

STATE OF HAWAII  
DEPARTMENT OF HAWAIIAN HOME LANDS

March 29, 2023

To: Chairman and Members, Hawaiian Homes Commission

From: Peter “Kahana” Albinio, Jr., Acting Administrator  
Land Management Division ~~K/A~~

Subject: Approval to Issue a Right-of-Entry Permit for due diligence purposes and Conditional Approval for a General Lease (25-years with options to extend) to Nexamp Solar, LLC, a Delaware limited liability company, for an additional 19.33 acres to the 27.6 acre portion of Hawaiian Home Lands previously approved by the Hawaiian Homes Commission at its regularly scheduled monthly meeting held on October 17-18, 2022, to develop a second 3MW solar plus battery storage project, whereby two (2) “co-located” solar plus battery storage projects would be developed and generate a total of up to 6MW of energy, and encompass a total land area of 46.93 acres of Hawaiian Home Lands, Tax Map Key No. (3) 7-3-010:007 (por.), Kalaoa, Hawai‘i Island.

APPLICANT:

NEXAMP SOLAR, LLC “NEXAMP”

RECOMMENDED MOTION/ACTION:

That the Hawaiian Homes Commission authorize the following:

1. Issuance of a Right -of-Entry Permit (“ROE”) to NEXAMP demising an additional portion of approximately 19.33-acres of Hawaiian Home Lands that when combined with its initial solar plus battery storage project site of 27.6 acres would encompass a total of 46.93 identified more specifically by TMK No. (3) 7-3-010:007 (por.), situated at Kalaoa, Hawaii Island as shown in Exhibits “A-1-4” attached hereto. The ROE shall be for due diligence activities to assess the potential of developing a solar project (“project”) that will generate 6 Megawatts of energy;
2. Conditional approval of the General Lease to NEXAMP or its authorized assignee for the development, construction, operation, management, and maintenance of the project on said parcel as identified, to be more fully described in a metes and bounds survey, and necessary non-exclusive licenses for access, maintenance, and other project purposes upon exercising the option for the General Lease;
3. Issuance of the ROE and the General Lease shall be upon the proposed terms and conditions attached hereto as Exhibit “B”;

4. Delegate authority to the HHC Chairman to negotiate the final terms and conditions of the ROE and General Lease with NEXAMP, and ancillary documents reasonably necessary or contemplated in connection with the project; and
5. Prescribe such terms and conditions deemed prudent and necessary by the Hawaiian Homes Commission.

LOCATION:

Hawaiian Home Lands situated at Kalaoa, Island of Hawaii, identified as TMK No.: (3) 7-3-010:007(por.) (See Exhibit “A-1-4”) .

AREA:

Containing additional approximate land area covering of 19.33 acres that when combined with the initially approved land area covering 27.6 acres would encompass a total land area of 46.93 acres

DISCUSSION:

The Need for this Approval

This request to add additional acreage is required to approve the entire project. This request addresses a typographical error that was missed by numerous seasoned staff who reviewed draft documents in DHHL’s shop and Nexamp’s shop. This motion is necessary to make the project whole.

In November 2022, HECO announced that they selected seven (7) projects to roll-out their new initiative of community-based renewable energy aka community solar. All seven projects were Nexamp projects, including the Kalaoa project. HECO and Nexamp expect to finalize the Power Purchase Agreement at the end of March. At that time, Nexamp must demonstrate that they have secured site control for the land necessary to implement the project. Our involvement and support of this project has never wavered; but our involvement in this project since 2020 has been considerably longer than usual, and during that time, both DHHL and Nexamp has had key personnel changes which could have contributed to the inadvertent, but significant error.

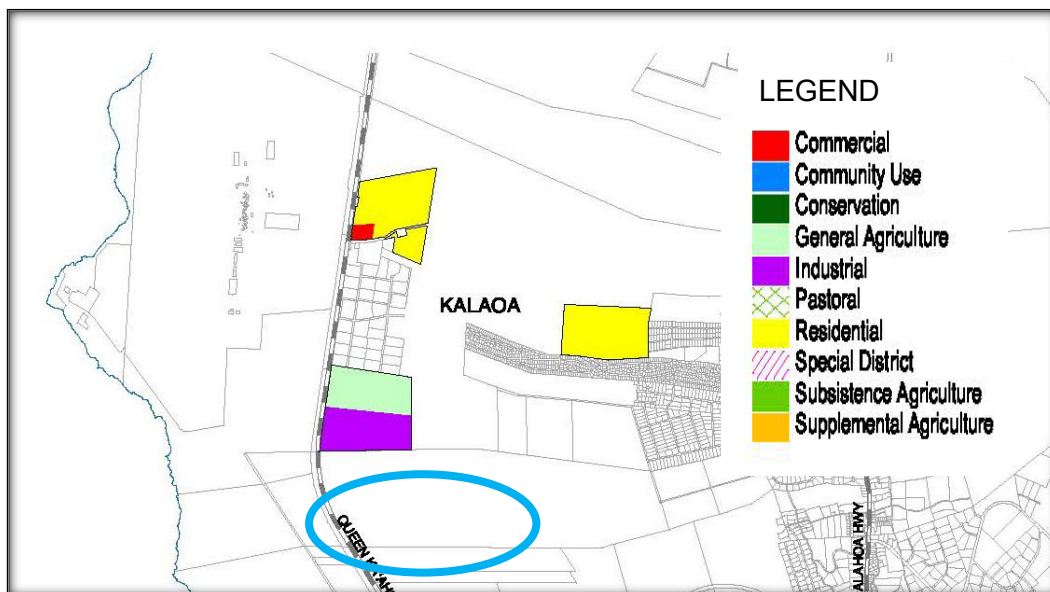
When the HHC took this item up for decision-making at its October 2022 meeting that convened in Hilo (See Exhibit “C”), we discovered that the submittal only included 27.6 acres. An attempt was made to amend the motion to include the correct amount of acreage (46.93 acres) but the Deputy AG pointed out that a 27.6 acre project is substantively different from a 46.93-acre project. Moreover, when the Deputy AG reviewed the presentation we made during the two (2) public hearings, he discovered that the presentation also conveyed the smaller area of 27.6 acres. As a result, we were instructed to conduct the required 2 public hearings on the Big Island, followed by a special meeting of the HHC in order to present the correct amount of acreage for the project which is 46.93 acres. Since the public hearing presentations, the HHC agenda, and the HHC submittal were consistent in indicating the acreage of 27.6 acres, the HHC decided to approve the motion. So we have approval for 27.6 acres of a 46.93-acre project. We conducted

the 2 required public hearings on March 28, 2023, and March 29, 2023 and our presentation materials presented the entire project area of 46.93 acres. The motion before you is the last approval that is required to cover the entire project area which will provide Nexamp the documentation that HECO requires to demonstrate site control.

#### Why DHHL Staff Supports this project

1. The idea of developing a renewable energy project on DHHL lands at Kalaoa was a beneficiary suggestion that came up during the Kealahou-La'i 'Ōpua Regional Plan Update meetings conducted in 2009 and 2019. In both updates, the development of a renewable energy solar project at Kalaoa received enough beneficiary votes to be one of the top five (5) projects that were identified in the respective update of the Regional Plan as a Priority Project.
2. The DHHL Kalaoa site is an ideal location for the development of a renewable energy solar plus battery storage project. The parcel is located along the Queen Ka'ahumanu Highway, across the entrance to the Natural Energy Laboratory of Hawai'i Authority/HOST Park. There are no nearby residential homes. The Hawai'i Island Plan designated the 100-acre parcel for Industrial uses which is consistent with the development of a solar plus battery storage project (see map below).

