

HAWAIIAN HOMES COMMISSION

Minutes of March 29, 2023

Courtyard King Kamehameha's Kona Beach Hotel Ballroom #1,
75-5660 Palani Road, Kailua-Kona, Hawai'i 96740, and
Interactive Conferencing Technology (ICT) Zoom ID: 609 754 2925

Pursuant to proper call, the meeting of the Hawaiian Homes Commission was held both in person and via Zoom, beginning at 11:30 a.m.

PRESENT Kali Watson, Chairman
Makai Freitas, West Hawai'i Commissioner
Zachary Z. Helm, Moloka'i Commissioner
Michael L. Kaleikini, East Hawai'i Commission
Russell K. Ka'upu, O'ahu Commissioner (ICT)
Pauline N. Namu'o, O'ahu Commissioner (ICT)
Patricia A. Teruya, O'ahu Commissioner (ICT)

EXCUSED Randy K. Awo, Maui Commissioner
Dennis L. Neves, Kauai Commissioner

COUNSEL Alyssa Kau, Deputy Attorney General

STAFF Katie L. Ducatt, Deputy Designate to the Chairman
Leah Burrows-Nuuanu, Secretary to the Commission
Richard Hoke, Executive Assistant to the Chairman
Andrew Choy, Planning Manager (ICT)
Kahana Albinio, Acting Land Management Division Administrator
Julie Cachola, Planner
Lilianne Makaila, Planner
Michael Lowe, Information Specialist

ORDER OF BUSINESS

CALL TO ORDER

Chair Watson called the meeting to order at 11:33 AM. Four (4) members were present at the meeting location, and two (2) via Zoom, establishing a quorum.

APPROVAL OF AGENDA

MOTION/ACTION

Moved by Commissioner Helm, seconded by Commissioner Kaleikini, to approve the agenda.
Motion carried unanimously.

Chair Watson announced that after Public Testimony, the Commission would convene into executive session for approximately 30 minutes.

PUBLIC TESTIMONY ON AGENDIZED ITEMS

PT-1 Cindy Freitas – Item F-1

Cindy Freitas opposed Item F-1. It is unacceptable how it is set up that all the beneficiaries cannot have a chance to do this. The Department should educate the people on how solar rooftops work and how they can benefit. She does not see any benefit from Nexamp. She is appalled at the acreage for Nexamp. She stated she still holds a lease with nothing attached to it. With rooftop solar, there are no adjustments besides the \$26.86 for the line attached to the home.

MOTION

Moved by Commissioner Helm, seconded by Commissioner Freitas, to convene in an executive session pursuant to Section 92-5(a)(4), HRS, to Consult with its attorney on questions and issues pertaining to the Commission's powers, duties, privileges, immunities, and liabilities; and

EXECUTIVE SESSION IN

11:41 AM

The Commission anticipates convening an executive meeting pursuant to Section 92-5(a)(4), HRS, to Consult with its attorney on questions and issues pertaining to the Commission's powers, duties, privileges, immunities, and liabilities; and

EXECUTIVE SESSION OUT

1:00 PM

ITEMS FOR DECISION MAKING

REGULAR AGENDA

LAND MANAGEMENT DIVISION

ITEM F-1 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.

RECOMMENDED MOTION/ACTION

Acting Land Management Division Administrator Kahana Albinio presented the following: Motion that the Hawaiian Homes Commission approve to issue of a Right of Entry Permit for due diligence purposes and Conditional Approval for a General Lease for 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 -acres 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 3-megawatts solar plus battery storage project, whereby two co-located solar plus battery storage project will be developed and generate a total of up to 6-megawatts of energy, and encompass a total land area of 46.93-acres of Hawaiian Home Lands, TMK No. (3) 7-3-010:007 (por.), situated in Kalaoa, Hawai`i Island.

MOTION

Moved by Commissioner Helm, seconded by Commissioner Freitas, to approve the motion as stated in the submittal.

DISCUSSION

Commissioner Kaleikini asked to clarify that the due diligence includes the environmental assessment and the negotiation with HELCO. There will be an application pending submittal to the Public Utilities Commission (PUC), but that still needs to be approved. So, if the PUC approves it, the environmental assessment must come to the Commission for approval. The review will include a discussion on the safety of the lithium battery and protocols for employees to follow in case of battery leakage. Once the due diligence is completed, the Commission will be asked to approve a long-term lease. Is that correct? K. Albinio stated under condition No. 4, the authority is delegated to the Hawaiian Homes Commission's Chairman to negotiate the final term of the Right-of-Entry and General Lease with Nexamp.

Commissioner Kaleikini stated the key is that the Commission needs to hear the environmental assessment and safety concerns. If the DHHL staff agrees that the lease of this property is not suitable for residential and that it is a fair, reasonable compensation for using it, he will support it. However, safety concerns and other requirements need to be followed up on.

