

STATE OF HAWAII  
DEPARTMENT OF LAND AND NATURAL RESOURCES  
Land Division  
Honolulu, Hawaii 96813

August 12, 2016

Ref. No.: GLS-6024

Board of Land and Natural Resources  
State of Hawaii  
Honolulu, Hawaii

HAWAII

Consent to Assign General Lease No. S-6024, Boteilho Hawaii Enterprises, Inc., Assignor, to Mauna Kea Moo, LLC, Assignee, Opihipau-Hukiaa, Kokoiki, North Kohala, Hawaii, Tax Map Keys: (3) 5-5-003:004, 005 & 006, 5-5-005:001, and 5-5-006:002, 003,004 & 015.

APPLICANT:

Boteilho Hawaii Enterprises, Inc., as Assignor, to Mauna Kea Moo, LLC, as Assignee.

LEGAL REFERENCE:

Section 171-36(a)(5), Hawaii Revised Statutes, as amended.

LOCATION:

Portion of Government lands situated at Opihipau-Hukiaa, Kokoiki, North Kohala, Hawaii, Tax Map Keys: (3) 5-5-003:004, 005 & 006, 5-5-005:001, and 5-5-006:002, 003,004 & 015, as shown on the attached map labeled Exhibit A.

AREA:

TAX MAP KEY	DISTRICT	ZONING		ENCUMBRANCE	AREA (Acres)
		LUC	CZO		
(3) 5-5-003:004	Opihipau, Hukiaa N. Kohala	Ag	Ag-20	GLS-6024; Boteilho Hawaii Enterprises	138.45
(3) 5-5-003:005	Opihipau, Hukiaa N. Kohala	Ag	Ag-20	GLS-6024; Boteilho Hawaii Enterprises	31.780
(3) 5-5-003:006	Opihipau, Hukiaa N. Kohala	Ag	Ag-20	GLS-6024; Boteilho Hawaii Enterprises	39.100
(3) 5-5-005:001	Kokoiki, N. Kohala	Ag	Ag-20	GLS-6024; Boteilho Hawaii Enterprises	74.323
(3) 5-5-006:002	Opihipau, Hukiaa N. Kohala	Ag	Ag-20	GLS-6024; Boteilho Hawaii Enterprises	39.280
(3) 5-5-006:003	Opihipau, Hukiaa N. Kohala	Ag	Ag-20	GLS-6024; Boteilho Hawaii Enterprises	397.239

(3) 5-5-006:004	Opihipau, Hukiaa N. Kohala	Ag	Ag-20	GLS-6024; Boteilho Hawaii Enterprises	144.827
(3) 5-5-006:015	Opihipau, Hukiaa N. Kohala	Ag	Ag-20	GLS-6024; Boteilho Hawaii Enterprises	16.060
				<b>TOTAL:</b>	<b>879.549</b>

TRUST LAND STATUS:

Section 5(b) lands of the Hawaii Admission Act

DHHL 30% entitlement lands pursuant to the Hawaii State Constitution:

YES   x   NO       

CHARACTER OF USE:

Dairying and allied purposes to include pasturing of dairy-heifers, including milking barn and accessory uses involved with operating a dairy.

TERM OF LEASE:

30-years, commencing on 6/23/11 and expiring on 6/22/41. First rental reopening is scheduled for 6/23/21.

ANNUAL RENTAL:

\$15,000.

CONSIDERATION:

\$ 2,039,460

RECOMMENDED PREMIUM:

None. (Refer to Exhibit B attached.)

Note: All improvements were on the property from a previous lease.

DCCA VERIFICATION:

ASSIGNOR:

Place of business registration confirmed: YES   x   NO  
Registered business name confirmed: YES   x   NO  
Good standing confirmed: YES   x   NO

ASSIGNEE:

Place of business registration confirmed:	YES <u>x</u>	NO
Registered business name confirmed:	YES <u>x</u>	NO
Good standing confirmed:	YES <u>x</u>	NO

REMARKS:

At its meeting of December 16, 1983, Item F-5, the Board of Land and Natural Resources approved a direct (35-year) lease (GLS-4950) to Boteilho Hawaii Enterprises, Inc. (BHEI), for dairying, cattle feeding and pasturing purposes. The lease was set to expire on March 31, 2020. The lease covered 597.406 acres, identified by Tax Map Keys: (3) 5-5-006:002, 003, 004 & 015.

At a public auction held on December 9, 1998, General Lease S-5572, a 20-year pasture lease was awarded to BHEI, as the successful bidder. The lease was set to expire on February 7, 2019. The lease covered 207.820 acres, identified by Tax Map Keys: (3) 5-5-003:004, 005 & 006.

At a public auction held on December 9, 1998, BHEI was the successful bidder for GLS-5574, a 20-year pasture lease under General Lease No. S-5574. The lease was set to expire on February 7, 2019. The lease covered 74.323 acres, identified by Tax Map Key: (3) 5-5-005:001.

At its meeting of March 11, 2011 (D-3), and July 22, 2011 (D-3), the Land Board approved the mutual cancellation of General Lease Nos. S-4950, S-5572, and S-5574, and the issuance of a direct lease to BHEI for dairy and allied purposes. Also at its meeting of July 22, 2011, Item D-1, the Board approved the transfer of the subject lands and leases to the Department of Agriculture (DOA) pursuant to Act 90, Sessions Laws of Hawaii 2003. The set-aside has not yet been completed. Staff has advised DOA of the request to assign the leases.

The subject parcels are currently under lease to BHEI for dairying and pasture purposes. The highest and best use allowable that is consistent with county zoning, which is agriculture. BHEI initially requested a 25-year extension for its leases, but later decided to instead request a cancellation of its leases, then to consolidate into a new direct lease over the same parcels for agricultural processing (dairy) purposes. The longer lease term would justify additional investment of monies for the replacement of old machinery and other major improvements.