#### **ISLAND PLAN LAND USE DESIGNATIONS DHHL KALAOA LANDS**



3. DHHL was successful in securing project fees in addition to a higher base lease rent with an annual escalation of 1% for the duration of the project.
4. DHHL secured a generous benefit package, including a one-time donation of \$40,000 that would be distributed to the homestead associations in the region to support their good work.
5. DHHL secured the opportunity for homestead lessees and wait list applicants to sign up as subscribers to the Kalaoa project. All subscriber fees have been waived (sign up for free). In order to qualify, the lessee or applicant must reside on the Big Island and must

have a household income that is 80% or below the Area Median Income. The income limits to qualify as a low-to-moderate income household are established annually by HUD. Beneficiaries who qualify may sign up as subscribers to the Kalaoa Community Solar Project and will receive an estimated 10% discount on your monthly electric bill. We are very excited about securing benefits for Applicants on the Wait List because that is an unprecedented benefit. Unfortunately, if you already have solar panels on your house—if you already participate in a HECO solar program, you will not be able to be a subscriber.

6. Since all seven (7) community based renewable energy projects selected by HECO are Nexamp projects, we are in discussions with them to see if lessees and applicants on Maui and O‘ahu can sign up as subscribers to receive the reduction in their monthly electric bill.
7. The total compensation package for the Kalaoa project covering the 46.93 acre portion of the subject TMK, would generate a total of \$3,169,692 for DHHL over the initial twenty-five (25) year ROE/GL term as proposed. The total does not include any revenue from the three (3) optional 5-year extensions provided by the terms of the lease. The terms of each extension would be negotiated/determined at that time.

The Kalaoa Nexamp Community Solar Project Summary Sheet is attached as Exhibit “D”

The ROE would convert to a General Lease upon: 1) completion of an Environmental Assessment and Finding of No Significant Impact; and 2) securing a Power Purchase Agreement (PPA) from HECO.

*Since we have engaged in beneficiary consultation meetings, two rounds of public hearings, and other activities to support this project since 2020, the table below provides summary highlights of those activities in chronological order.*

**Table 1**  
**Community Based Renewable Energy Project at Kalaoa, Kailua-Kona**  
**Summary Highlights and Timeframe of Activities Completed**

ACTIVITIES	TIMEFRAME
1. Solicitation for renewable energy projects published in all local newspapers across the State	August 31, 2020
2. Deadline for renewable energy producers to submit completed Application and Qualification Forms, the renewable energy project proposal, Lease Terms Sheet, Financial Statement, and Certificate of Good Standing to DHHL. <ul style="list-style-type: none"> <li>• \$500 Application Fee</li> </ul>	December 18, 2020
3. Review Committee qualify applicants	January 2021
4. Evaluation Committee members review, evaluate, and score proposals. Nexamp selected to develop Kalaoa project.	February 2021

ACTIVITIES	TIMEFRAME
5. Selected Applicant conduct initial due diligence on the site	February – June 2021
6. Kalaoa Beneficiary Consultation Meeting to introduce Nexamp to Beneficiaries	July 13, 2021
7. Submittal of Beneficiary Consultation Report to HHC for Nexamp’s Kalaoa CBRE Project	September 20-21, 2021.
8. Public Hearing #1 for the Kalaoa project	October 11, 2021
9. Public Hearing #2 for the Kalaoa project	October 13, 2021
10. HHC Special Meeting to consider issuing ROE for due diligence purposes and conditional General Lease. (Deferred Action)	October 13, 2021
11. HECO issued its Community-Based Renewable Energy (CBRE) Phase 2 Request for Proposals for Low-and Moderate Income (LMI) subscribers.	March 17, 2022
12. Deadline to submit project proposals to HECO	May 17, 2022
13. DHHL provided a Letter of Support for the project and a separate letter verifying Nexamp’s progress toward securing site control.	May 17, 2022
14. HHC Special Meeting to consider issuing ROE for due diligence purposes and conditional General Lease. (Approved 27.6-acres)	October 17, 2022
15. HECO selected 7 community solar projects on O’ahu, Hawai’i island and Maui for the LMI CBRE RFP. <ul style="list-style-type: none"> <li>All 7 projects are Nexamp projects.</li> </ul>	Nov 15, 2022
16. Kalaoa Public Hearing Round 2, Hearing #1	March 28, 2023
17. Kalaoa Public Hearing Round 2, Hearing #2	March 29, 2023
18. HHC Special Meeting to consider issuing ROE for due diligence purposes and conditional General Lease for the additional 19.33 acres for the total project area of 46.93 acres.	March 29, 2023
19. HECO and Nexamp negotiating terms of Power Purchase Agreement	Finalize by end of March 2023

PLANNING AREA:

Kalaoa, Island of Hawaii

LAND USE DESIGNATION:

Industrial Use, Hawaii Island Plan (2002), Figure 8 – West Hawaii – Hawaii Land Inventory

CURRENT STATUS:

The vacant northern half of the parcel has been designated for general agriculture use while the southern half, comprising 100 acres, has been designated for industrial use, preserving it for possible other future uses such as for farming and ranching, and in this particular case, for a renewable energy project. The parcel frontage along Queen K Highway and is across from the Kona International Airport. Under DHHL's Hawaii Island Plan (2002), the parcel has been designated for general agriculture and industrial use. The parcel is lava land sparsely covered in scrub grass, trees, and shrubs in a dry and arid climate, typical of coastal Kona. The project area elevation varies between 150 feet in the west to 250 feet in the east with a western-facing slope.

#### CHARACTER OF USE:

Due diligence studies to assess the potential for a solar project under a ROE and if the option for the long-term general lease is exercised, for the eventual development, construction, operations, management, and maintenance of a solar production facility.

#### CHAPTER 343 – ENVIRONMENTAL ASSESSMENT:

##### Issuance of ROE:

Upon issuance of the ROE Permit, NEXAMP will conduct due diligence studies including studies related to the preparation of an HRS Chapter 343 environmental assessment for the renewable energy project.

##### Issuance of the General Lease:

The issuance of the General Lease is subject to the terms and conditions of the ROE, including, but not limited to, compliance with HRS Chapter 343 and HAR Chapter 11-200, and is not exemptible under DHHL's exemption list. NEXAMP will be preparing an environmental assessment in accordance with HRS Chapter 343 for this renewable energy project which will be subject to HHC approval.

#### CONSISTENCY WITH DHHL PLANS, POLICIES AND PROGRAMS

##### **DHHL General Plan (2002)**

The recommended disposition is consistent with the following General Plan goals and objectives:

##### **Land Use Planning**

##### Goals:

- Utilize Hawaiian Home Lands for uses most appropriate to meet the needs and desires of the beneficiary population.

##### Objectives:

- Provide space for and designate a mixture of appropriate land uses, economic opportunities, and community services in a native Hawaiian-friendly environment.
- Direct urban growth to priority development areas based on infrastructure availability, feasible site conditions, beneficiary preferences and job opportunities.

Goals:

- Be responsible, long-term stewards of the Trust’s lands and the natural, historic and community resources located on these lands.

Objectives:

- Manage land dispositions in a manner that is environmentally sound and does not jeopardize their future uses.
- Enforce governmental health and safety standards and protect life and property from the effects of natural hazards and disaster on Hawaiian home lands.

**Economic Development**

Goals:

- Generate significant revenue to provide greater financial support towards fulfilling the Trust’s mission.

Objectives:

- Create a professionally managed investment portfolio with a well-balanced mix of assets.

**Kealakehe-La’i’Opua -Regional Plan Update (2020)**

The recommended disposition is consistent with the following elements of the Kealakehe-La’i’Opua Regional Plan Update: 8.5 Renewable Energy Initiative – PV Farm in ‘O’oma (pgs. 46-49)

**Program Plans**

Ho’omaluku Energy Policy (2009) - Objectives

- ✓ Ko’o: Facilitate the use of diverse renewable energy resources – Pursue the leasing of those lands that are identified as suitable for renewable energy projects. (First priority should be given to entities that would provide “firm” renewable energy power such as garbage-to-energy (mass-burn), geothermal, pump storage hydropower, solar-thermal and second priority to “as-available” renewable energy power such as wind, solar-photovoltaic, and wave.)

