESSMENT

Date: 01/29/2016

TMK/PARCEL ID	YEAR	OWNER	CLASS VAL OVR	LAND AREA	TYPE	CASE NUM
4-8-001-001-6001	2015	KAHEAWA WIND POWER, LLC	6	200.00	B	015940

ORIGINAL	VALUATION	EXEMPTION	NET TAXABLE	TAX RATES	TAXES
BLDG	81,619,500.00	0.00	81,619,500.00	5.90	481,555.05
LAND	576,000.00	0.00	576,000.00	5.90	3,398.40
<b>TOTAL</b>			<b>82,195,500.00</b>		<b>484,953.45</b>

AMENDED	VALUATION	EXEMPTION	NET TAXABLE	TAX RATES	TAXES
BLDG	81,619,500.00	0.00	81,619,500.00	5.90	481,555.05
LAND	576,000.00	0.00	576,000.00	5.90	3,398.40
<b>TOTAL</b>			<b>82,195,500.00</b>		<b>484,953.45</b>

PENALTY	0.00
OTHER	0.00
NET CHANGE	0.00
DEPOSIT	0.00

REASON: Board of Review

Board of Review Decision MCC 3.48.630 If you do not agree with the stipulated assessment or the Board of Review's decision you may appeal to the State of Hawaii Tax Appeal Court. The appeal deadline to Tax Appeal Court is 30 days from the date of this notice. Please contact the State of Hawaii, Tax Appeal Court, for the appropriate forms.

NOTES: BOR DECISION

KAHEAWA WIND POWER, LLC  
 C/O FIRST WIND ENERGY, LLC ATTN:  
 179 LINCOLN ST, #500  
 BOSTON MA 02111

ADMINISTRATOR

01/29/2016

Auth ID: RGF

TAX APPEAL COURT  
OF THE STATE OF HAWAII

In the Matter of the Appeal of

KAHEAWA WIND POWER,  
LLC,

Taxpayer-Appellant.

4-8-001-001-6001  
(2015 tax year)

T. A. No.

CERTIFICATE OF SERVICE

CERTIFICATE OF SERVICE

I hereby certify that copies of the foregoing Notice of Appeal to Tax Appeal Court will be mailed or delivered to the following parties immediately following filing and receipt of said Notice:

**Brian Bilberry, Esq.**

Deputy Corporation Counsel, County of Maui  
200 S. High St.  
Kalana O Maui Bldg  
Wailuku, HI 96793

**Real Property Tax Assessor**

County of Maui, Real Property Tax Division  
70 East Kaahumanu Ave, Suite A-16  
Kahului, HI 96732

**Real Property Tax Administrator**

County of Maui, Real Property Tax Division  
70 East Kaahumanu Ave, Suite A-16  
Kahului, HI 96732



**Maria Zielinski**  
Director of Taxation  
830 Punchbowl Street  
Honolulu, HI 96813

DATED: Honolulu, Hawaii, Feb 3, 2016.

TORKILDSON, KATZ, MOORE  
HETHERINGTON & HARRIS  
Attorneys at Law  
A Law Corporation



RONALD I. HELLER  
Attorneys for Taxpayer-Appellant  
KAHEAWA WIND POWER, LLC

RECEIVED  
RPA DIVISION

TAX APPEAL COURT  
STATE OF HAWAII  
FILED

TORKILDSON, KATZ, MOORE  
HETHERINGTON & HARRIS  
Attorneys at Law  
A Law Corporation

2016 SEP -9 PM 2: 13

DEPT. OF FINANCE  
COUNTY OF MAUI  
WAHAULA, HI 96793

2016 SEP -7 P 3: 19

KATHLEEN HANAWAHINE

CLERK

RONALD I. HELLER 2721  
700 Bishop Street, 15th Floor  
Honolulu, Hawaii 96813-4187  
Telephone: (808) 523-6000

Attorney for Taxpayer-Appellant  
KAHEAWA WIND POWER, LLC

TAX APPEAL COURT  
OF THE STATE OF HAWAII

In the Matter of the Appeal of

KAHEAWA WIND POWER,  
LLC,

Taxpayer-Appellant.

4-8-001-001-6001  
(2016 tax year)

Case No. 1 T.X. 16-1-0326

NOTICE OF APPEAL TO TAX  
APPEAL COURT FROM BOARD  
OF REVIEW; EXHIBITS A - D;  
CERTIFICATE OF SERVICE

NOTICE OF APPEAL TO TAX APPEAL COURT  
FROM BOARD OF REVIEW

I.

Appellant's name: KAHEAWA WIND POWER, LLC

Appellant's address: c/o First Wind Holdings, LLC  
179 Lincoln St., Suite 500  
Boston MA 02111

Appellant's Hawaii general excise tax license number: not relevant

RECEIVED  
CORPORATION COUNSEL  
2016 SEP 16 PM 12: 13

II.

Date of notice of assessment: Estimated date March 15, 2016

Date of decision of the Board of Review: August 26, 2016; copy attached as Exhibit A

(Revised decision issued on August 31, 2016, apparently intended to replace original decision; copy attached as Exhibit B)

III.

Nature of the tax: real property tax

Year or period for which determination was made: tax year 2016

IV.

Where real property tax is involved, furnish the following:

Location (Tax Map Key No.): 4-8-001-001-6001

Street Address: 3000 Honoapiilani Hwy

Appeal concerns (1) exemption, (2) improper and unlawful assessment procedure, (3) erroneous over-valuation, (4) incorrectly treating personal property as real property, (5) Illegality, on any ground arising under the Constitution or laws of the United States or the laws of the State or the ordinances of the County in addition to the ground of illegality of the methods used, and (6) an unlawful and improper attempt by the Board of Review to change its decision after the decision had been officially issued.

V.

The basis of this appeal is as follows:

1. The Assessor has erroneously and unlawfully treated personal property as "buildings" in determining the building value.

2. The legal issue of whether the towers and turbines on the Subject Property constitute real property has already been decided by this Court, for previous tax years. The Board of Review wrongly and improperly ignored this legal precedent. No change in the County ordinance can give the County the power to tax personal property, nor can it transmute personal property into real property.

3. The assessment is also erroneous by reason of overstating the fair market value of the subject property by more than twenty percent. The assessed amount and the "correct" value (before any exemption) are as follows:

Tax Year	Value per Assessment	"Correct" Value
2016	\$87,822,200	\$3,077,940

The assessed amount was reduced by the Board of Review to \$81,359,300 which is still far above the correct value. (See Exhibit A, attached.)

4. There is a lack of uniformity or inequality brought about by illegality of the methods used or error in the application of the methods to the property.

5. There has been a denial of an exemption to which the taxpayer is entitled; and/or

6. The assessment is illegal under the Constitution or laws of the United States, the State of Hawaii, and/or the County of Maui.

7. The Board of Review issued its FINDINGS OF FACT, CONCLUSIONS OF LAW, AND DECISION AND ORDER in the present case on **August 26, 2016** (Exhibit A), and thereafter had no further authority or jurisdiction in this case. Nevertheless, on **August 31, 2016** the Board of Review issued a subsequent and different FINDINGS OF FACT, CONCLUSIONS OF LAW, AND DECISION AND ORDER in the present case (Exhibit B), apparently intending to modify its decision. That document, although inconsistent with the original August 26, 2016 FINDINGS OF FACT, CONCLUSIONS OF LAW, AND DECISION AND ORDER, did not contain any statement that it was an amendment or correction to the prior FINDINGS OF FACT,

CONCLUSIONS OF LAW, AND DECISION AND ORDER. Instead, it was issued simultaneously with, and mailed in the same envelope as, another modified decision issued in a different case, Board of Review Case No. 16018000 (Exhibit C). The latter document (the modified decision in Case No. 16018000) had a notation clipped to it, saying:

**PLEASE NOTE:**

**Documents have been revised.  
Certification Date has been changed  
from August 26, 2016 to  
August 31, 2016.**

**Mahalo**

There was no such notation on the revised FINDINGS OF FACT, CONCLUSIONS OF LAW, AND DECISION AND ORDER in the present case. Moreover, both documents (the revised FINDINGS OF FACT, CONCLUSIONS OF LAW, AND DECISION AND ORDER in the present case and the modified decision in Case No. 16018000) were mailed to the Taxpayer in the same envelope, **post-marked September 1, 2016, not August 31, 2016**, the purported date of the documents. See Exhibit D, the envelope showing the postmark. Thus, the Board of Review attempted to issue an amended decision when it had no authority to do so, failed to actually label the amended decision as “amended” (or “corrected” or “revised” or “modified” or any similar label), and failed to actually serve it on the date it was issued.

8. In view of the clear law in Hawaii, the position taken by the Assessor in this case is not only wrong, but clearly frivolous and unjustified, and the Taxpayer should therefore receive an award of all of its costs and expenses in this action, including but not limited to attorneys’ fees.

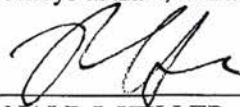
WHEREFORE, Taxpayer-Appellant prays that the Court enter its judgment herein:

- (1) declaring the real property assessment at issue in this case to be excessive, unlawful, null and void;
- (2) reducing the assessment to an amount that properly and correctly reflects the actual fair market value of the real property (excluding personal property).

- (3) finding and declaring that there is no tax (nor any penalty or interest) due from the Taxpayer-Appellant with respect to the subject property for the tax year at issue;
- (4) ordering a refund of any and all amounts paid on, or with respect to, the challenged assessments, together with interest as provided by law;
- (5) holding that the purported FINDINGS OF FACT, CONCLUSIONS OF LAW, AND DECISION AND ORDER issued on August 31, 2016 were improperly and unlawfully issued and are null and void, and/or
- (6) granting all other and further relief as the Court may deem appropriate and proper.

DATED: Honolulu, Hawaii, September 2, 2016.