Commissioner Ka'upu stated the submittal is a Right-of-Entry for due diligence for Nexamp to fill all the contingencies still open. If they fill those contingencies, they can move into a General Lease. There might be specific lease terms delegated to the Chairman to figure out, but entering into the lease at that point, the Commission does not have the option to say no. He thinks the Commission would like the opportunity to see the environmental assessment results.

Planner Julie Cachola stated it is conditional upon approval of the PPA and the EA, which is squarely in the Commission's authority to approve the environmental assessment. If Nexamp completes those two, then they could exercise the option for a general lease at that point. That goes to the draft, comments, and the final.

Commissioner Ka'upu stated there were lots of testimony about the risk of fire. The topography and the condition of the parcel, which is probably lava, is the risk of the spread of fire, for whatever cause, is that risk as significant here in Puukapu as in other areas on Hawai'i island? K. Albinio stated he is not a fire specialist, but the area is covered with a lava rock and some vegetation.

Commissioner Freitas stated there had been small fires in this area, but it is predominantly lava rock. It is not like in Waikoloa Village.

Commissioner Ka'upu asked if the Department is extending water service to the parcel that does not have service. K. Albinio stated no the Department is not. Commissioner Ka'upu asked the fire apparatus is not reliant upon access to County water. K. Albinio stated it is not. It is a powder fire suppressant.

Commissioner Helm voiced his concerns about providing beneficiary consultation for the people, having a non-beneficiary company instead of a local company doing the project, and the percentage of the discount for the electricity. He will abstain.

Commissioner Teruya asked if there was a beneficiary consultation done. J. Cachola stated there was no other beneficiary consultation done. The project had been vetted two times in the regional planning process. Commissioner Teruya stated that few people get involved in planning regional plans when things change. Regarding the earlier plan on the proposed solar, O'oma Homestead Alliance from Kailua-Kona applied and was not selected. The Chairman approved Nexamp LLC. She stated she would not be supporting this project.

Commissioner Freitas stated he was for the concept of the project. If this goes through today and the Commission gives the right of entry but does not feel comfortable with information from Nexamp or questions regarding the cultural issues, can the Commission pull the plug on it, or must it move forward?

K. Albinio stated the right of entry allows for cancellation if the Commission feels Nexamp is not answering the questions and not addressing any of the concerns and safety issues or concerns. Commissioner Freitas stated there is a way to possibly revisit the beneficiary consultation so that the beneficiaries feel their voice matters. J. Cachola stated they have the video of that beneficiary consultation session. Commissioner Freitas is for the project with the intent that most beneficiaries are for it. He would like to hear more from the beneficiaries, if possible. J. Cachola stated it was a public hearing last night, or do you want another meeting?

Chair Watson stated these are vacant lands, and he would like to move things along, especially if there is a way the Department can benefit beneficiaries and provide income to the Department for its programs. This a due diligence right of entry where they have to jump through all the different hoops and provide the Department/Commission information from independent third parties. There is also the flexibility for the negotiator, should it get to that point where the Commission is comfortable with Nexamp's suggestions of fire safety and various other things when they get their PPA, get a better handle on the cost, and incorporate the tax credits to generate more revenue for them. It is more like continuing the process, not terminating, and maybe missing an opportunity to move the program forward. He is for this next step; if the Commission does not take the next step, it will never know the specific benefits of the program. He stated he would be voting to issue a right of entry.

ACTION

Moved by Commissioner Kaleikini, seconded by Commissioner Neves, to approve Items F-1 and F-2, except for parcel No. 19.						
Commissioner	1	2	'AE (YES)	A'OLE (NO)	KANALUA ABSTAIN	EXCUSED
Commissioner Awo						X
Commissioner Freitas		X	X			
Commissioner Helm	X			X		
Commissioner Kaleikini			X			
Commissioner Ka'upu			X			
Commissioner Namu'o			X			
Commissioner Neves						X
Commissioner Teruya				X		
Chairman Watson			X			
TOTAL VOTE COUNT			5	2		2
MOTION: [] UNANIMOUS [X] PASSED [] DEFERRED [] FAILED Five (5) Yes votes. Two (2) No votes. Motion passed.						

Kaulani Almeida asked if the public could have a discussion before the vote is taken.

Chair Watson stated the public was provided that opportunity, so the Commission is in the process of taking the vote.

ANNOUNCEMENTS AND ADJOURNMENT

NEXT MEETING

The next HHC meeting – April 17 &18, 2023, Kulana Oihi Halau, 600 Maunaloa Highway, Kalama`ula, Moloka`i, 96748

MOTION/ACTION

Moved by Commissioner Helm, seconded by Commissioner Freitas, to adjourn the meeting.
Motion carried unanimously.

ADJOURNMENT

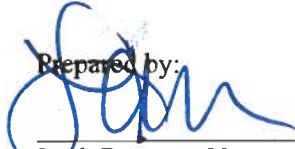
1:40 PM

Respectfully submitted:



Kali Watson, Chairman
Hawaiian Homes Commission

Prepared by:



Leah Burrows-Nuuanu, Commission Secretary
Hawaiian Homes Commission

Attachments:

- 1) Public Testimony