**AUTHORIZATION:**

Section 204(a)(2) of the Hawaiian Homes Commission Act, 1920, as amended,

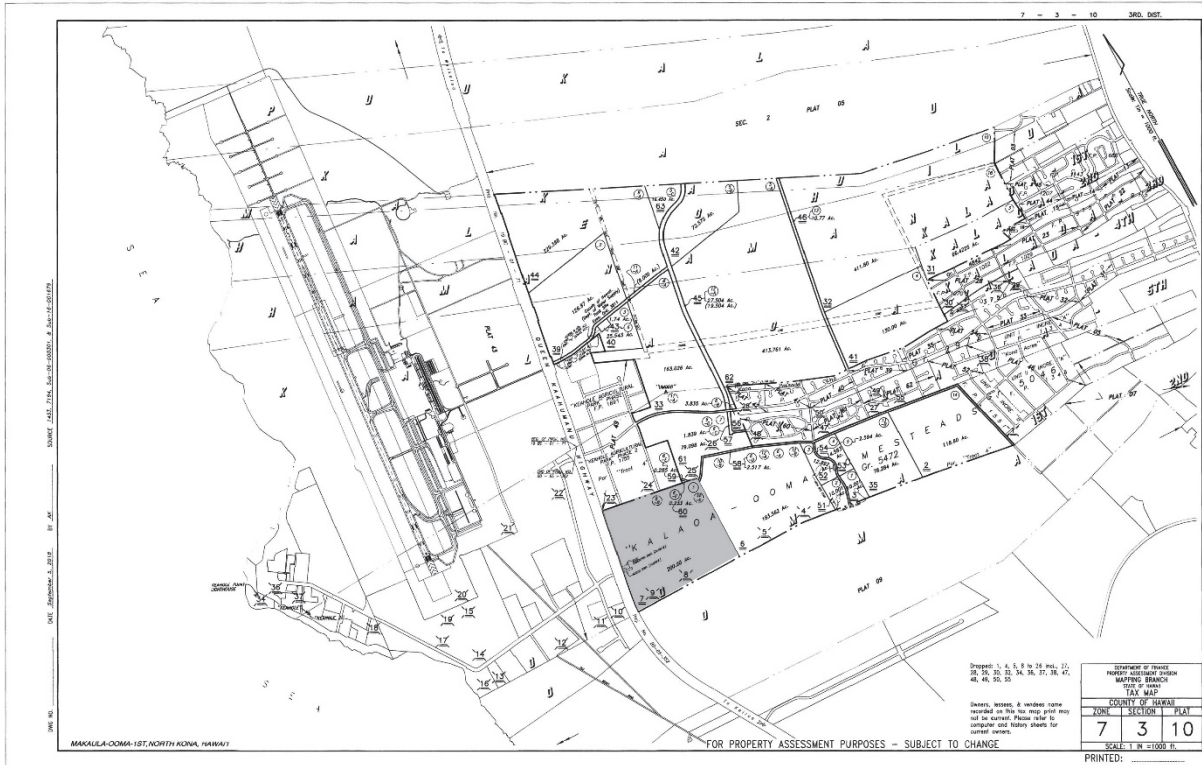
Sections 10-4-21 and 10-4-22, Hawaii Administrative Rules, as amended

§171-55, §171-95, and §171-95.3, Hawaii Revised Statutes, as amended

**RECOMMENDATION:**

Land Management Division respectfully requests approval of the motion as stated.