TORKILDSON, KATZ, MOORE  
HETHERINGTON & HARRIS  
Attorneys at Law, A Law Corporation



---

RONALD I. HELLER  
Attorneys for Taxpayer-Appellant  
KAHEAWA WIND POWER, LLC

Filing Fee Paid \$100.00

**EXHIBIT A**

**EXHIBIT A**

County of Maui  
BEFORE THE BOARD OF REVIEW

COUNTY OF MAUI

STATE OF HAWAII

In the Matter of the  
Appeal of  
KAHEAWA WIND POWER, LLC

TMK NO. (2) 4-8-001-001-6001  
Address UKUMEHAME, LAHAINA, HI  
96761

Appeal of the Director of the Department of  
Finance, Real Property Assessment Division  
for year 2016

APPEAL NO. 16018028

FINDINGS OF FACT, CONCLUSIONS OF  
LAW, AND DECISION AND ORDER;  
CERTIFICATE OF SERVICE

**FINDINGS OF FACT, CONCLUSIONS OF LAW, DECISION AND ORDER**

Appellant KAHEAWA WIND POWER, LLC, (hereinafter "Appellant"), being the owner of real property located at UKUMEHAME, LAHAINA, Hawaii, and described for real property tax purposes as Tax Map Key No. (2) 4-8-001-001-6001 ("Property") timely filed an appeal, pursuant to §3.48.595, Maui County Code ("MCC") and §5-203-17, Rules of Practice and Procedure of the Board of Appeals ("Rules") of the real property tax assessment issued by the Director of the Department of Finance ("Director") by the Real Property Assessment Division, for the 2016 assessment year(s).

The appeal came on for hearing before the Board of Review (the "Board") on June 08, 2016. Appellant was not present at the hearing. Real Property Appraiser, Marcy Martin, appeared on behalf of the Department of Finance, Real Property Assessment Division.

The Board consolidated Appeal Nos. 16018139, 16018000, and 16018028.

After hearing testimony presented by or on behalf of Appellant and the Director, and review and consideration of the exhibits and other submittals by the parties, and after due deliberation, the Board hereby enters the following Findings of Fact, Conclusions of Law, and Decision and Order.

RECEIVED  
AUG 31 2016

Torkildson, Katz, Moore  
Hetherington & Harris



## FINDINGS OF FACT

1. To the extent that any finding of fact is more properly characterized as a conclusion of law, the Board adopts it as such.
2. Appellant is the owner of a parcel of property located at UKUMEHAME, LAHAINA, Hawaii, also designated as Tax Map Key No. (2) 4-8-001-001-6001.
3. The assessment year(s) being appealed is 2016.
4. Appellant alleges:
  - a. That the assessment of the Property exceeds by more than twenty (20) percent the assessment of market value used by the Director. Appellant stated that the total valuation for the Property is \$2,838,800.
  - b. Lack of uniformity or inequality, brought about by the inability of the methods used or error in the application of the methods to the Property.
  - c. Illegality, or any ground arising under the Constitution or laws of the United States or the laws of the State or the ordinances of the County in addition to the illegality of the methods used.
  - d. Denial of an exemption from real property tax on the basis that towers and wind turbines are not real property.
5. Appellant's submitted written testimony as follows:
  - a. Turbines are personal property, not real property.
  - b. Turbines are not affixed to the land in any permanent way. They are moveable machinery bolted in place.
  - c. Prior Hawaii case law determined that turbines are not real property.
  - d. Passage of a County ordinance including wind turbines in the definition of real property is improper as it puts a different label on the same property.
6. Appellant provided no evidence supporting its claim of lack of uniformity or inequality.
7. Appellant provided no evidence supporting existence of an exemption from real property taxes related to wind towers and turbines.
8. The Department provided documentation and testimony in support of wind turbines being classified as "real property" pursuant to §3.48.005, MCC, as well as information related to the Department's assessment of fair market value.

- a. The wind turbines are affixed permanently to foundations, and necessary to the utility of the foundations.
- b. There is no dispute that the foundations are permanently affixed to the land.
- c. It is not financially feasible to move the wind turbines, which is evidence of their being permanently fixed to the land for the economic life of the turbines.
- d. Removal of the turbines from the foundations, or the foundations from the land would damage the foundations and/or the land.
- e. There is no exemption from real property tax in the Maui County Code that is applicable to the wind turbines on the Property.

### CONCLUSIONS OF LAW

1. To the extent that any conclusion of law is more properly characterized as a finding of fact, the Board adopts it as such.
2. The Applicant timely filed its appeal, pursuant to §5-203-17, Board Rules.
3. Pursuant to §3.48.065, MCC, the assessment made by the Director is prima facie correct.
4. Notice of the hearing of the appeal was provided by the Director pursuant to §5-203-20.
5. "Property" or "real property" includes "Any and all wind energy conversion property that is used to convert wind energy to a form of usable energy, including, but not limited to, a wind charger, windmill, wind turbine, tower and electrical equipment, pad mount transformers, power lines, and substation, and other such components," pursuant to §3.48.005, MCC.
6. Pursuant to §3.48.605(A), MCC, the Appellant has not shown that the Appellant is entitled to a reduction in the value as assessed by the Department based upon the wind turbines not being "real property" and excluded from the valuation of the Property.
7. Pursuant to §3.48.605(B), MCC, the Appellant has not shown a lack of uniformity or inequality, brought about by inability of the methods used or error in the application of the methods to the Property.
8. Pursuant to §3.48.605(C), the Appellant failed to show that the assessment of the Property was illegal under the laws of the State of Hawaii or the ordinances of the County of Maui.

9. The Board may not hear the Appellant's objections involving the Constitution or laws of the United States, pursuant to §3.48.655(C), MCC, and any such objections or claims have not been considered or determined herein.

10. No exemption from real property tax exists for the wind towers or turbines located on the Property.

11. The Appellant did not meet its burden of proof, being a preponderance of the evidence, pursuant to §5-203-23(f), Board Rules.

**DECISION AND ORDER**

1. Upon consideration of all of the facts before the Board, oral argument, and all submissions, Board hereby denies the appeal.

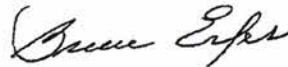
2. For the tax year 2016, the Land Classification is CONSERVATION and Value of the Property is:

	VALUE	EXEMPTION	NET TAXABLE
Building	\$80,872,900	\$ 0	\$80,872,900
Land	\$486,400	\$ 0	\$486,400
<b>Total</b>	<b>\$81,359,300</b>	<b>\$ 0</b>	<b>\$81,359,300</b>

3. Any party may appeal this decision and order to the State of Hawaii, Tax Appeal Court, within 30 days after the filing of the Decision and Order, pursuant to §232-17, Hawaii Revised Statutes.

DATED: Wailuku, Maui, Hawaii, August 26, 2016.

BOARD OF REVIEW  
COUNTY OF MAUI



By: Bruce Erfer  
Chairman, Board of Review  
County of Maui

BEFORE THE BOARD OF REVIEW

COUNTY OF MAUI

STATE OF HAWAII

In the Matter of the  
Appeal of  
KAHEAWA WIND POWER, LLC

TMK NO. (2) 4-8-001-001-6001  
Address UKUMEHAME, LAHAINA, HI  
96761

Appeal of the Director of the Department of  
Finance, Real Property Assessment Division  
for year 2016

APPEAL NO. 16018028  
CERTIFICATE OF SERVICE

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this date a true and correct copy of the foregoing document was duly served upon the following party by U.S. mail, postage prepaid, as follows:

Name: KAHEAWA WIND POWER II LLC  
Address: FIRST WIND ENERGY LLC  
179 LINCOLN ST., STE 500  
BOSTON, MA 02111

TORKILDSON, KATZ, MOORE, HETHERINGTON & HARRIS  
ATTN: RONALD I. HELLER  
700 BISHOP ST., 15<sup>TH</sup> FLOOR  
HONOLULU, HI 96813

Appellant: KAHEAWA WIND POWER, LLC

DATED: Wailuku, Maui, Hawaii, August 26, 2016.

DEPARTMENT OF FINANCE  
REAL PROPERTY ASSESSMENT DIVISION  
COUNTY OF MAUI  
Gery Madriaga



for: Danilo F. Agsalog  
Director of Finance

**EXHIBIT B**

**EXHIBIT B**

BEFORE THE BOARD OF REVIEW

COUNTY OF MAUI

STATE OF HAWAII

In the Matter of the  
Appeal of  
KAHEAWA WIND POWER, LLC

TMK NO. (2) 4-8-001-001-6001  
Address UKUMEHAME, LAHAINA,  
HI 96761

Appeal of the Director of the Department of  
Finance, Real Property Assessment Division  
for year 2016

APPEAL NO. 16018028

FINDINGS OF FACT, CONCLUSIONS OF  
LAW, AND DECISION AND ORDER;  
CERTIFICATE OF SERVICE

FINDINGS OF FACT, CONCLUSIONS OF LAW, DECISION AND ORDER

Appellant KAHEAWA WIND POWER LLC, (hereinafter "Appellant"), being the owner of real property located at UKUMEHAME, LANAINA, Hawaii, and described for real property tax purposes as Tax Map Key No. (2) 4-8-001-001-6001 ("Property") timely filed an appeal, pursuant to §3.48.595, Maui County Code ("MCC") and §5-203-17, Rules of Practice and Procedure of the Board of Appeals ("Rules") of the real property tax assessment issued by the Director of the Department of Finance ("Director") by the Real Property Assessment Division, for the 2016 assessment year(s).

The appeal came on for hearing before the Board of Review (the "Board") on June 08, 2016. Appellant was not present at the Hearing.

The Board consolidated Appeal No. 16018139, 16018000 and 16018028.

After hearing testimony presented by or on behalf of Appellant and the Director, and review and consideration of the exhibits and other submittals by the parties, and after due deliberation, the Board hereby enters the following Findings of Fact, Conclusions of Law, and Decision and Order.

RECEIVED  
SEP - 6 2016

Torkildson, Katz, Moore  
Hetherington & Harris

### FINDINGS OF FACT

1. To the extent that any finding of fact is more properly characterized as a conclusion of law, the Board adopts it as such.
2. Appellant is the owner of a parcel of property located at UKUMEHAME, LAHAINA, HAWAII also designated as Tax Map Key No. (2) 4-8-001-001-6001.
3. The assessment year(s) being appealed is 2016.
4. Appellant alleges:
  - a. That the assessment of the Property exceeds by more than twenty (20) percent the assessment of market value used by the Director. Appellant stated that the total valuation for the Property is \$2,838,000.
  - b. Lack of uniformity or inequality, brought about by the inability of the methods used or error in the application of the methods to the Property.
  - c. Illegality, or any ground arising under the constitution or laws of the United States or the laws of the State or the ordinances of the County in addition to the illegality of the methods.
  - d. Denial of an exemption from the real property tax on the basis that towers and wind turbines are not real property.
5. Appellant's submitted written testimony as follows:
  - a. Turbines are personal property, not real property. b.Lack of uniformity or inequality, brought about by the inability of the methods used or error in the application of the methods to the Property.
  - b. Turbines are not affixed to the land in any permanent way. They are moveable machinery bolted in place.
  - c. Prior Hawaii case law determined that turbines are not real property.
  - d. Passage of a County ordinance including wind turbines in the definition of real property is improper as it puts a different label on the same property.
6. Appellant provided no evidence supporting its claim of lack of uniformity or inequality.
7. Appellant provided no evidence supporting existence of an exemption from real property taxes related to wind towers and turbines.

