

COUNCIL OF THE COUNTY OF MAUI
PARKS, RECREATION, ENERGY, AND
LEGAL AFFAIRS COMMITTEE

March 24, 2017

Committee
Report No. _____

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

Chair and Members:

Your Parks, Recreation, Energy, and Legal Affairs Committee, having met on March 7, 2017, makes reference to County Communication 17-6, from Council Chair Mike White, relating to litigation matters.

By correspondence dated February 28, 2017, the Department of the Corporation Counsel requested consideration of possible settlement options for tax appeals 14-1-0266, 16-1-0272, 16-1-0326, 14-1-0267, 16-1-0273, and 16-1-0327 by Kaheawa Wind Power, LLC and Kaheawa Wind Power II, LLC. Attached to the request is a proposed resolution entitled "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." The purpose of the proposed resolution is to authorize settlement of the appeals.

Your Committee notes Section 3.16.020(B), Maui County Code, requires Council authorization for any settlement of claims or civil litigation in excess of the authority granted by that provision.

A Deputy Corporation Counsel provided a brief overview of the case. He said the issue in these tax appeals is whether the wind turbines have been properly assessed in the valuation of real property for property tax purposes.

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

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

Following the executive meeting, your Committee reconvened in regular session. Based on the information received and the recommendation of the Department, your Committee voted 7-0 to recommend adoption of the proposed resolution to authorize settlement of the appeals under the terms discussed in the executive meeting. Committee Chair Guzman, Vice-Chair King, and members Atay, Cochran, Crivello, Sugimura, and White voted "aye." Committee members Carroll and Hokama were excused.

Your Parks, Recreation, Energy, and Legal Affairs Committee RECOMMENDS that Resolution _____, attached hereto, entitled "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," be ADOPTED.

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



DON S. GUZMAN, Chair

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Resolution

No. _____

AUTHORIZING SETTLEMENT 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

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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:

A handwritten signature in black ink, appearing to read 'B. Bilberry', is written over a horizontal line.

BRIAN A. BILBERRY
Deputy Corporation Counsel
County of Maui