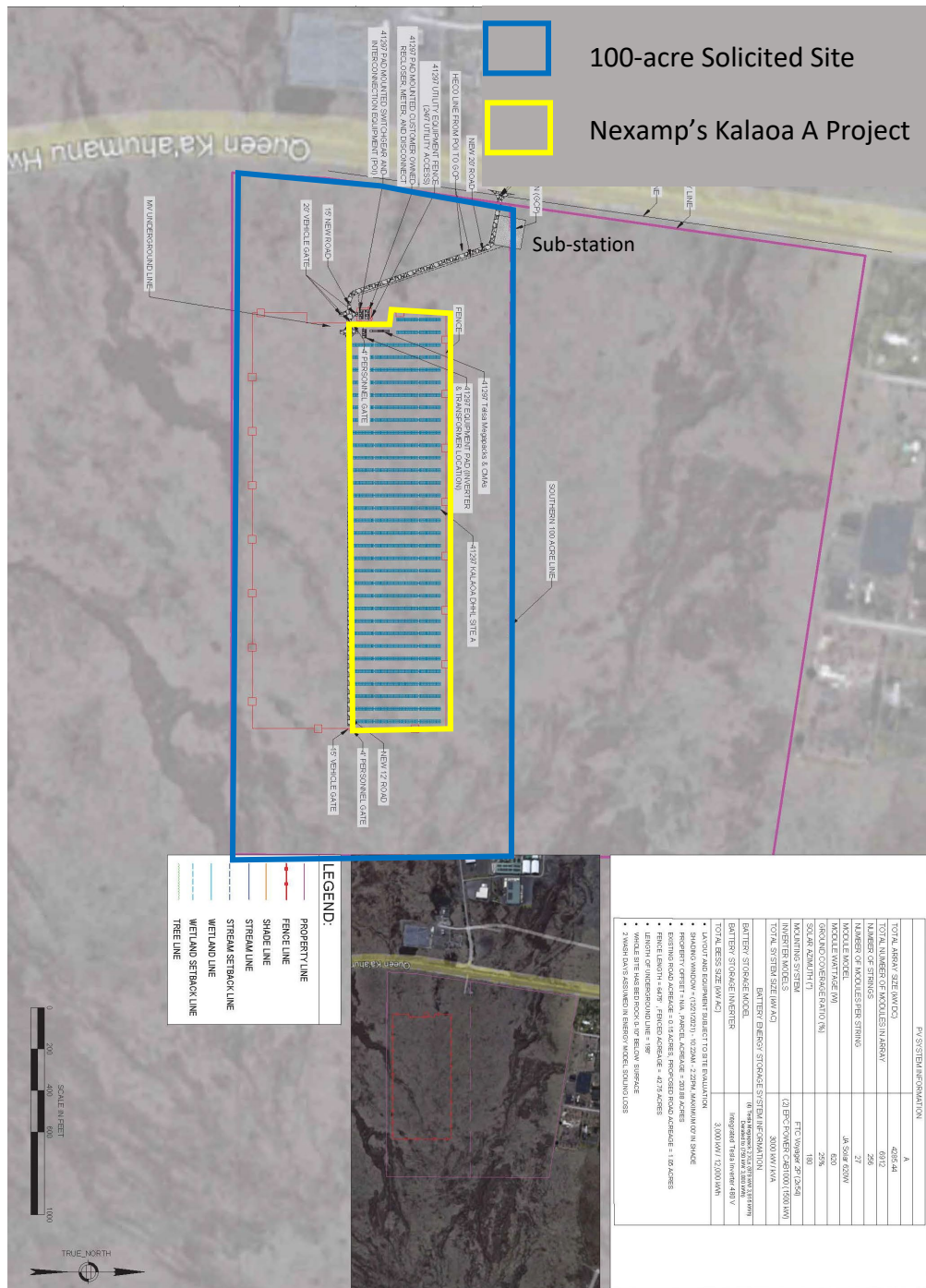
**Exhibit "A-1"**  
**Item No. F-1**



**NEXAMP COMMUNITY SOLAR PROJECT, KALAOA B, FOR PUBLIC HEARINGS  
SUBJECT TO HHC APPROVAL**

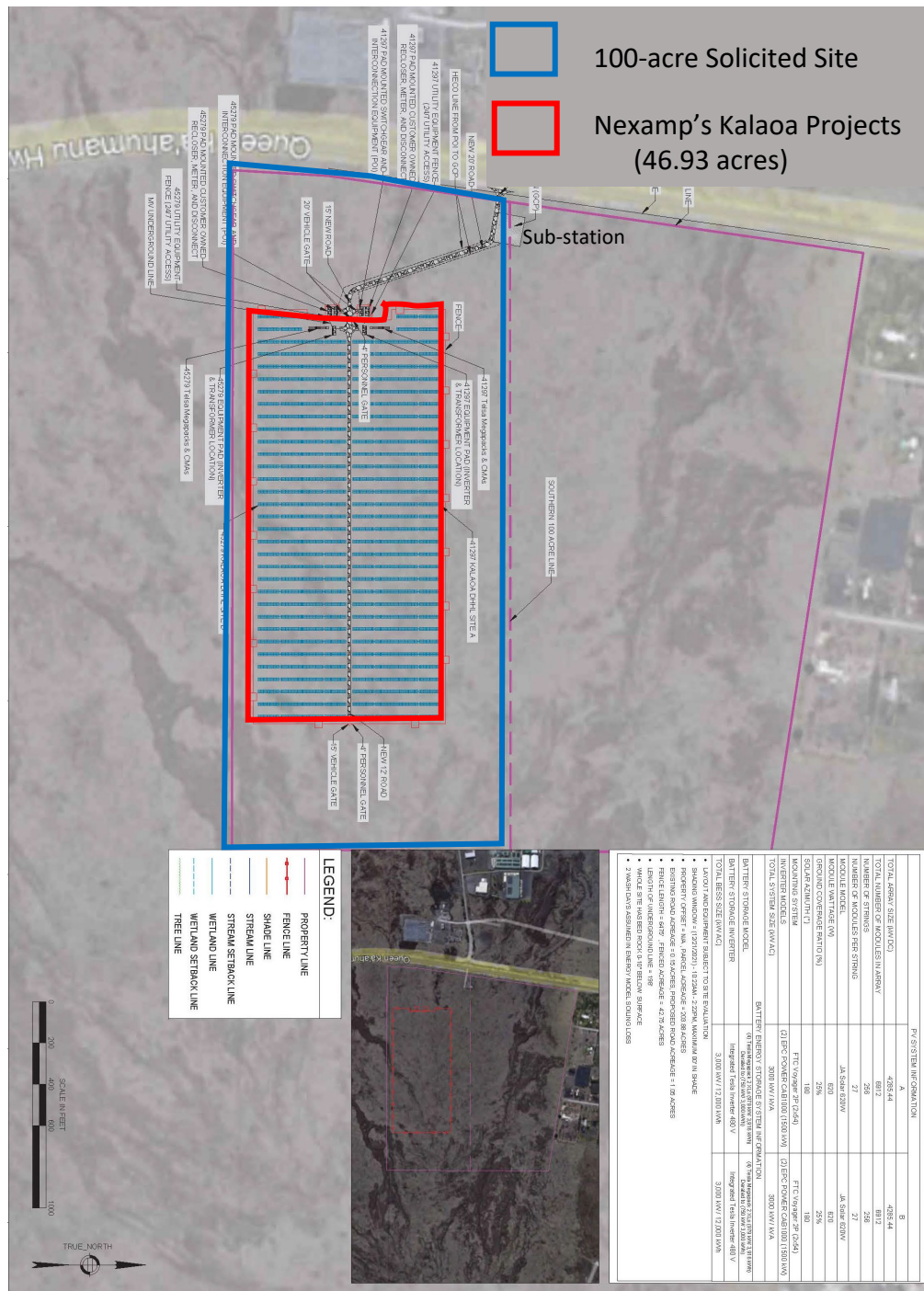


**NEXAMP COMMUNITY SOLAR PROJECT, KALAOA A, APPROVED BY THE HHC IN OCTOBER 2022**



**Exhibit "A-3"**  
**Item No. F-1**

**NEXAMP COMMUNITY SOLAR PROJECTS, KALAOA A AND B, COMPOSITE DEPICTING TOTAL PROJECT AREA**



**Exhibit "A-4"**  
**Item No. F-1**

**Exhibit "B"**  
**Item No. F-1**



# Kalaoa Project

Terms of Agreement for Right-of-Entry and General Lease

<u>Terms of Agreement</u>	<u>Date</u>	<u>Payment Amount</u>
1. Right-of-Entry Fee for 2-year term	Upon issuance Oct 2023	\$30,000
2. Right-of-Entry Extension Fee	If needed – Oct 2025	\$10,000
3. Fee to exercise General Lease	Upon completion of EA and PPA with HECO	\$30,000
4. Construction Term: 2 years, option to extend 1 year		\$0
5. Operation Term: 25 years for 19.33 acres + 27.6 acres = 46.93 acres, Annual lease rent increases to be redetermined	Jan 2025	\$2,750/acre/year = \$53,158 + \$75,900/yr 1 w/ annual escalation of 1.0%
6. Commencement of Commercial Operations Fee	Jan 2025	\$60,000
7. Community Donation	Jan 2025	\$40,000

Other Terms:

- No subscription fees will be charged to DHHL beneficiaries
- Upon termination of lease, DHHL may require Nexamp to remove improvements

**Exhibit "C"**  
**Item No. F-1**

STATE OF HAWAII  
DEPARTMENT OF HAWAIIAN HOME LANDS

October 17-18, 2022

To: Chairman and Members, Hawaiian Homes Commission

From: Peter “Kahana” Albinio, Jr., Acting Administrator  
Land Management Division ~~KA~~

Subject: Approval to Issue a Right-of-Entry Permit for due diligence purposes and Conditional Approval for a General Lease (25-years with options to extend) to Nexamp Solar, LLC, a Delaware limited liability company, to develop a solar plus battery storage project on 27.6-acres of Hawaiian Home Lands, Tax Map Key No. (3) 7-3-010:007 (por.), Kalaoa, Hawai‘i Island

APPLICANT:

NEXAMP SOLAR, LLC “NEXAMP”

RECOMMENDED MOTION/ACTION:

That the Hawaiian Homes Commission authorize the following:

1. Issuance of a Right -of-Entry Permit (“ROE”) to NEXAMP demising a portion of approximately 27.6-acres of Hawaiian Home Lands identified more specifically by TMK No. (3) 7-3-010:007 (por.), situated at Kalaoa, Hawaii Island as shown in Exhibit “A” attached hereto. The ROE shall be for due diligence activities to assess the potential of developing a solar project (“project”) that will generate 9 Megawatts of energy;
2. Conditional approval of the General Lease to NEXAMP or its authorized assignee for the development, construction, operation, management, and maintenance of the project on said parcel as identified, to be more fully described in a metes and bounds survey, and necessary non-exclusive licenses for access, maintenance, and other project purposes upon exercising the option for the General Lease;
3. Issuance of the ROE and the General Lease shall be upon the proposed terms and conditions attached hereto as Exhibit “B”;
4. Delegate authority to the HHC Chairman to negotiate the final terms and conditions of the ROE and General Lease with NEXAMP, and ancillary documents reasonably necessary or contemplated in connection with the project; and



5. Prescribe such terms and conditions deemed prudent and necessary by the Hawaiian Homes Commission.

LOCATION:

Hawaiian Home Lands situated at Kalaoa, Island of Hawaii, identified as TMK No.: (3) 7-3-010:007(por.) (See Exhibit “A”).

AREA:

Containing approximately 27.6 acres

DISCUSSION:

Immediately following the HHC Public Hearings held on the Kalaoa and Kawaihae projects on October 13, 2021, the HHC discussed motions to approve the ROEs with the option to convert to General Leases. The HHC deferred action on the motion as recommended under respective LMD Agenda Item Nos. F-1 (Kalaoa Project (See Exhibit “C”). They directed staff to get a better deal.

Specifically, Nexamp submitted the Kalaoa project in response to HECO’s LMI CBRE RFP, released by HECO on March 17, 2022. The deadline for proposals was May 17, 2022. DHHL provided a Letter of Support for the project and a separate letter verifying Nexamp’s progress toward securing site control.