8. The Department provided documentation and testimony in support of wind turbines being classified as "real property" pursuant to §3.48.005(C), MCC as well information related to the Department's assessment of fair market value.

- a. The wind turbines are affixed permanently to foundations, and necessary to the utility
- b. There is no dispute that the foundations are permanently affixed to the land.
- c. It is not financially feasible to move the wind turbines, which is evidence of there being permanently fixed to the land for the economic life of the turbines.
- d. Removal of the turbines from the foundations or the foundations from the land would damage the foundations and/or the land.
- e. There is no exemption from real property tax in the Maui County code that is applicable to the wind turbines on the Property.

#### CONCLUSIONS OF LAW

1. To the extent that any conclusion of law is more properly characterized as a finding of fact, the Board adopts it as such.

2. The Applicant timely filed its appeal, pursuant to §5-203-17, Board Rules.

3. Pursuant to §3.48.065, MCC, the assessment made by the Director is prima facie correct.

4. Notice of the hearing of the appeal was provided by the Director pursuant to §5-203-20.

5. "Property" or "real property" includes, "Any and all wind energy conversion property that is used to convert wind energy to a form of usable energy, including, but not limited to a wind charger, windmill, wind turbine, tower and electrical equipment, pad mount transformers, power lines, and substation, and other such components," pursuant to §3.48.005, MCC.

6. Pursuant to §3.48.605(A), MCC, the Appellant has not shown that the Appellant is entitled to a reduction in the value as assessed by the Department based upon the wind turbines not being "real property" and excluded from the valuation of the Property.

7. Pursuant to §3.48.005(B), MCC The Appellant has not shown a lack of uniformity or inequality, brought about by inability of the methods used or error in the application of the methods to the Property.



8. Pursuant to §3.48.065(C), MCC, the Appellant failed to show that the assessment of the Property was illegal under the laws of the State of Hawaii or the ordinances of the Maui County Code.

9. The Board may not hear the Appellant's objection involving the Constitution or laws of the United States, pursuant to §3.48.655(C), MCC, and any such objections or claims have not been considered or determined herein.

10. No exemption from real property tax exists for the wind towers or turbines located on the Property.

11. The Appellant did not meet its burden of proof, being a preponderance of the evidence, pursuant to §5-203-23(f), Board Rules., MCC

#### DECISION AND ORDER

1. Upon consideration of all of the facts before the Board, oral argument, and all submissions, Board hereby denies the appeal.

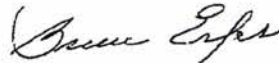
2. For the tax year 2016, the Land Classification is **CONSERVATION** and Value of the Property is:

	VALUE	EXEMPTION	NET TAXABLE
Building	\$87,246,200	\$ 0	\$87,246,200
Land	\$576,000	\$ 0	\$576,000
<b>Total</b>	<b>\$87,822,200</b>	<b>\$ 0</b>	<b>\$87,822,200</b>

3. Any party may appeal this decision and order to the State of Hawaii, Tax Appeal Court, within 30 days after the filing of the Decision and Order, pursuant to §232-17, Hawaii Revised Statutes.

DATED: Wailuku, Maui, Hawaii, August 31, 2016.

BOARD OF REVIEW  
COUNTY OF MAUI



By: Bruce Erfer  
Chairman, Board of Review  
County of Maui

TORKILDSON, KATZ, MOORE  
HETHERINGTON & HARRIS  
Attorneys at Law  
A Law Corporation

RONALD I. HELLER 2721  
700 Bishop Street, 15th Floor  
Honolulu, Hawaii 96813-4187  
Telephone: (808) 523-6000

Attorney for Taxpayer-Appellant  
KAHEAWA WIND POWER II, LLC

TAX APPEAL COURT  
STATE OF HAWAII  
FILED

2014 NOV 12 PM 3:11

KATHLEEN HANAWAHINE

CLERK

2014 NOV 13 AM 9:15  
RECEIVED

TAX APPEAL COURT  
OF THE STATE OF HAWAII

In the Matter of the Appeal of

KAHEAWA WIND POWER II,  
LLC,

Taxpayer-Appellant.

4-8-001-014-6001  
(2014)

1 T. X. 14-1-0267

**NOTICE OF APPEAL TO TAX  
APPEAL COURT FROM BOARD  
OF REVIEW; EXHIBIT A;  
CERTIFICATE OF SERVICE**

NOTICE OF APPEAL TO TAX APPEAL COURT  
FROM BOARD OF REVIEW

I.

Appellant's name: KAHEAWA WIND POWER II, LLC

Appellant's address: c/o First Wind Holdings, LLC  
179 Lincoln St., Suite 500  
Boston MA 02111

Appellant's Hawaii general excise tax license number: not relevant

II.

Date of notice of assessment: estimated date March 15, 2014

Date of decision of the Board of Review: October 31, 2014; copy attached as Exhibit A

III.

Nature of the tax: real property tax

Year or period for which determination was made: tax year 2014

IV.

Where real property tax is involved, furnish the following:

Location (Tax Map Key No.): 4-8-001-014-6001

Street Address: 3000 Honoapiilani Hwy

Appeal concerns (1) exemption, (2) improper and unlawful assessment procedure, (3) erroneous over-valuation, and (4) unjustified penalties

V.

The basis of this appeal is as follows:

1. The Assessor has erroneously and unlawfully treated personal property as “buildings” in determining the building value.

2. The legal issue of whether the towers and turbines on the Subject Property constitute real property has already been decided by this Court, for previous tax years. The Board of Review wrongly and improperly ignored this legal precedent.

3. The assessment is also erroneous by reason of overstating the fair market value of the subject property by more than ten percent. The assessed amount and the “correct” value (before any exemption) are as follows:

Tax Year	Value per Assessment	“Correct” Value
2014	\$71,854,800	\$2,814,276

4. There is a lack of uniformity or inequality brought about by illegality of the methods used or error in the application of the methods to the property.

5. There has been a denial of an exemption to which the taxpayer is entitled; and/or

6. The assessment is illegal under the Constitution or laws of the United States, the State of Hawaii, and/or the County of Maui.

7. In view of the clear law in Hawaii, the position taken by the Assessor in this case is not only wrong, but clearly frivolous and unjustified, and the Taxpayer should therefore receive an award of all of its costs and expenses in this action, including but not limited to attorneys’ fees.

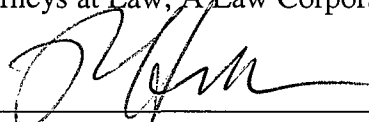
WHEREFORE, Taxpayer-Appellant prays that the Court enter its judgment herein:

- (1) declaring the real property assessment at issue in this case to be excessive, unlawful, null and void;
- (2) reducing the assessment to an amount that properly and correctly reflects the actual fair market value of the real property (excluding personal property).
- (3) finding and declaring that there is no tax (nor any penalty or interest) due from the Taxpayer-Appellant with respect to the subject property for the tax year at issue;

- (4) ordering a refund of any and all amounts paid on, or with respect to,  
the challenged assessments, together with interest as provided by law;  
and/or
- (5) granting all other and further relief as the Court may deem appropriate  
and proper.

DATED: Honolulu, Hawaii, November 12, 2014.

TORKILDSON, KATZ, MOORE  
HETHERINGTON & HARRIS  
Attorneys at Law, A Law Corporation



---

RONALD I. HELLER  
Attorneys for Taxpayer-Appellant  
KAHEAWA WIND POWER II, LLC

Filing Fee Paid \$100.00

ALAN M. ARAKAWA  
Mayor

**REAL PROPERTY ASSESSMENT DIVISION  
BOARD OF REVIEW**

DANILO F. AGSALOG  
Director of Finance

BRUCE ERFER  
Chair, Board of Review



In the Matter of the Tax Appeal of:  
**KAHEAWA WIND POWER II LLC**  
C/O FIRST WIND ENERGY LLC  
179 LINCOLN ST, STE 500  
BOSTON MA 02111

Tax Map Key No.: **(2) 360010146001**

Case No.: **14014479**

**DECISION AND ORDER:** Having heard the above entitled appeal and having considered all of the evidence presented thereon, the Board of Review ("Board") has determined that the classification and value of the property as of January 1, 2014 is:

Land Classification: 600  
CONSERVATION

	<u>VALUE</u>	<u>EXEMPTION</u>	<u>NET TAXABLE</u>
Building/Improvements	\$71,368,400	\$0	\$71,368,400
Land	\$486,400	\$0	\$486,400
Total	\$71,854,800	\$0	\$71,854,800

Upon consideration of all the facts before the Board, oral argument, and all submissions, the board finds:

**EVIDENCE PRESENTED BY THE APPELLANT DOES NOT DEMONSTRATE THAT THE APPELLANT IS ENTITLED TO AN ADJUSTMENT.**

The Appellant offered no evidence in support of its requests to (1) adjust the assessed value; (2) that the Department's assessment or valuation methods lacked uniformity or equality; or (3) Appellant's entitlement to any class of exemption.

After having carefully reviewed all of the Appellant's evidence, the Board concurred with the Department's determination that wind turbines and towers are "real property," pursuant to Section 3.48.005, Maui County Code, and further that the Department properly included such wind turbines and towers in the value of the buildings/improvements and deemed the Director's assessed value prima facie correct pursuant to Section 3.48.630, Maui County Code. The Appellant's appeal is therefore DENIED.

1. The Board met on October 15, 2014 to consider Appellant's Real Property Tax Appeal ("Hearing").
2. The appellant's representative, Attorney Ronald I. Heller, was not present at the Hearing.
3. Senior Real Property Technical Officer, Marcy Martin and Maui County Corporation Counsel Attorney, Richard Rost, appeared at the Hearing on behalf of the Department of Finance and presented an Appeal Report and oral testimony to the Board on the subject property.

October 31, 2014

Decision Filed:

Bruce Erfer, Chair, Board of Review

**CERTIFICATION**

I hereby certify this to be a true and correct copy of the original document which is on file in the office of the Director of Finance, County of Maui, Hawaii.

October 31, 2014

Date:

Gery Madriaga, for Director of Finance

Further Right of Appeal: Decisions of the Board of Review may be appealed to the State of Hawaii, Tax Appeal Court pursuant to Chapter 232, Hawaii Revised Statutes.