Nexamp wants to secure HHC approval for a ROE to both properties for due diligence purposes. The ROE would convert to a General Lease upon: 1) completion of an Environmental Assessment and Finding of No Significant Impact; and 2) securing a Power Purchase Agreement (PPA) from HECO.

**NEXAMP’S NEW OFFER**

Staff explained to Nexamp that we needed a better deal to put the action item back on the HHC’s Agenda. Nexamp responded with the following offer:

1. The \$20,000 donation to any nonprofit when commercial operations begin, would be earmarked for our homestead associations. In addition, they increased the Kalaoa donation from \$20,000 to \$40,000.
  - For the Kalaoa project, \$20K will go to La‘i ‘Ōpua 2020 and \$20K will go to Kaniohale Homestead Association.
2. During the Operational Term, the base lease rent per acre increased by 10.0% from \$2,500 to \$2,750 per acre.
  - Kalaoa project:
    1. The lease rent per acre was  $\$2,500 \times 27.6 \text{ acres} = \$69,000/\text{year}$  or  $\$5,750/\text{mo.}$

2. The new offer increases the base rent by 10.0% to \$2,750 x 27.6 acres = \$75,900/year or \$6,325/mo.
3. They offered a 1% annual escalator on lease rent.
4. The total compensation package in the new offer for the Kalaoa project, would generate a total of \$2,354,159 for DHHL over the initial twenty-five (25) year ROE/GL term as proposed. This new proposal is increased by almost 25.0% or \$468,469.00 above the original offer. The total does not include any revenue from the three (3) optional 5-year extensions provided by the terms of the lease. The terms of each extension would be negotiated/determined at that time.

The Kalaoa Nexamp Community Solar Project Summary Sheet is attached as Exhibit “D”

PLANNING AREA:

Kalaoa, Island of Hawaii

LAND USE DESIGNATION:

Industrial Use, Hawaii Island Plan (2002), Figure 8 – West Hawaii – Hawaii Land Inventory

CURRENT STATUS:

The vacant northern half of the parcel has been designated for general agriculture use while the southern half, comprising 100 acres, has been designated for industrial use, preserving it for possible other future uses such as for farming and ranching, and in this particular case, for a renewable energy project. The parcel frontage along Queen K Highway and is across from the Kona International Airport. Under DHHL’s Hawaii Island Plan (2002), the parcel has been designated for general agriculture and industrial use. The parcel is lava land sparsely covered in scrub grass, trees, and shrubs in a dry and arid climate, typical of coastal Kona. The project area elevation varies between 150 feet in the west to 250 feet in the east with a western-facing slope.

CHARACTER OF USE:

Due diligence studies to assess the potential for a solar project under a ROE and if the option for the long- term general lease is exercised, for the eventual development, construction, operations, management, and maintenance of a solar production facility.

CHAPTER 343 – ENVIRONMENTAL ASSESSMENT:

Issuance of ROE:

Upon issuance of the ROE Permit, NEXAMP will conduct due diligence studies including studies related to the preparation of an HRS Chapter 343 environmental assessment for the renewable energy project.

Issuance of the General Lease:

The issuance of the General Lease is subject to the terms and conditions of the ROE, including, but not limited to, compliance with HRS Chapter 343 and HAR Chapter 11-200, and is not exemptible under DHHL's exemption list. NEXAMP will be preparing an environmental assessment in accordance with HRS Chapter 343 for this renewable energy project which will be subject to HHC approval.

CONSISTENCY WITH DHHL PLANS, POLICIES AND PROGRAMS

**DHHL General Plan (2002)**

The recommended disposition is consistent with the following General Plan goals and objectives:

**Land Use Planning**

Goals:

- Utilize Hawaiian Home Lands for uses most appropriate to meet the needs and desires of the beneficiary population.

Objectives:

- Provide space for and designate a mixture of appropriate land uses, economic opportunities, and community services in a native Hawaiian-friendly environment.
- Direct urban growth to priority development areas based on infrastructure availability, feasible site conditions, beneficiary preferences and job opportunities.

Goals:

- Be responsible, long-term stewards of the Trust's lands and the natural, historic and community resources located on these lands.

Objectives:

- Manage land dispositions in a manner that is environmentally sound and does not jeopardize their future uses.
- Enforce governmental health and safety standards and protect life and property from the effects of natural hazards and disaster on Hawaiian home lands.

**Economic Development**

Goals:

- Generate significant revenue to provide greater financial support towards fulfilling the Trust's mission.

Objectives:

- Create a professionally managed investment portfolio with a well-balanced mix of assets.

**Kealakehe-La'i'Opua -Regional Plan Update (2020)**

The recommended disposition is consistent with the following elements of the Kealahou-La'i'Opua Regional Plan Update: 8.5 Renewable Energy Initiative – PV Farm in 'O'oma (pgs. 46-49)

**Program Plans**

Ho'omalulu Energy Policy (2009) - Objectives

- ✓ Ko'o: Facilitate the use of diverse renewable energy resources – Pursue the leasing of those lands that are identified as suitable for renewable energy projects. (First priority should be given to entities that would provide “firm” renewable energy power such as garbage-to-energy (mass-burn), geothermal, pump storage hydropower, solar-thermal and second priority to “as-available” renewable energy power such as wind, solar-photovoltaic, and wave.)

**AUTHORIZATION:**

Section 204(a)(2) of the Hawaiian Homes Commission Act, 1920, as amended,

Sections 10-4-21 and 10-4-22, Hawaii Administrative Rules, as amended

§171-55, §171-95, and §171-95.3, Hawaii Revised Statutes, as amended

**RECOMMENDATION:**

Land Management Division respectfully requests approval of the motion as stated.



**Exhibit "A"**  
**Item No. F-2**

# Kalaoa Project

Terms of Agreement for Right-of-Entry and General Lease

<u>Terms of Agreement</u>	<u>Date</u>	<u>Payment Amount</u>
1. Right-of-Entry Fee for 2-year term	Upon issuance Oct 2022	\$30,000
2. Right-of-Entry Extension Fee	If needed – Oct 2025	\$10,000
3. Fee to exercise General Lease	Upon completion of EA and PPA with HECO	\$30,000
4. Construction Term: 2 years, option to extend 1 year		\$0
5. Operation Term: 25 years for 27.6 acres, Annual lease rent increases to be re-determined	Jan 2025	\$2,750/acre/year= \$75,900/yr 1 w/ annual escalation of 1.0%
6. Commencement of Commercial Operations Fee	Jan 2025	\$30,000
7. Community Donation	Jan 2025	\$40,000

Other Terms:


- No subscription fees will be charged to DHHL beneficiaries
- Upon termination of lease, DHHL may require Nexamp to remove improvements



STATE OF HAWAII  
DEPARTMENT OF HAWAIIAN HOME LANDS

October 13, 2021

To: Chairman and Members, Hawaiian Homes Commission

From: Peter "Kahana" Albinio, Jr., Acting Administrator  
Land Management Division 

Subject: Approval to Issue a Right-of-Entry Permit (for up to three years) and Conditional Approval for a General Lease to Nexamp Solar, LLC, a Delaware limited liability company, for due diligence purposes and a long-term General Lease (25-years with options to extend) to develop a solar plus battery storage project on 27.6-acres of Hawaiian Home Lands, TMK No. (3) 7-3-010:007 (por.), Kalaoa, Hawai'i Island

APPLICANT:

NEXAMP SOLAR, LLC "NEXAMP"

RECOMMENDED MOTION/ACTION:

That the Hawaiian Homes Commission authorize the following:

1. Issuance of a Right -of-Entry Permit ("ROE") to NEXAMP that demising a portion of approximately 27.6-acres of Hawaiian Home Lands identified more specifically by TMK No. (3) 7-3-010:007 (por.), situated at Kalaoa, Hawaii Island as shown in Exhibit "A" attached hereto. The ROE shall be for due diligence activities to assess the potential of developing a solar project ("project") that will generate 9MW of energy;
2. Conditional approval of the General Lease to NEXAMP or its authorized assignee for the development, construction, operation, management, and maintenance of the project on said parcel as identified, to be more fully described in a metes and bounds survey, and necessary non-exclusive licenses for access, maintenance, and other project purposes upon exercising the option for the General Lease;
3. Issuance of the ROE and the General Lease shall be upon the proposed terms and conditions attached hereto as Exhibit "B";
4. Delegate authority to the HHC Chairman to negotiate the final terms and conditions of the ROE and General Lease with NEXAMP, and ancillary documents reasonably necessary or contemplated in connection with the project; and

Item No. F-1

**Exhibit "C"**  
**Item No. F-2**



5. Prescribe such terms and conditions deemed prudent and necessary by the Hawaiian Homes Commission.

LOCATION:

Hawaiian Home Lands situated at Kalaoa, Island of Hawaii, identified as TMK No.: . (3) 7-3-010:007(por.) (See Exhibit “A”) .