Exhibit A

TAX APPEAL COURT  
OF THE STATE OF HAWAII

In the Matter of the Appeal of

KAHEAWA WIND POWER,  
LLC,

Taxpayer-Appellant.

4-8-001-001-6001  
(2010)

T. A. No.

CERTIFICATE OF SERVICE

CERTIFICATE OF SERVICE

I hereby certify that copies of the foregoing Notice of Appeal to Tax Appeal Court will be mailed or delivered to the following parties immediately following filing and receipt of said Notice:

**Richard Rost, Esq.**  
Deputy Corporation Counsel, County of Maui  
200 S. High St.  
Kalana O Maui Bldg  
Wailuku, HI 96793

**Real Property Tax Assessor**  
County of Maui, Real Property Tax Division  
70 East Kaahumanu Ave, Suite A-16  
Kahului, HI 96732

**Real Property Tax Administrator**  
County of Maui, Real Property Tax Division  
70 East Kaahumanu Ave, Suite A-16  
Kahului, HI 96732

**Frederick D. Pablo**  
Director of Taxation  
830 Punchbowl Street  
Honolulu, HI 96813

DATED: Honolulu, Hawaii, 11/12, 2014.

TORKILDSON, KATZ, MOORE  
HETHERINGTON & HARRIS  
Attorneys at Law  
A Law Corporation



---

RONALD I. HELLER  
Attorneys for Taxpayer-Appellant  
KAHEAWA WIND POWER II, LLC



TORKILDSON, KATZ, MOORE  
HETHERINGTON & HARRIS  
Attorneys at Law  
A Law Corporation

RONALD I. HELLER 2721  
700 Bishop Street, 15th Floor  
Honolulu, Hawaii 96813-4187  
Telephone: (808) 523-6000

Attorney for Taxpayer-Appellant  
KAHEAWA WIND POWER II, LLC

TAX APPEAL COURT  
OF THE STATE OF HAWAII

In the Matter of the Appeal of

KAHEAWA WIND POWER II,  
LLC,

Taxpayer-Appellant.

4-8-001-014-6001  
(2015 tax year)

Case No. **1 T.X. 16-1-0273**

**NOTICE OF APPEAL TO TAX  
APPEAL COURT FROM BOARD  
OF REVIEW; EXHIBIT A;  
CERTIFICATE OF SERVICE**

NOTICE OF APPEAL TO TAX APPEAL COURT  
FROM BOARD OF REVIEW

I.

Appellant's name: KAHEAWA WIND POWER II, LLC

Appellant's address: c/o First Wind Holdings, LLC  
179 Lincoln St., Suite 500  
Boston MA 02111

Appellant's Hawaii general excise tax license number: not relevant

RECEIVED  
CORPORATION COUNSEL  
2016 FEB -5 PM 3: 25

II.

Date of notice of assessment: estimated date March 15, 2015

Date of decision of the Board of Review: January 29, 2016; copy attached as Exhibit A

III.

Nature of the tax: real property tax

Year or period for which determination was made: tax year 2015

IV.

Where real property tax is involved, furnish the following:

Location (Tax Map Key No.): 4-8-001-014-6001

Street Address: 3000 Honoapiilani Hwy

Appeal concerns (1) exemption, (2) improper and unlawful assessment procedure, (3) erroneous over-valuation, and (4) unjustified penalties

V.

The basis of this appeal is as follows:

1. The Assessor has erroneously and unlawfully treated personal property as “buildings” in determining the building value.

2. The legal issue of whether the towers and turbines on the Subject Property constitute real property has already been decided by this Court, for previous tax years. The Board of Review wrongly and improperly ignored this legal precedent. No change in the County ordinance can give the County the power to tax personal property, nor can it transmute personal property into real property.

3. The assessment is also erroneous by reason of overstating the fair market value of the subject property by more than ten percent. The assessed amount and the “correct” value (before any exemption) are as follows:

Tax Year	Value per Assessment	“Correct” Value
2015	\$76,052,900	\$2,604,559

4. There is a lack of uniformity or inequality brought about by illegality of the methods used or error in the application of the methods to the property.

5. There has been a denial of an exemption to which the taxpayer is entitled; and/or

6. The assessment is illegal under the Constitution or laws of the United States, the State of Hawaii, and/or the County of Maui.

7. In view of the clear law in Hawaii, the position taken by the Assessor in this case is not only wrong, but clearly frivolous and unjustified, and the Taxpayer should therefore receive an award of all of its costs and expenses in this action, including but not limited to attorneys’ fees.

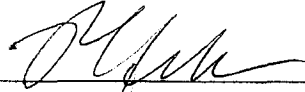
WHEREFORE, Taxpayer-Appellant prays that the Court enter its judgment herein:

- (1) declaring the real property assessment at issue in this case to be excessive, unlawful, null and void;
- (2) reducing the assessment to an amount that properly and correctly reflects the actual fair market value of the real property (excluding personal property).
- (3) finding and declaring that there is no tax (nor any penalty or interest) due from the Taxpayer-Appellant with respect to the subject property for the tax year at issue;

- (4) ordering a refund of any and all amounts paid on, or with respect to,  
the challenged assessments, together with interest as provided by law;  
and/or
- (5) granting all other and further relief as the Court may deem appropriate  
and proper.

DATED: Honolulu, Hawaii, February 3, 2016.

TORKILDSON, KATZ, MOORE  
HETHERINGTON & HARRIS  
Attorneys at Law, A Law Corporation



---

RONALD I. HELLER  
Attorneys for Taxpayer-Appellant  
KAHEAWA WIND POWER II, LLC

Filing Fee Paid \$100.00

# **EXHIBIT A**

# **EXHIBIT A**

BEFORE THE BOARD OF REVIEW

COUNTY OF MAUI

STATE OF HAWAII

In the Matter of the  
Appeal of  
KAHEAWA WIND POWER II LLC

TMK NO. (2) 3-6-001-014-6001  
Address 3000 HONOAPIILANI HWY.,  
WAILUKU HI 96793

APPEAL NOS. 015939 and 015940

FINDINGS OF FACT, CONCLUSIONS OF  
LAW, AND DECISION AND ORDER;  
CERTIFICATE OF SERVICE

In the Matter of the  
Appeal of  
KAHEAWA WIND POWER, LLC

TMK NO. (2) 4-8-001-001-6001  
Address UKUMEHAME, LAHAINA HI 96761

Appeals of the Director of the Department of  
Finance, Real Property Assessment Division  
for year 2015

**FINDINGS OF FACT, CONCLUSIONS OF LAW, DECISION AND ORDER**

Appellant KAHEAWA WIND POWER II LLC, being the owner of real property located at 3000 HONOAPIILANI HWY., WAILUKU, Hawaii, and described for real property tax purposes as Tax Map Key No. (2) 3-6-001-014-6001 and Appellant KAHEAWA WIND POWER, LLC, being the owner of real property located at UKUMEHAME, LAHAINA, Hawaii, and described for real property tax purposes as Tax Map Key No. (2) 4-8-001-001-6001, timely filed their appeals, pursuant to §3.48.595, Maui County Code ("MCC") and §5-203-17, Rules of Practice and Procedure of the Board of Appeals ("Rules") of the real property tax assessments issued by the Director of the Department of Finance ("Director") by the Real Property Assessment Division, for the 2015 assessment year.

The appeals came on for hearing before the Board of Review (the "Board") on November 18, 2015, and the Board granted the Department's request to consolidate the appeals

for hearing as the issues raised were identical and the properties are similarly situated. Appellant did not appear at the hearing. Senior Real Property Technical Officer Marcy Martin and Deputy Corporation Counsel Brian Bilberry appeared on behalf of the Department of Finance, Real Property Assessment Division.

After hearing testimony presented by or on behalf of the Director, and review and consideration of the exhibits and other submittals by the parties, and after due deliberation, the Board hereby enters the following Findings of Fact, Conclusions of Law, and Decision and Order.

### FINDINGS OF FACT

1. To the extent that any finding of fact is more properly characterized as a conclusion of law, the Board adopts it as such.
2. Appellants, respectively, are the owner of the parcels of property identified hereinabove.
3. The assessment year being appealed is 2015.
4. Appellants allege:
  - a. That the assessment of each of the Properties exceeds by more than twenty (20) percent the assessment of market value used by the Director.
  - b. Lack of uniformity or inequality, brought about by the inability of the methods used or error in the application of the methods to the Properties.
  - c. Denial of an exemption to which the owners are entitled, namely "towers and turbines are not real property."
  - d. Illegality, or any ground arising under the Constitution or laws of the United States or the laws of the State or the ordinances of the County in addition to the illegality of the methods used.
5. Appellants stated that the Tax Appeal Court of the State of Hawaii has already ruled in the taxpayers' favor on this issue for prior tax years, and attached copies of a First Amended Final Judgment issued by the Tax Appeal Court to the appeals. The Appellants assert that the County is erroneously treating the towers and turbines as real property included in "building value" for real property tax purposes. The towers and turbines are actually machinery and equipment which is movable, and which is not real property.
6. The Department and its legal representative provided information related to an amendment of Chapter 3.48, Maui County Code ("Real Property Tax"), which took effect for tax

years beginning after January 1, 2014, which is relevant to the instant Appeal. The amendment to Section 3.48.005 added “any and all wind energy conversion property that is used to convert wind energy to a form of usable energy, including, but not limited to, a wind charger, windmill, wind turbine, tower and electrical equipment, pad mount transformers, power lines, and substation, and other such components” to the definition of “Property” or “Real property.”

### **CONCLUSIONS OF LAW**

1. To the extent that any conclusion of law is more properly characterized as a finding of fact, the Board adopts it as such.
2. The Applicants timely filed each of the appeals, pursuant to §5-203-17, Board Rules.
3. Pursuant to §3.48.065, MCC, the assessments made by the Director are prima facie correct.
4. Notice of the hearing of the appeals was provided by the Director pursuant to §5-203-20.
5. The Board may not hear the Appellants' objections involving the Constitution or laws of the United States, pursuant to §3.48.655(C), MCC, and any such objections and claims have not been considered or determined herein.
6. Pursuant to §3.48.605, the Appellants have not shown that the Appellants are entitled to a reduction in the value as assessed by the Department.
7. The Appellants did not meet the burden of proof, being a preponderance of the evidence, pursuant to §5-203-23(f), Board Rules.

### **DECISION AND ORDER**

1. Upon consideration of all of the facts before the Board, oral argument and all submission, Board hereby denies the appeals.
2. As to the appeal of KAHEAWA WIND POWER II LLC, owner of real property located at 3000 HONOAPIILANI HWY., WAILUKU, Hawaii, and described for real property tax



purposes as Tax Map Key No. (2) 3-6-001-014-6001 for the tax year 2015, the Land Classification is CONSERVATION and Value of the Property is:

	VALUE	EXEMPTION	NET TAXABLE
Building	\$75,566,500	\$ 0	\$75,566,500
Land	\$486,400	\$ 0	\$486,400
<b>Total</b>	<b>\$76,052,900</b>	<b>\$ 0</b>	<b>\$76,052,900</b>

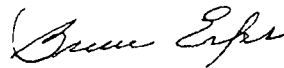
3. As to the appeal of KAHEAWA WIND POWER, LLC, being the owner of real property located at UKUMEHAME, LAHAINA, Hawaii, and described for real property tax purposes as Tax Map Key No. (2) 4-8-001-001-6001, for the tax year 2015, the Land Classification is CONSERVATION and Value of the Property is:

	VALUE	EXEMPTION	NET TAXABLE
Building	\$81,619,500	\$ 0	\$81,619,500
Land	\$576,000	\$ 0	\$576,000
<b>Total</b>	<b>\$82,195,500</b>	<b>\$ 0</b>	<b>\$82,195,500</b>

4. Any party may appeal this decision and order to the State of Hawaii, Tax Appeal Court, within 30 days after the filing of the Decision and Order, pursuant to §232-17, Hawaii Revised Statutes.

DATED: Wailuku, Maui, Hawaii, January 29, 2016.

BOARD OF REVIEW  
COUNTY OF MAUI



By: Bruce Erfer  
Chairman, Board of Review  
County of Maui

BEFORE THE BOARD OF REVIEW  
COUNTY OF MAUI  
STATE OF HAWAII

In the Matter of the  
Appeal of KAHEAWA WIND POWER II LLC

TMK NO. (2) 3-6-001-014-6001  
Address 3000 HONOAPIILANI HWY.,  
WAILUKU HI 96793

In the Matter of the  
Appeal of KAHEAWA WIND POWER, LLC

TMK NO. (2) 4-8-001-001-6001  
Address UKUMEHAME, LAHAINA HI 96761

Appeals of the Director of the Department of  
Finance, Real Property Assessment Division  
for year 2015

APPEAL NOS. 015939 and 015940

CERTIFICATE OF SERVICE

**CERTIFICATE OF SERVICE**

I HEREBY CERTIFY that on this date a true and correct copy of the foregoing document was duly served upon the following party by U.S. mail, postage prepaid, as follows:

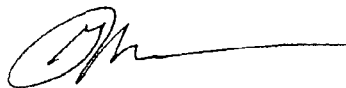
Name: KAHEAWA WIND POWER II LLC  
KAHEAWA WIND POWER, LLC

Address: C/O FIRST WIND ENERGY LLC  
179 LINCOLN ST, STE 500  
BOSTON MA 02111

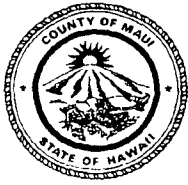
DATED: Wailuku, Maui, Hawaii, January 29, 2016.

DEPARTMENT OF FINANCE  
REAL PROPERTY ASSESSMENT DIVISION  
COUNTY OF MAUI

Gery Madriaga



for: Danilo F. Agsalog  
Director of Finance  
County of Maui



COUNTY OF MAUI  
 REAL PROPERTY ASSESSMENT DIVISION  
 70 E. KAAHUMANU AVENUE, SUITE A16  
 KAHULUI, HI 96732  
 TELEPHONE: (808)270-7297

TB538HI

AMENDED NOTICE OF PROPERTY ASSESSMENT

Date: 01/29/2016

TMK/PARCEL ID	YEAR	OWNER	CLASS VAL	OVR	LAND AREA	TYPE	CASE NUM
3-6-001-014-6001	2015	KAHEAWA WIND POWER II LLC	6		135.10	B	015939

ORIGINAL	VALUATION	EXEMPTION	NET TAXABLE	TAX RATES	TAXES
BLDG	75,566,500.00	0.00	75,566,500.00	5.90	445,842.35
LAND	486,400.00	0.00	486,400.00	5.90	2,869.76
TOTAL			76,052,900.00		448,712.11

AMENDED	VALUATION	EXEMPTION	NET TAXABLE	TAX RATES	TAXES
BLDG	75,566,500.00	0.00	75,566,500.00	5.90	445,842.35
LAND	486,400.00	0.00	486,400.00	5.90	2,869.76
TOTAL			76,052,900.00		448,712.11

PENALTY	0.00
OTHER	0.00
NET CHANGE	0.00
DEPOSIT	0.00

REASON: Board of Review

Board of Review Decision MCC 3.48.630 If you do not agree with the stipulated assessment or the Board of Review's decision you may appeal to the State of Hawaii Tax Appeal Court. The appeal deadline to Tax Appeal Court is 30 days from the date of this notice. Please contact the State of Hawaii, Tax Appeal Court, for the appropriate forms.

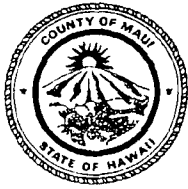
NOTES: BOR DECISION

KAHEAWA WIND POWER II LLC  
 C/O FIRST WIND ENERGY LLC  
 179 LINCOLN ST, STE 500  
 BOSTON MA 02111

ADMINISTRATOR

01/29/2016

Auth ID: RGF



COUNTY OF MAUI  
 REAL PROPERTY ASSESSMENT DIVISION  
 70 E. KAAHUMANU AVENUE, SUITE A16  
 KAHULUI, HI 96732  
 TELEPHONE: (808)270-7297

TB538HI

AMENDED NOTICE OF PROPERTY ASSESSMENT

Date: 01/29/2016

TMK/PARCEL ID	YEAR	OWNER	CLASS VAL	OVR	LAND AREA	TYPE	CASE NUM
4-8-001-001-6001	2015	KAHEAWA WIND POWER, LLC	6		200.00	B	015940

ORIGINAL	VALUATION	EXEMPTION	NET TAXABLE	TAX RATES	TAXES
BLDG	81,619,500.00	0.00	81,619,500.00	5.90	481,555.05
LAND	576,000.00	0.00	576,000.00	5.90	3,398.40
TOTAL			82,195,500.00		484,953.45

AMENDED	VALUATION	EXEMPTION	NET TAXABLE	TAX RATES	TAXES
BLDG	81,619,500.00	0.00	81,619,500.00	5.90	481,555.05
LAND	576,000.00	0.00	576,000.00	5.90	3,398.40
TOTAL			82,195,500.00		484,953.45

PENALTY	0.00
OTHER	0.00
NET CHANGE	0.00
DEPOSIT	0.00

REASON: Board of Review

Board of Review Decision MCC 3.48.630 If you do not agree with the stipulated assessment or the Board of Review's decision you may appeal to the State of Hawaii Tax Appeal Court. The appeal deadline to Tax Appeal Court is 30 days from the date of this notice. Please contact the State of Hawaii, Tax Appeal Court, for the appropriate forms.

NOTES: BOR DECISION

KAHEAWA WIND POWER, LLC  
 C/O FIRST WIND ENERGY, LLC ATTN:  
 179 LINCOLN ST, #500  
 BOSTON MA 02111

ADMINISTRATOR

01/29/2016

Auth ID: RGF

TAX APPEAL COURT  
OF THE STATE OF HAWAII

In the Matter of the Appeal of

KAHEAWA WIND POWER,  
LLC,

Taxpayer-Appellant.

4-8-001-001-6001  
(2015 tax year)

T. A. No.

CERTIFICATE OF SERVICE

CERTIFICATE OF SERVICE

I hereby certify that copies of the foregoing Notice of Appeal to Tax Appeal Court will be mailed or delivered to the following parties immediately following filing and receipt of said Notice:

**Brian Bilberry, Esq.**

Deputy Corporation Counsel, County of Maui  
200 S. High St.  
Kalana O Maui Bldg.  
Wailuku, HI 96793

**Real Property Tax Assessor**

County of Maui, Real Property Tax Division  
70 East Kaahumanu Ave, Suite A-16  
Kahului, HI 96732

**Real Property Tax Administrator**

County of Maui, Real Property Tax Division  
70 East Kaahumanu Ave, Suite A-16  
Kahului, HI 96732

**Maria Zielinski**  
Director of Taxation  
830 Punchbowl Street  
Honolulu, HI 96813

DATED: Honolulu, Hawaii, Feb 3, 2016.

TORKILDSON, KATZ, MOORE  
HETHERINGTON & HARRIS  
Attorneys at Law  
A Law Corporation



---

RONALD I. HELLER  
Attorneys for Taxpayer-Appellant  
KAHEAWA WIND POWER II, LLC

RECEIVED  
RPA DIVISION

TAX APPEAL COURT  
STATE OF HAWAII  
FILED

TORKILDSON, KATZ, MOORE  
HETHERINGTON & HARRIS  
Attorneys at Law  
A Law Corporation

2016 SEP -9 PM 2:12

DEPT. OF FINANCE  
COUNTY OF MAUI  
WAILUKO, HI 96793

2016 SEP -7 P 3:19

KATHLEEN HANAWAHINE

RONALD I. HELLER 2721  
700 Bishop Street, 15th Floor  
Honolulu, Hawaii 96813-4187  
Telephone: (808) 523-6000

CLERK

Attorney for Taxpayer-Appellant  
KAHEAWA WIND POWER II, LLC

TAX APPEAL COURT  
OF THE STATE OF HAWAII

In the Matter of the Appeal of

KAHEAWA WIND POWER II,  
LLC,

Taxpayer-Appellant.

(2)3-6-001-014-6001  
(2016 tax year)

Case No. 1 T.X. 16-1-0327

**NOTICE OF APPEAL TO TAX  
APPEAL COURT FROM BOARD  
OF REVIEW; EXHIBITS A-B;  
CERTIFICATE OF SERVICE**

NOTICE OF APPEAL TO TAX APPEAL COURT  
FROM BOARD OF REVIEW

I.

Appellant's name: KAHEAWA WIND POWER II, LLC

Appellant's address: c/o First Wind Holdings, LLC  
179 Lincoln St., Suite 500  
Boston MA 02111

Appellant's Hawaii general excise tax license number: not relevant

RECEIVED  
CORPORATION COUNSEL  
2016 SEP 16 PM 12:13

II.