AREA:

Containing approximately 27.6 acres

DISCUSSION:

Pursuant to the Hawaiian Home Commission authorization and approval of LMD’s Agenda Item No. F-1 dated August 18, 2020, a Public Notice Disposition of Hawaiian Home Lands by General Leases for Renewable Energy Projects on Oahu, Molokai, and Hawaii Island was released on August 31, 2020. The public solicitation offered lands whereby a Right-of-Entry Permit would be issued to a successful applicant or applicants(s) who received the highest total points for due diligence activities with the option for a long-term general lease to develop, construct, operate, manage, and maintain a respective renewable energy project that would generate a revenue stream for the DHHL Trust and provide community benefits for the impacted community as well.

After release of the Public Notice, DHHL issued three (3) separate addendums to the offering. To note, information for the addendums issued by date are as follows:

- Addendum No. 1 - September 18, 2020:  
DHHL responses to questions DHHL received by the 2:00 p.m. (HST) Tuesday, September 15, 2020 deadline
- Addendum No. 2 – October 13, 2020:  
**IMPORTANT NOTICE TO ALL PROSPECTIVE APPLICANTS:**  
October 16, 2020 deadline to submit applications, as specified in Section 3.3.3 of the August 31, 2020 Information Packet, has been postponed until further notice. The postponement is to accommodate changes in the timing of HECO’s RFPS which are in a state of flux.
- Addendum No. 3 – November 3, 2020:  
Application deadline specified in Section 3.1.1 of the August 31, 2020 Information Packet has been **extended to December 18, 2020 at 2:00 p.m. HST**. All the terms, requirements, and conditions remain the same except for the information provided below.

An Evaluation Committee which was comprised of five (5) respective members (three (3) DHHL and two (2) Non-Governmental) were selected to review the applications received in response to August 31, 2020 Solicitation for renewable energy projects.

For the Hawaii Island sites, two (2) applicants responded for the Kawaihae site and three (3) responded for the Kalaoa site (see table below.) All the applicants proposed solar plus battery projects. There was no application received for the Hoolehua, Molokai site. The Evaluation Committee believed that a primary reason for this is because of issues with allowing HECO to compete with independent renewable energy producers to develop a community solar project on Molokai.

Kawaihae Applicants

Arion Energy, LLC  
Nexamp Solar, LLC

Kalaoa Applicants

Arion Energy, LLC  
Nexamp Solar, LLC  
O'oma Homestead Alliance, LLC

Following its final review and evaluation, the Evaluation Committee's Scoring Summary (see table below) was determined as prescribed under DHHL's solicitation. As such, applicants for each site would be subject to further scrutiny and negotiations in order of its respective rankings during the selection process.

**DHHL 2020 Renewable Energy Projects Solicitation**

	Kawaihae (Hawaii Island)		Kalaoa (Hawaii Island)		
	Arion Energy, LLC	Nexamp Solar, LLC	Arion Energy, LLC	Nexamp Solar, LLC	O'oma Homestead Alliance, LLC
<b>Total Score</b>	231	354	235	344	239
<b>Average Score</b>	46.2	70.8	47	68.8	47.8
<b>Rank</b>	2	1	3	1	2

**Nexamp Solar, LLC's** parent company, Nexamp was founded in 2007 to build the future of energy so that it is clean, simple, and accessible. Today, Nexamp is a leader in the clean energy space, offering solar and energy storage solutions. They own and operate all of its solar storage projects and manage every stage of the process: financing, project development and acquisition, design, construction, operations and maintenance, and energy sales. They foster accountability, passion, empathy, open communication, transparency, and belongingness as well as allocates time and resources to serve its host communities from early-stage development through the life of the project. Additionally, they value long relationships to the highest degree and strive to be the best possible neighbors, including a willingness to hire locally and offer training to new employees.

DHHL conducted *virtual beneficiary consultation meetings* for the respective Kalaoa, and Kawaihae, Hawaii Island sites. The table below reflects information from the Kalaoa BC meeting.

<u>Date</u>	<u>Invitations Mailed</u>	<u>Comments</u>	<u>HHC Acceptance</u>
Tues., 7/13/2021	975 Post Cards – with 96740 and 96745 Zip Codes	18 comments over the course of the BC meeting	9/20-21/ 2021 – Agenda Item No. G-5

were noted and 2 written  
comments were received

Prior to decision-making by the HHC scheduled for Wed., 10/13/2021 at 1:30 p.m., the HHC will have conducted two virtual public hearings on Hawaii Island where the project is located to meet the requirements under Section 171-95.3(c), HRS. The public hearings were scheduled as follows:

**Public Hearing # 1**

Date: Mon., 10/11/2021

Time: 6:00 p.m.

Location: In person - Laiopua 2020  
Community Center Complex, 74-5210  
Keanalehu Dr., Kailua-Kona, Hawaii 96740

**Public Hearing #2**

Date: Wed., 10/13/2021

Time: 8:30 a.m.

Location: In Person - Hale Kuhio, 64-756  
Mamalahoa Highway, Kamuela, Hawaii  
96743

Public Hearing notices were published on Monday, September 27, 2021, in respective statewide print media editions.

LMD believes that Nexamp's project as proposed is in the best interest of the Hawaiian Home Lands Trust for the following reasons:

- ✓ The project as proposes will generate a revenue stream for the Hawaiian Home Land Trust over at least twenty-five (25) years on land that lack infrastructure, have use restrictions and limitations for development and have not any generated revenue.
- ✓ The project will add another renewable energy resource for Hawaii Island and be DHHL's contribution to help achieve the State's commitment to clean energy by having the utility companies generate 100% of their electricity sales from renewable energy resources by the Year 2045.

**PLANNING AREA:**

Kalaoa, Island of Hawaii

**LAND USE DESIGNATION:**

Industrial Use, Hawaii Island Plan (2002), Figure 8 – West Hawaii – Hawaii Land Inventory

**CURRENT STATUS:**

The vacant northern half of the parcel has been designated for general agriculture use while the southern half, comprising 100 acres, has been designated for industrial use, preserving it for possible other future uses such as for farming and ranching, and in this particular case, for a renewable energy project. The parcel frontage along Queen K Highway and is across from the Kona International Airport. Under DHHL's Hawaii Island Plan (2002), the parcel has been designated for general agriculture and industrial use. The parcel is lava land sparsely covered in

scrub grass, trees, and shrubs in a dry and arid climate, typical of coastal Kona. The project area elevation varies between 150 feet in the west to 250 feet in the east with a western-facing slope.

#### CHARACTER OF USE:

Due diligence studies to assess the potential for a solar project under a ROE and if the option for the long-term general lease is exercised, for the eventual development, construction, operations, management, and maintenance of a solar production facility.