Date of notice of assessment: estimated date March 15, 2016

Date of decision of the Board of Review: August 26, 2016; copy attached as Exhibit A:  
Decision was purportedly re-issued on August 31,  
2016 (Exhibit B)

III.

Nature of the tax: real property tax

Year or period for which determination was made: tax year 2016

IV.

Where real property tax is involved, furnish the following:

Location (Tax Map Key No.): (2)3-6-001-014-6001

Street Address: 3000 Honoapiilani Hwy

Appeal concerns (1) exemption, (2) improper and unlawful assessment procedure, (3) erroneous over-valuation, and (4) incorrectly treating personal property as real property, (5) Illegality, on any ground arising under the Constitution or laws of the United States or the laws of the State or the ordinances of the County in addition to the ground of illegality of the methods used, and (6) an unlawful and improper attempt by the Board of Review to change its decision after the decision had been officially issued.

V.

The basis of this appeal is as follows:

1. The Assessor has erroneously and unlawfully treated personal property as “buildings” in determining the building value.



2. The legal issue of whether the towers and turbines on the Subject Property constitute real property has already been decided by this Court, for previous tax years. The Board of Review wrongly and improperly ignored this legal precedent. No change in the County ordinance can give the County the power to tax personal property, nor can it transmute personal property into real property.

3. The assessment is also erroneous by reason of overstating the fair market value of the subject property by more than twenty percent. The assessed amount and the "correct" value (before any exemption) are as follows:

Tax Year	Value per Assessment	"Correct" Value
2016	\$81,359,300	\$2,604,559

4. There is a lack of uniformity or inequality brought about by illegality of the methods used or error in the application of the methods to the property.

5. There has been a denial of an exemption to which the taxpayer is entitled; and/or

6. The assessment is illegal under the Constitution or laws of the United States, the State of Hawaii, and/or the County of Maui.

7. The Board of Review issued its FINDINGS OF FACT, CONCLUSIONS OF LAW, AND DECISION AND ORDER in the present case on **August 26, 2016** (Exhibit A), and thereafter had no further authority or jurisdiction in this case. Nevertheless, on **August 31, 2016** the Board of Review improperly and unlawfully re-issued its FINDINGS OF FACT, CONCLUSIONS OF LAW, AND DECISION AND ORDER in the present case (Exhibit B).

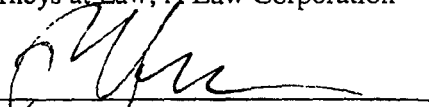
8. In view of the clear law in Hawaii, the position taken by the Assessor in this case is not only wrong, but clearly frivolous and unjustified, and the Taxpayer should therefore receive an award of all of its costs and expenses in this action, including but not limited to attorneys' fees.

WHEREFORE, Taxpayer-Appellant prays that the Court enter its judgment herein:

- (1) declaring the real property assessment at issue in this case to be excessive, unlawful, null and void;
- (2) reducing the assessment to an amount that properly and correctly reflects the actual fair market value of the real property (excluding personal property).
- (3) finding and declaring that there is no tax (nor any penalty or interest) due from the Taxpayer-Appellant with respect to the subject property for the tax year at issue;
- (4) ordering a refund of any and all amounts paid on, or with respect to, the challenged assessments, together with interest as provided by law; and/or
- (5) granting all other and further relief as the Court may deem appropriate and proper.

DATED: Honolulu, Hawaii, September 7, 2016.

TORKILDSON, KATZ, MOORE  
HETHERINGTON & HARRIS  
Attorneys at Law, A Law Corporation



---

RONALD I. HELLER  
Attorneys for Taxpayer-Appellant  
KAHEAWA WIND POWER II, LLC

Filing Fee Paid \$100.00

**EXHIBIT A**

**EXHIBIT A**

**BEFORE THE BOARD OF REVIEW**

**COUNTY OF MAUI**

**STATE OF HAWAII**

In the Matter of the  
Appeal of  
KAHEAWA WIND POWER II LLC

TMK NO. (2) 3-6-001-014-6001  
Address 3000 HONOAPIILANI HWY,  
WAILUKU, HI 96793

Appeal of the Director of the Department of  
Finance, Real Property Assessment Division  
for year 2016

APPEAL NO. 16018000

FINDINGS OF FACT, CONCLUSIONS OF  
LAW, AND DECISION AND ORDER;  
CERTIFICATE OF SERVICE

**FINDINGS OF FACT, CONCLUSIONS OF LAW, DECISION AND ORDER**

Appellant KAHEAWA WIND POWER II LLC, (hereinafter "Appellant"), being the owner of real property located at 3000 HONOAPIILANI HWY, WAILUKU, Hawaii, and described for real property tax purposes as Tax Map Key No. (2) 3-6-001-014-6001 ("Property") timely filed an appeal, pursuant to §3.48.595, Maui County Code ("MCC") and §5-203-17, Rules of Practice and Procedure of the Board of Appeals ("Rules") of the real property tax assessment issued by the Director of the Department of Finance ("Director") by the Real Property Assessment Division, for the 2016 assessment year(s).

The appeal came on for hearing before the Board of Review (the "Board") on June 08, 2016. Appellant was not present at the hearing. Real Property Appraiser, Marcy Martin, appeared on behalf of the Department of Finance, Real Property Assessment Division.

The Board consolidated Appeal Nos. 16018139, 16018000, and 16018028.

After hearing testimony presented by or on behalf of Appellant and the Director, and review and consideration of the exhibits and other submittals by the parties, and after due deliberation, the Board hereby enters the following Findings of Fact, Conclusions of Law, and Decision and Order.

**RECEIVED**  
AUG 31 2016

**Torkildson, Katz, Moore  
Hetherington & Harris**

## FINDINGS OF FACT

1. To the extent that any finding of fact is more properly characterized as a conclusion of law, the Board adopts it as such.
2. Appellant is the owner of a parcel of property located at 3000 HONOAPIILANI HWY, WAILUKU, HAWAII, also designated as Tax Map Key No. (2) 3-6-001-014-6001.
3. The assessment year(s) being appealed is 2016.
4. Appellant alleges:
  - a. That the assessment of the Property exceeds by more than twenty (20) percent the assessment of market value used by the Director. Appellant stated that the total valuation for the Property is \$2,064,600.
  - b. Lack of uniformity or inequality, brought about by the inability of the methods used or error in the application of the methods to the Property.
  - c. Illegality, or any ground arising under the Constitution or laws of the United States or the laws of the State or the ordinances of the County in addition to the illegality of the methods used.
  - d. Denial of an exemption from real property tax on the basis that towers and wind turbines are not real property.
5. Appellant's submitted written testimony as follows:
  - a. Turbines are personal property, not real property.
  - b. Turbines are not affixed to the land in any permanent way. They are moveable machinery bolted in place.
  - c. Prior Hawaii case law determined that turbines are not real property.
  - d. Passage of a County ordinance including wind turbines in the definition of real property is improper as it puts a different label on the same property.
6. Appellant provided no evidence supporting its claim of lack of uniformity or inequality.
7. Appellant provided no evidence supporting existence of an exemption from real property taxes related to wind towers and turbines.

8. The Department provided documentation and testimony in support of wind turbines being classified as "real property" pursuant to §3.48.005, MCC, as well as information related to the Department's assessment of fair market value.

- a. The wind turbines are affixed permanently to foundations, and necessary to the utility of the foundations.
- b. There is no dispute that the foundations are permanently affixed to the land.
- c. It is not financially feasible to move the wind turbines, which is evidence of their being permanently fixed to the land for the economic life of the turbines.
- d. Removal of the turbines from the foundations, or the foundations from the land would damage the foundations and/or the land.
- e. There is no exemption from real property tax in the Maui County Code that is applicable to the wind turbines on the Property.

#### **CONCLUSIONS OF LAW**

1. To the extent that any conclusion of law is more properly characterized as a finding of fact, the Board adopts it as such.

2. The Applicant timely filed its appeal, pursuant to §5-203-17, Board Rules.

3. Pursuant to §3.48.065, MCC, the assessment made by the Director is prima facie correct.

4. Notice of the hearing of the appeal was provided by the Director pursuant to §5-203-20.

5. "Property" or "real property" includes "Any and all wind energy conversion property that is used to convert wind energy to a form of usable energy, including, but not limited to, a wind charger, windmill, wind turbine, tower and electrical equipment, pad mount transformers, power lines, and substation, and other such components," pursuant to §3.48.005, MCC.

6. Pursuant to §3.48.605(A), MCC, the Appellant has not shown that the Appellant is entitled to a reduction in the value as assessed by the Department based upon the wind turbines not being "real property" and excluded from the valuation of the Property.

7. Pursuant to §3.48.605(B), MCC, the Appellant has not shown a lack of uniformity or inequality, brought about by inability of the methods used or error in the application of the methods to the Property.

8. Pursuant to §3.48.605(C), the Appellant failed to show that the assessment of the Property was illegal under the laws of the State of Hawaii or the ordinances of the County of Maui.

9. The Board may not hear the Appellant's objections involving the Constitution or laws of the United States, pursuant to §3.48.655(C), MCC, and any such objections or claims have not been considered or determined herein.

10. No exemption from real property tax exists for the wind towers or turbines located on the Property.

11. The Appellant did not meet its burden of proof, being a preponderance of the evidence, pursuant to §5-203-23(f), Board Rules.

**DECISION AND ORDER**

1. Upon consideration of all of the facts before the Board, oral argument, and all submissions, Board hereby denies the appeal.

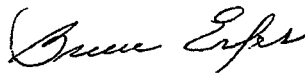
2. For the tax year 2016, the Land Classification is CONSERVATION and Value of the Property is:

	VALUE	EXEMPTION	NET TAXABLE
Building	\$80,872,900	\$ 0	\$80,872,900
Land	\$486,400	\$ 0	\$486,400
<b>Total</b>	<b>\$81,359,300</b>	<b>\$ 0</b>	<b>\$81,359,300</b>

3. Any party may appeal this decision and order to the State of Hawaii, Tax Appeal Court, within 30 days after the filing of the Decision and Order, pursuant to §232-17, Hawaii Revised Statutes.

DATED: Wailuku, Maui, Hawaii, August 26, 2016.

BOARD OF REVIEW  
COUNTY OF MAUI



By: Bruce Erfer  
Chairman, Board of Review  
County of Maui

**BEFORE THE BOARD OF REVIEW**

**COUNTY OF MAUI**

**STATE OF HAWAII**

In the Matter of the  
Appeal of  
KAHEAWA WIND POWER II LLC

TMK NO. (2) 3-6-001-014-6001  
Address 3000 HONOAPIILANI HWY,  
WAILUKU, HI 96793

Appeal of the Director of the Department of  
Finance, Real Property Assessment Division  
for year 2016

APPEAL NO. 16018000  
CERTIFICATE OF SERVICE

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this date a true and correct copy of the foregoing document was duly served upon the following party by U.S. mail, postage prepaid, as follows:

Name: KAHEAWA WIND POWER II LLC  
Address: FIRST WIND ENERGY LLC  
179 LINCOLN ST., STE 500  
BOSTON, MA 02111

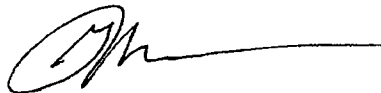
TORKILDSON, KATZ, MOORE, HETHERINGTON & HARRIS  
ATTN: RONALD I. HELLER  
700 BISHOP ST., 15<sup>TH</sup> FLOOR  
HONOLULU, HI 96813

Appellant: KAHEAWA WIND POWER II LLC

DATED: Wailuku, Maui, Hawaii, August 26, 2016.

DEPARTMENT OF FINANCE  
REAL PROPERTY ASSESSMENT DIVISION  
COUNTY OF MAUI

Gery Madriaga



for: Danilo F. Agsalog  
Director of Finance



# **EXHIBIT B**

# **EXHIBIT B**

BEFORE THE BOARD OF REVIEW

COUNTY OF MAUI

STATE OF HAWAII

In the Matter of the  
Appeal of  
KAHEAWA WIND POWER II LLC

TMK NO. (2) 3-6-001-014-6001  
Address 3000 HONOAPIILANI HWY,  
WAILUKU, HI 96793

Appeal of the Director of the Department of  
Finance, Real Property Assessment Division  
for year 2016

APPEAL NO. 16018000

FINDINGS OF FACT, CONCLUSIONS OF  
LAW, AND DECISION AND ORDER;  
CERTIFICATE OF SERVICE

FINDINGS OF FACT, CONCLUSIONS OF LAW, DECISION AND ORDER

Appellant KAHEAWA WIND POWER II LLC, (hereinafter "Appellant"), being the owner of real property located at 3000 HONOAPIILANI HWY, WAILUKU, Hawaii, and described for real property tax purposes as Tax Map Key No. (2) 3-6-001-014-6001 ("Property") timely filed an appeal, pursuant to §3.48.595, Maui County Code ("MCC") and §5-203-17, Rules of Practice and Procedure of the Board of Appeals ("Rules") of the real property tax assessment issued by the Director of the Department of Finance ("Director") by the Real Property Assessment Division, for the 2016 assessment year(s).

The appeal came on for hearing before the Board of Review (the "Board") on June 08, 2016. Appellant was not present at the Hearing.

The Board consolidated Appeal No. 16018139, 16018000 and 16018028.

After hearing testimony presented by or on behalf of Appellant and the Director, and review and consideration of the exhibits and other submittals by the parties, and after due deliberation, the Board hereby enters the following Findings of Fact, Conclusions of Law, and Decision and Order.

**PLEASE NOTE:**

Documents have been revised.  
Certification Date has been changed  
from August 26, 2016 to  
August 31, 2016.

Mahalo

RECEIVED  
SEP - 6 2016

Torkildson, Katz, Moore  
Hetherington & Harris

## FINDINGS OF FACT

1. To the extent that any finding of fact is more properly characterized as a conclusion of law, the Board adopts it as such.
2. Appellant is the owner of a parcel of property located at **3000 HONOAPIILANI HWY, WAILUKU, HAWAII**, also designated as Tax Map Key No. (2) 3-6-001-014-6001.
3. The assessment year(s) being appealed is 2016.
4. Appellant alleges:
  - a. That the assessment of the Property exceeds by more than twenty (20) percent the assessment of market value used by the Director. Appellant stated that the total valuation for the Property is **\$2,064,600**.
  - b. Lack of uniformity or inequality, brought about by the inability of the methods used or error in the application of the methods to the Property.
  - c. Illegality, or any ground arising under the Constitution or laws of the United States or the laws of the State or the ordinances of the County in addition to the illegality of the methods used.
  - d. Denial of an exemption from real property tax on the basis that towers and wind turbines are not real property.
5. Appellant submitted written testimony as follows.
  - a. Turbines are personal property, not real property.
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  - c. Prior Hawaii case law determined that turbines are not real property.
  - d. Passage of County ordinance including wind turbines in the definition of real property is improper as it puts a different label on the same property.
6. Appellant provided no evidence supporting its claim of lack of uniformity or inequality.
7. Appellant provided no evidence supporting existence of an exemption from real property taxes related to wind towers and turbines.
8. The Department provided documentation and testimony in support of wind turbines being classified as "real property" pursuant to §3.48.005, MCC, as well as information related to the Departments assessment of fair market value.

- a. The wind turbines are affixed permanently to foundations and necessary to the utility of the foundations.
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- d. Removal of the turbines from the foundations or the foundations from the land would damage the foundations and/or the land.
- e. There is no exemption from real property tax in the Maui county code that is applicable to the wind turbines on the Property.

### **CONCLUSIONS OF LAW**

1. To the extent that any conclusion of law is more property characterized as a find of fact, the Board adopts it as such.
2. The Applicant timely filed its appeal, pursuant to §5-203-17, Board Rules.
3. Pursuant to §3.48.065, MCC, the assessment made by the Director is prima facie correct.
4. Notice of the hearing of the appeal was provided by the Director pursuant to §5-203-20.
5. "Property" or "real property" includes, "Any and all wind energy conversion property that is used to convert wind energy to a form of usable energy, including but not limited to, a wind charger, windmill, wind turbine, tower and electrical equipment, pad mount transformers, power lines and substation, and other such components" pursuant to §3.48.005, MCC.
6. Pursuant to §3.48.605(A), MCC, the Appellant has not shown that the Appellant is entitled to a reduction in the value as assessed by the Department based on upon the wind turbines not being "real property" and excluded from the valuation of the Property.
7. Pursuant to §3.48.605(B), MCC, the Appellant has not shown a lack of uniformity or inequality, brought about by the inability of the methods used or error in the application of the methods to the Property.
8. Pursuant to §3.48.605(C), MCC, the Appellant failed to show that the assessment of the Property was illegal under the laws of the State of Hawaii or the ordinances of the County of Maui.

9. The Board may not hear the Appellant's objections to involving the Constitution or laws of the United States, pursuant to §3.48.655(C), and any such objections or claims have not been considered or determined herein.

10. No exemption from real property tax exists for the wind towers or turbines located on the Property.

11. The Appellant **did not** meet its burden of proof, being a preponderance of the evidence, pursuant to §5-203-23(f), Board Rules.

### DECISION AND ORDER

1. Upon consideration of all of the facts before the Board, oral argument, and all submissions, Board hereby denies the appeal.

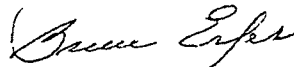
2. For the tax year 2016, the Land Classification is **CONSERVATION** and Value of the Property is:

	VALUE	EXEMPTION	NET TAXABLE
Building	\$80,872,900	\$ 0	\$80,872,900
Land	\$486,400	\$ 0	\$486,400
<b>Total</b>	<b>\$81,359,300</b>	<b>\$ 0</b>	<b>\$81,359,300</b>

3. Any party may appeal this decision and order to the State of Hawaii, Tax Appeal Court, within 30 days after the filing of the Decision and Order, pursuant to §232-17, Hawaii Revised Statutes.

DATED: Wailuku, Maui, Hawaii, August 31, 2016.

BOARD OF REVIEW  
COUNTY OF MAUI



By: Bruce Erfer  
Chairman, Board of Review  
County of Maui

**BEFORE THE BOARD OF REVIEW**

**COUNTY OF MAUI**

**STATE OF HAWAII**

In the Matter of the  
Appeal of  
**KAHEAWA WIND POWER II LLC**

TMK NO. (2) 3-6-001-014-6001  
Address **3000 HONOAPIILANI HWY,  
WAILUKU, HI 96793**

Appeal of the Director of the Department of  
Finance, Real Property Assessment Division  
for year **2016**

**APPEAL NO. 16018000**  
**CERTIFICATE OF SERVICE**

**CERTIFICATE OF SERVICE**

I HEREBY CERTIFY that on this date a true and correct copy of the foregoing document was duly served upon the following party by U.S. mail, postage prepaid, as follows:

Name: **KAHEAWA WIND POWER II LLC**  
Address: **FIRST WIND ENERGY LLC**  
**179 LINCOLN ST., STE 500**  
**BOSTON, MA 02111**

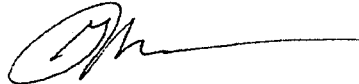
**TORKILDSON, KATZ, MOORE, HETHERINGTON & HARRIS**  
**ATTN: RONALD I. HELLER**  
**700 BISHOP ST., 15<sup>TH</sup> FLOOR**  
**HONOLULU, HI 96813**

Appellant: **KAHEAWA WIND POWER II LLC**

DATED: Wailuku, Maui, Hawaii, August 31, 2016.

DEPARTMENT OF FINANCE  
REAL PROPERTY ASSESSMENT DIVISION  
COUNTY OF MAUI

Gery Madriaga



for: Danilo F. Agsalog  
Director of Finance  
County of Maui

TAX APPEAL COURT  
OF THE STATE OF HAWAII

In the Matter of the Appeal of

KAHEAWA WIND POWER II,  
LLC,

Taxpayer-Appellant.

(2)3-6-001-014-6001  
(2016 tax year)

T. A. No.

CERTIFICATE OF SERVICE

CERTIFICATE OF SERVICE

I hereby certify that copies of the foregoing Notice of Appeal to Tax Appeal Court will be mailed or delivered to the following parties immediately following filing and receipt of said Notice:

**Brian Bilberry, Esq.**

**Thomas Kolbe, Esq.**

Deputy Corporation Counsel, County of Maui  
200 S. High St.  
Kalana O Maui Bldg  
Wailuku, HI 96793

**Real Property Tax Assessor**

County of Maui, Real Property Tax Division  
70 East Kaahumanu Ave, Suite A-16  
Kahului, HI 96732

**Real Property Tax Administrator**

County of Maui, Real Property Tax Division  
70 East Kaahumanu Ave, Suite A-16  
Kahului, HI 96732

**Maria Zielinski**  
Director of Taxation  
830 Punchbowl Street  
Honolulu, HI 96813

DATED: Honolulu, Hawaii, September 7, 2016.