#### CHAPTER 343 – ENVIRONMENTAL ASSESSMENT:

##### Issuance of ROE:

Upon issuance of the ROE Permit, NEXAMP will conduct due diligence studies including studies related to the preparation of an HRS Chapter 343 environmental assessment for the renewable energy project.

##### Issuance of the General Lease:

The issuance of the General Lease is subject to the terms and conditions of the ROE, including, but not limited to, compliance with HRS Chapter 343 and HAR Chapter 11-200, and is not exemptible under DHHL's exemption list. NEXAMP will be preparing an environmental assessment in accordance with HRS Chapter 343 for this renewable energy project.

#### CONSISTENCY WITH DHHL PLANS, POLICIES AND PROGRAMS

##### **DHHL General Plan (2002)**

The recommended disposition is consistent with the following General Plan goals and objectives:

##### **Land Use Planning**

###### Goals:

- Utilize Hawaiian Home Lands for uses most appropriate to meet the needs and desires of the beneficiary population.

###### Objectives:

- Provide space for and designate a mixture of appropriate land uses, economic opportunities, and community services in a native Hawaiian-friendly environment.
- Direct urban growth to priority development areas based on infrastructure availability, feasible site conditions, beneficiary preferences and job opportunities.

###### Goals:

- Be responsible, long-term stewards of the Trust's lands and the natural, historic and community resources located on these lands.

###### Objectives:

- Manage land dispositions in a manner that is environmentally sound and does not jeopardize their future uses.
- Enforce governmental health and safety standards and protect life and property from the effects of natural hazards and disaster on Hawaiian home lands.

### **Economic Development**

#### Goals:

- Generate significant revenue to provide greater financial support towards fulfilling the Trust's mission.

#### Objectives:

- Create a professionally managed investment portfolio with a well-balanced mix of assets.

### **Kealakehe-La'i'Opua -Regional Plan Update (2020)**

The recommended disposition is consistent with the following elements of the Kealakehe-La'i'Opua Regional Plan Update: 8.5 Renewable Energy Initiative – PV Farm in 'O'oma (pgs. 46-49)

### **Program Plans**

#### Ho'omaluku Energy Policy (2009) - Objectives

- ✓ Ko'o: Facilitate the use of diverse renewable energy resources – Pursue the leasing of those lands that are identified as suitable for renewable energy projects. (First priority should be given to entities that would provide “firm” renewable energy power such as garbage-to-energy (mass-burn), geothermal, pump storage hydropower, solar-thermal and second priority to “as-available” renewable energy power such as wind, solar-photovoltaic, and wave.)

### **AUTHORIZATION:**

Section 204(a)(2) of the Hawaiian Homes Commission Act, 1920, as amended,

Sections 10-4-21 and 10-4-22, Hawaii Administrative Rules, as amended

§171-55, §171-95, and §171-95.3, Hawaii Revised Statutes, as amended

### **RECOMMENDATION:**

Land Management Division respectfully requests approval of the motion as stated.





# Kalaoa Project: Terms of Agreement For Right-of-Entry and General Lease

TERMS OF AGREEMENT	DATE	PAYMENT AMOUNT
1. Right-of-Entry Fee for 2-year term	Upon Issuance Oct 2021	\$30,000
2. Right-of-Entry Extension Fee for 1-year	If needed –Oct 2023	\$10,000
3. Fee to Exercise General Lease	Upon completion of EA and PPA with HECO	\$30,000
4. Construction Term: 2 years, option to extend 1 year		0
5. Operational Term: 25 years For 27.6 acres, Annual lease rent increases to be discussed	Jan 24, 2023	\$2,500/acre/year= \$70,000/year
6. Commencement of Commercial Operations Fee	Jan. 24, 2023	\$25,000
7. Community Donation	Jan. 24, 2023	\$20,000

## Other Terms:

- No subscription fees will be charged to DHHL beneficiaries.
- Upon termination of lease, DHHL may require Nexamp to remove improvements.

**Exhibit “B”  
Item No. F-1**



## **KALAOA NEXAMP COMMUNITY SOLAR PROJECT SUMMARY SHEET**

**Project Site** 30-acres of a 100-acre vacant parcel located on the mauka side of Queen Ka'ahumanu Highway across from the Natural Energy Laboratory of Hawai'i Authority (NELHA)/Hawai'i Ocean Science and Technology Park (HOST Park). See attached project map.

**Project Description** 8.4 MW solar plus battery storage project that will be within a perimeter fence. Project includes: access roads, utility poles and a utility area for monitoring system and inverter. Solar panels are raised bi-facial panels that track the movement of the sun. The raised panels allow a secondary use (e.g., sheep grazing) under the panels. Nexamp will submit the project in response to HECO's RFP for Community-Based Renewable Energy Projects for Low- and Moderate-Income Subscribers, O'ahu, Maui, and Hawai'i Island issued on March 17, 2022. Proposals were due on May 17, 2022.

**Targeted Subscribers** Nexamp proposes a Low-to-Moderate Income (LMI) Project that will serve approximately 1,100 homes/subscribers. There are 5,370 beneficiaries (lessees and applicants) that reside on the island of Hawai'i.

For LMI projects, HECO requires that at least 60% of the energy generated by the project must go to households that have incomes at 80% or below the HUD-defined Average Median Income (AMI) for the respective county. Beneficiaries cannot participate if they are already enrolled in a solar panel program through HECO (Schedule Q, Net Energy Metering, Feed-in Tariff, Standard Interconnection Agreement, Customer Grid Supply, Customer Grid Supply Plus, Smart Export, or Customer Self-Supply tariff program).

**2021 Hawaii County Income Limits for 80% of Area Median Income (AMI)**

Household Size	1	2	3	4	5	6	7
Income Limits	\$47,950	\$54,800	\$61,650	\$68,500	\$74,000	\$79,500	\$84,950

**Community Benefits**

1. For Beneficiaries who are Big Island HELCO customers: Guaranteed discount on electricity for 20+ years projected at 10% - 12%. No installation of solar panels or equipment on individual rooftops or on individual lots. No subscription fees, no upfront costs or long-term contracts (can cancel with 90-days notice). No cancellation fees. No credit check or FICO score requirement. Sign up and billing handled through HECO's dedicated website. Participation is a way to help the State move toward 100% renewable energy.
2. Upgraded electrical infrastructure; less brown-outs.
3. Workforce opportunities: training program for trade jobs in construction and maintenance.
4. Donation of \$20,000 to the Kaniohale Community Association and \$20,000 donation to La'i 'Ōpua 2020.
5. Agricultural uses could occur on the lands under the solar panels. Low impact land use allows return of lands to its original condition.

***Proposed  
Terms***

1. A Right-of-Entry (ROE) permit would be issued for due diligence purposes for a 2-year term for \$30,000. If needed, the ROE may be extended for 1-year upon payment of the extension fee of \$10,000.
2. A General Lease will be issued after the completion of a Final Environmental Assessment/FONSI, the receipt of a Power Purchase Agreement (PPA) from HECO, and upon the receipt of the \$30,000 fee to exercise the General Lease option. The General Lease will be for a term of 25 years.
  - a. Construction Term: No lease rent will be assessed during the first 2 years of the General Lease, with the option for a 1-year extension, while the project is being constructed.
  - b. Operational Term: Lease rent for the remaining term of the General Lease for the 27.6 acres will be assessed at \$2,750 per acre per year, for a total of \$75,900 per year, with annual 1% rent increases.
3. A Commencement of Commercial Operation Fee of \$25,000 will be due when the project starts to produce and sell electricity to HECO.
4. When commercial operation begins, Nexamp will donate \$20,000 to 2 nonprofit organization that serves the beneficiary community.