TORKILDSON, KATZ, MOORE  
HETHERINGTON & HARRIS  
Attorneys at Law  
A Law Corporation



---

RONALD I. HELLER  
Attorneys for Taxpayer-Appellant  
KAHEAWA WIND POWER II, LLC



MAUI COUNTY  
REAL PROPERTY ASSESSMENT DIVISION  
ASSESSMENT LIST  
TAXYR = 2016

---TAX MAP KEY---

----- BUILDING VALUES -----

----- LAND VALUES -----

---APPEAL AMOUNT IN DISPUTE ---

Z S	PLT	PAR	HPR	PT	GROSS	EXEMPT	NET	GROSS	EXEMPT	NET	BUILDING	LAND	TOTAL
			3 5										
			PLAT:	035	39,258,100	18,025,000	21,233,100	24,211,500	0	24,211,500	0	0	0

PARCEL COUNT	116	PITT COUNT	116	APPEAL COUNT	0
PITT	COUNT				
0	0				
1	26	7,531,400	0	7,531,400	4,730,300
10	0				
2	0				
3	0				
4	0				
5	0				
6	0				
7	0				
8	0				
9	90	31,726,700	18,025,000	13,701,700	19,481,200

SECTION	5	PARCEL COUNT	3,198	PITT COUNT	3,200	APPEAL COUNT	16
PITT	COUNT						
0	0						
1	553	143,197,000	1,330,800	141,866,200	143,929,500	1,836,900	142,092,600
10	0						
2	229	57,179,900	0	57,179,900	29,036,800	0	29,036,800
3	16	16,515,400	0	16,515,400	47,716,900	0	47,716,900
4	19	6,769,700	0	6,769,700	14,996,100	0	14,996,100
5	73	5,261,100	0	5,261,100	17,159,800	1,740,900	15,418,900
6	5	1,700	0	1,700	57,600	0	57,600
7	0						
8	0						
9	2,305	821,660,600	454,494,200	367,166,400	447,796,300	12,894,800	434,901,500
3-6-001-005-0000	9	710,800	200,000	510,800	1,487,300	0	1,487,300
3-6-001-014-6001	6	80,872,900	0	80,872,900	486,400	0	486,400
3-6-001-015-0000	6	0	0	0	5,700	0	5,700
3-6-001-018-0000	5	0	0	0	4,300	0	4,300
3-6-001-024-0000	1	79,000	0	79,000	1,528,100	0	1,528,100
3-6-001-025-0000	3	834,600	0	834,600	841,900	0	841,900
3-6-001-028-0000	1	226,000	0	226,000	1,526,100	0	1,526,100
3-6-001-030-0000	9	174,500	174,500	0	1,483,600	25,500	1,458,100
3-6-001-031-0000	1	117,200	0	117,200	1,481,700	0	1,481,700
3-6-001-032-0000	1	59,400	0	59,400	1,519,100	0	1,519,100
3-6-001-033-0000	9	625,900	200,000	425,900	1,445,000	0	1,445,000
3-6-001-034-0001	3	86,800	86,800	0	185,100	185,100	0
3-6-001-034-0002	3	275,000	0	275,000	185,100	0	185,100
3-6-001-035-0000	9	165,000	165,000	0	1,449,700	35,000	1,414,700
3-6-001-036-0000	9	217,000	200,000	17,000	1,491,500	0	1,491,500
3-6-001-051-0000	3	0	0	0	2,000	0	2,000

# **EXHIBIT C**

# **EXHIBIT C**

BEFORE THE BOARD OF REVIEW

COUNTY OF MAUI

STATE OF HAWAII

In the Matter of the  
Appeal of  
KAHEAWA WIND POWER II LLC

TMK NO. (2) 3-6-001-014-6001  
Address 3000 HONOAPIILANI HWY,  
WAILUKU, HI 96793

Appeal of the Director of the Department of  
Finance, Real Property Assessment Division  
for year 2016

APPEAL NO. 16018000

FINDINGS OF FACT, CONCLUSIONS OF  
LAW, AND DECISION AND ORDER;  
CERTIFICATE OF SERVICE

**FINDINGS OF FACT, CONCLUSIONS OF LAW, DECISION AND ORDER**

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After hearing testimony presented by or on behalf of Appellant and the Director, and review and consideration of the exhibits and other submittals by the parties, and after due deliberation, the Board hereby enters the following Findings of Fact, Conclusions of Law, and Decision and Order.

RECEIVED  
SEP - 6 2016

Torkildson, Katz, Moore  
Hetherington & Harris

**PLEASE NOTE:**

Documents have been revised.  
Certification Date has been changed  
from August 26, 2016 to  
August 31, 2016.

Mahalo

## FINDINGS OF FACT

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  - b. Lack of uniformity or inequality, brought about by the inability of the methods used or error in the application of the methods to the Property.
  - c. Illegality, or any ground arising under the Constitution or laws of the United States or the laws of the State or the ordinances of the County in addition to the illegality of the methods used.
  - d. Denial of an exemption from real property tax on the basis that towers and wind turbines are not real property.
5. Appellant submitted written testimony as follows.
  - a. Turbines are personal property, not real property.
  - b. Turbines are not affixed to the land in any permanent way. They are moveable machinery bolted in place.
  - c. Prior Hawaii case law determined that turbines are not real property.
  - d. Passage of County ordinance including wind turbines in the definition of real property is improper as it puts a different label on the same property.
6. Appellant provided no evidence supporting its claim of lack of uniformity or inequality.
7. Appellant provided no evidence supporting existence of an exemption from real property taxes related to wind towers and turbines.
8. The Department provided documentation and testimony in support of wind turbines being classified as "real property" pursuant to §3.48.005, MCC, as well as information related to the Departments assessment of fair market value.

- a. The wind turbines are affixed permanently to foundations and necessary to the utility of the foundations.
- b. There is no dispute that the foundations are permanently affixed to the land.
- c. It is not financially feasible to move the wind turbines, which is evidence of their being permanently fixed to the land for the economic life of the turbines.
- d. Removal of the turbines from the foundations or the foundations from the land would damage the foundations and/or the land.
- e. There is no exemption from real property tax in the Maui county code that is applicable to the wind turbines on the Property.

### CONCLUSIONS OF LAW

1. To the extent that any conclusion of law is more property characterized as a find of fact, the Board adopts it as such.
2. The Applicant timely filed its appeal, pursuant to §5-203-17, Board Rules.
3. Pursuant to §3.48.065, MCC, the assessment made by the Director is prima facie correct.
4. Notice of the hearing of the appeal was provided by the Director pursuant to §5-203-20.
5. "Property" or "real property" includes, "Any and all wind energy conversion property that is used to convert wind energy to a form of usable energy, including but not limited to, a wind charger, windmill, wind turbine, tower and electrical equipment, pad mount transformers, power lines and substation, and other such components" pursuant to §3.48.005, MCC.
6. Pursuant to §3.48.605(A), MCC, the Appellant has not shown that the Appellant is entitled to a reduction in the value as assessed by the Department based on upon the wind turbines not being "real property" and excluded from the valuation of the Property.
7. Pursuant to §3.48.605(B), MCC, the Appellant has not shown a lack of uniformity or inequality, brought about by the inability of the methods used or error in the application of the methods to the Property.
8. Pursuant to §3.48.605(C), MCC, the Appellant failed to show that the assessment of the Property was illegal under the laws of the State of Hawaii or the ordinances of the County of Maui.

9. The Board may not hear the Appellant's objections to involving the Constitution or laws of the United States, pursuant to §3.48.655(C), and any such objections or claims have not been considered or determined herein.

10. No exemption from real property tax exists for the wind towers or turbines located on the Property.

11. The Appellant **did not** meet its burden of proof, being a preponderance of the evidence, pursuant to §5-203-23(f), Board Rules.

### DECISION AND ORDER

1. Upon consideration of all of the facts before the Board, oral argument, and all submissions, Board hereby **denies** the appeal.

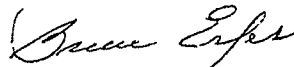
2. For the tax year 2016, the Land Classification is **CONSERVATION** and Value of the Property is:

	VALUE	EXEMPTION	NET TAXABLE
Building	\$80,872,900	\$ 0	\$80,872,900
Land	\$486,400	\$ 0	\$486,400
<b>Total</b>	<b>\$81,359,300</b>	<b>\$ 0</b>	<b>\$81,359,300</b>

3. Any party may appeal this decision and order to the State of Hawaii, Tax Appeal Court, within 30 days after the filing of the Decision and Order, pursuant to §232-17, Hawaii Revised Statutes.

DATED: Wailuku, Maui, Hawaii, August 31, 2016.

BOARD OF REVIEW  
COUNTY OF MAUI



By: Bruce Erfer  
Chairman, Board of Review  
County of Maui

**BEFORE THE BOARD OF REVIEW**

**COUNTY OF MAUI**

**STATE OF HAWAII**

In the Matter of the  
Appeal of  
**KAHEAWA WIND POWER II LLC**

TMK NO. (2) 3-6-001-014-6001  
Address **3000 HONOAPIILANI HWY,  
WAILUKU, HI 96793**

Appeal of the Director of the Department of  
Finance, Real Property Assessment Division  
for year 2016

**APPEAL NO. 16018000**  
**CERTIFICATE OF SERVICE**

**CERTIFICATE OF SERVICE**

I HEREBY CERTIFY that on this date a true and correct copy of the foregoing document was duly served upon the following party by U.S. mail, postage prepaid, as follows:

Name: **KAHEAWA WIND POWER II LLC**  
Address: **FIRST WIND ENERGY LLC  
179 LINCOLN ST., STE 500  
BOSTON, MA 02111**

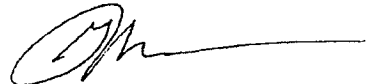
**TORKILDSON, KATZ, MOORE, HETHERINGTON & HARRIS  
ATTN: RONALD I. HELLER  
700 BISHOP ST., 15<sup>TH</sup> FLOOR  
HONOLULU, HI 96813**

Appellant: **KAHEAWA WIND POWER II LLC**

DATED: Wailuku, Maui, Hawaii, August 31, 2016.

DEPARTMENT OF FINANCE  
REAL PROPERTY ASSESSMENT DIVISION  
COUNTY OF MAUI

Gery Madriaga



for: Danilo F. Agsalog  
Director of Finance  
County of Maui