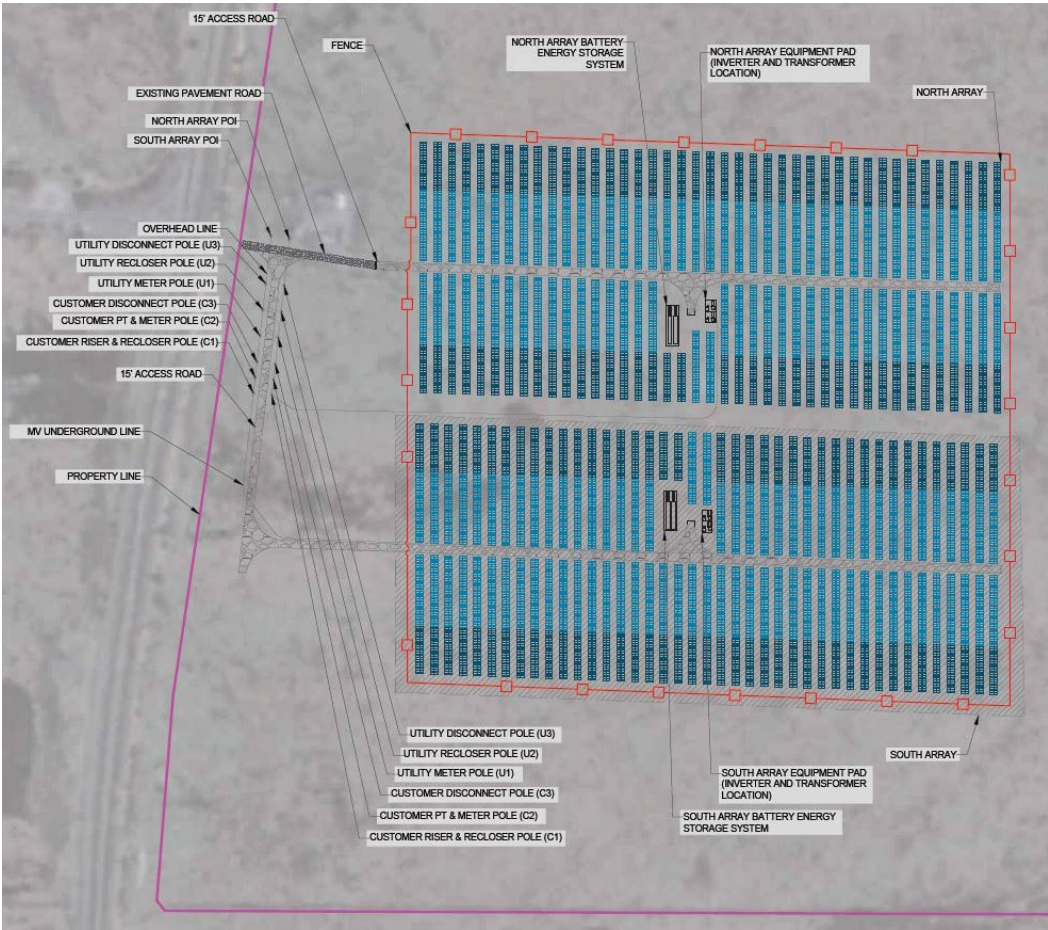
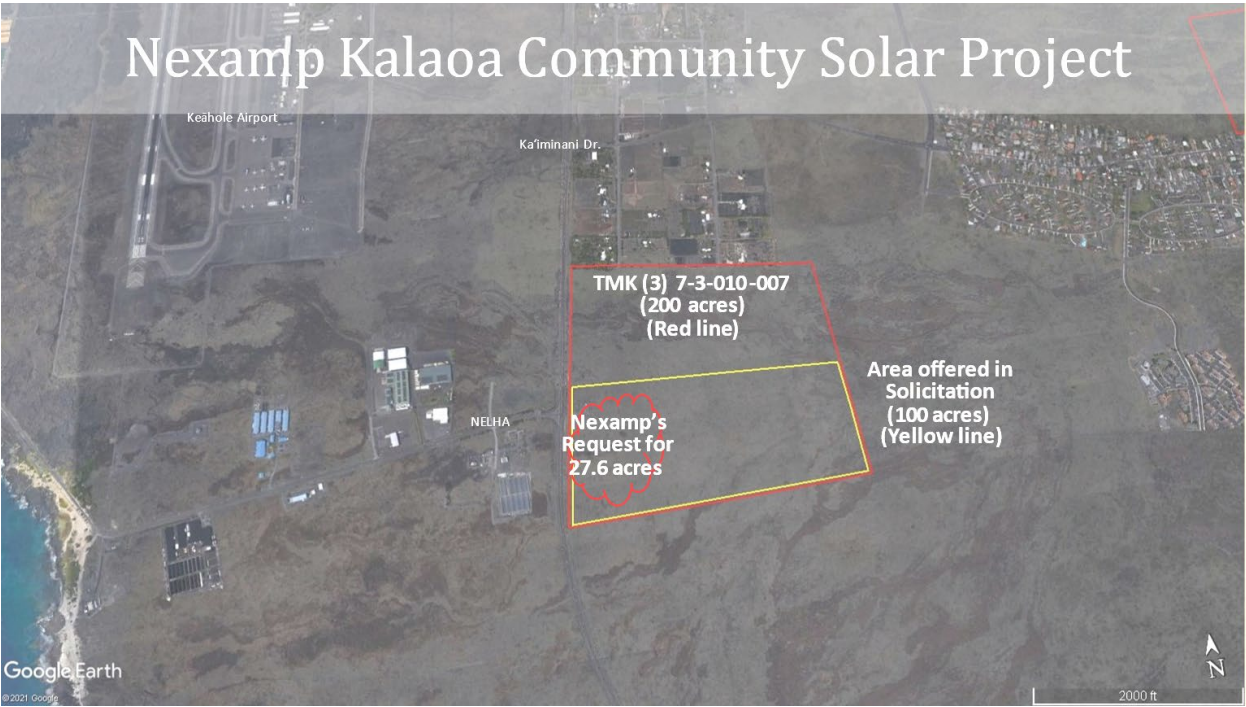
***Consultation  
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1. A virtual Beneficiary Consultation meeting was held on July 13, 2021. Invitation postcards were sent to all lessees and applicants that reside in the 96740 or 96745 zipcode area. The Beneficiary Consultation Report was submitted to the HHC on September 20, 2021.
2. Public Hearings required for the lease of public lands to renewable energy producers (Chapter 171-95.3, HRS) were duly noticed and conducted by the HHC on October 11, 2021 at the La'i 'Ōpua Community Center Complex and October 13, 2021 at Hale Kūhiō (DHHL, West Hawai'i District Office). The HHC deferred action on the land disposition.

***Beneficiary  
Issues and  
Concerns***

1. Nexamp's workforce development training for building and maintenance of the solar farm should target and give priority to DHHL beneficiaries. La'i 'Ōpua 2020 offered space for Nexamp to deliver workforce development training workshops.
2. Beneficiaries would like Nexamp to create a written plan that details the process and program to provide workforce development opportunities for DHHL beneficiaries.
3. Beneficiaries want to have top priority for any and all jobs offered by the project.
4. Beneficiaries want greater detail on what Nexamp has in mind for donations to nonprofit organizations that support DHHL beneficiaries.
5. When Queen Ka'ahumanu Highway was constructed, archaeological and burial sites were uncovered in close proximity to the project area. Beneficiaries want Nexamp to identify archaeological or burial sites in the project area so they may be treated with the care and respect our ancestors deserve.
6. Beneficiaries want subscriptions to be for all beneficiaries, regardless of income.
7. Beneficiaries who already installed solar panels on their rooftops will not benefit from the project. Beneficiaries cannot be subscribers if they are already enrolled in a HECO solar panel program, including: Schedule Q, Net Energy Metering, Feed-in Tariff, Standard Interconnection Agreement, Customer Grid Supply, Customer Grid Supply Plus, Smart Export, or Customer Self-Supply tariff program.

**PROPOSED LOCATION OF THE PROJECT**



**Exhibit "D"**  
**Item No. F-1**



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**PROPOSED LOCATION OF THE PROJECT**