BHEI qualified for the direct lease pursuant to Hawaii Revised Statutes, 171-59(b), for agricultural processing purposes, which involves the processing of agricultural products, including dairying, grown, raised or produced in Hawaii. BHEI has been in the dairying business for over 26 years. The disposition of a direct lease to BHEI encouraged competition in the agricultural milk production industry as it allowed for BHEI to acquire much needed newer equipment so it can maintain its milk production quotas. Currently

there are only three dairies left in the State, all of which are on the Big Island.

By letter dated July 20, 2016, Evan Pfaff, Insight Environmental LLC (Insight), explained he was contracted by Boteilho Hawaii Enterprises, to conduct a Phase I Environmental Site Assessment (ESA) as required under the lease. The Phase I ESA identified the presence of four underground storage tank (UST) fill ports on the property. Prior to being notified of the presence of the UST fill ports on the property, via findings of the Phase I ESA, BHEI indicated it was not aware of the UST infrastructure and had not operated the UST facility. Neither was the Hawaii District Land Office aware of the USTs. There were no records in file to indicate authorization was granted to the prior lessee (Hawaii Biogenics, Ltd.) or if proper permits were obtained by the previous lessee for installing the USTs. As part of a potential sale agreement to a third party, BHEI agreed to remove the USTs.

In early April 2015, Insight provided notification of the intent to close the four identified USTs. BHEI was identified as the UST facility operator on notification forms because the true operator was not known. The Hawaii Department of Health (HDOH) Solid Waste and Hazardous Waste Branch (SHWB) assigned facility identifier 9-603948 to the facility. In late April 2015, surface infrastructure and ancillary piping associated with the UST facility was removed and overburden excavated. On April 24, 2015, the four USTs were removed from the ground, and closure confirmation samples were collected from beneath each UST and two identified dispensers. Visual inspection of the USTs did not identify any substantial corrosion or holes. On June 30, 2015, the excavation was backfilled. A UST Closure and Release Response Report was completed and submitted to SHWB.

Evidence gathered by Insight indicates that the Hawaii Biogenics, Ltd. (Hawaii Biogenics) installed, owned, and operated the UST facility on the property. Records indicate that the lease to Hawaii Biogenics was terminated in March 1979 and the company was later dissolved. Hawaii Biogenics installed the UST in violation of its lease because it failed to notify DLNR of the installation. DLNR was not aware of the presence of the UST facility on the property, therefore could not in turn notify BHEI prior to issuing the lease.

By letter dated May 20, 2016, BHEI's attorney requested that BHEI be reimbursed in the amount of \$42,763.88 for expenses related to the removal of the USTs. See Exhibit C attached. Staff has forwarded this request to the Department of the Attorney General to determine whether the State has any obligation with respect to the claim.

On June 6, 2016, the Hawaii District Land Office received consent to assignment of lease application from BHEI, requesting the assignment of General Lease No. S-6024 to Mauna Kea Moo, LLC (MKM LLC). Mr. Boteilho indicated that for health reasons, he decided to assign the lease because he is getting along in age and feels that the demands of the job are becoming too difficult for him. The assignment of lease includes improvements (2-warehouses & 5-employee dwellings for \$576,000), trade fixtures

(\$276,500), livestock (\$1,110,960), and milk quota (\$76,000). The various improvements were on the property from BHEI's prior lease.

Mr. Kees Kea, the owner/operator of MKM LLC, has been in the dairy industry since the 1980's. Through the years, Kees Kea has owned, operated, and has been a partner of various dairy operations. MKM LLC currently has a dairy lease with the State under General Lease No. S-6054, since July 8, 2014, and is scheduled to expire on May 31, 2049. Mr. Kea's plans are to eventually produce and sell organic cheese, yogurt and butter from the milk produced. In the meantime, Mr. Kea intends to continue the dairy operations of BHEI, to meet the milk quota he inherited/bought.

Staff reviewed the file and can report that Lessee has been in compliance with all lease terms and conditions. The Lessee has never been cited for any illegal or unlawful activity on the State property.

Assignee, Mauna Kea Moo, Inc. has not had a lease, permit, easement or other disposition of the State lands terminated within the last five years due to non-compliance with such terms and conditions.

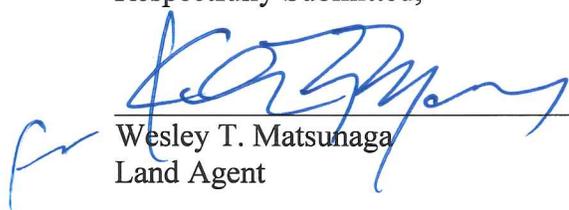
The first rental reopening is scheduled for June 23, 2021. There is no outstanding rental reopening issues.

Staff did not solicit comments from other agencies on the subject request, as there will be no changes to the land use.

RECOMMENDATION: That the Board:

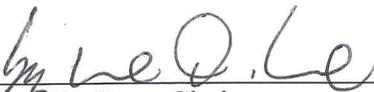
- A. Consent to the assignment of General Lease No. S-6024 from Boteilho Hawaii Enterprises, Inc., as Assignor, to Mauna Kea Moo, LLC, as Assignee, subject to the following:
1. The standard terms and conditions of the most current consent to assignment form, as may be amended from time to time;
  2. Review and approval by the Department of the Attorney General; and
  3. Such other terms and conditions as may be prescribed by the Chairperson to best serve the interests of the State.

Respectfully Submitted,

  
\_\_\_\_\_  
Wesley T. Matsunaga  
Land Agent

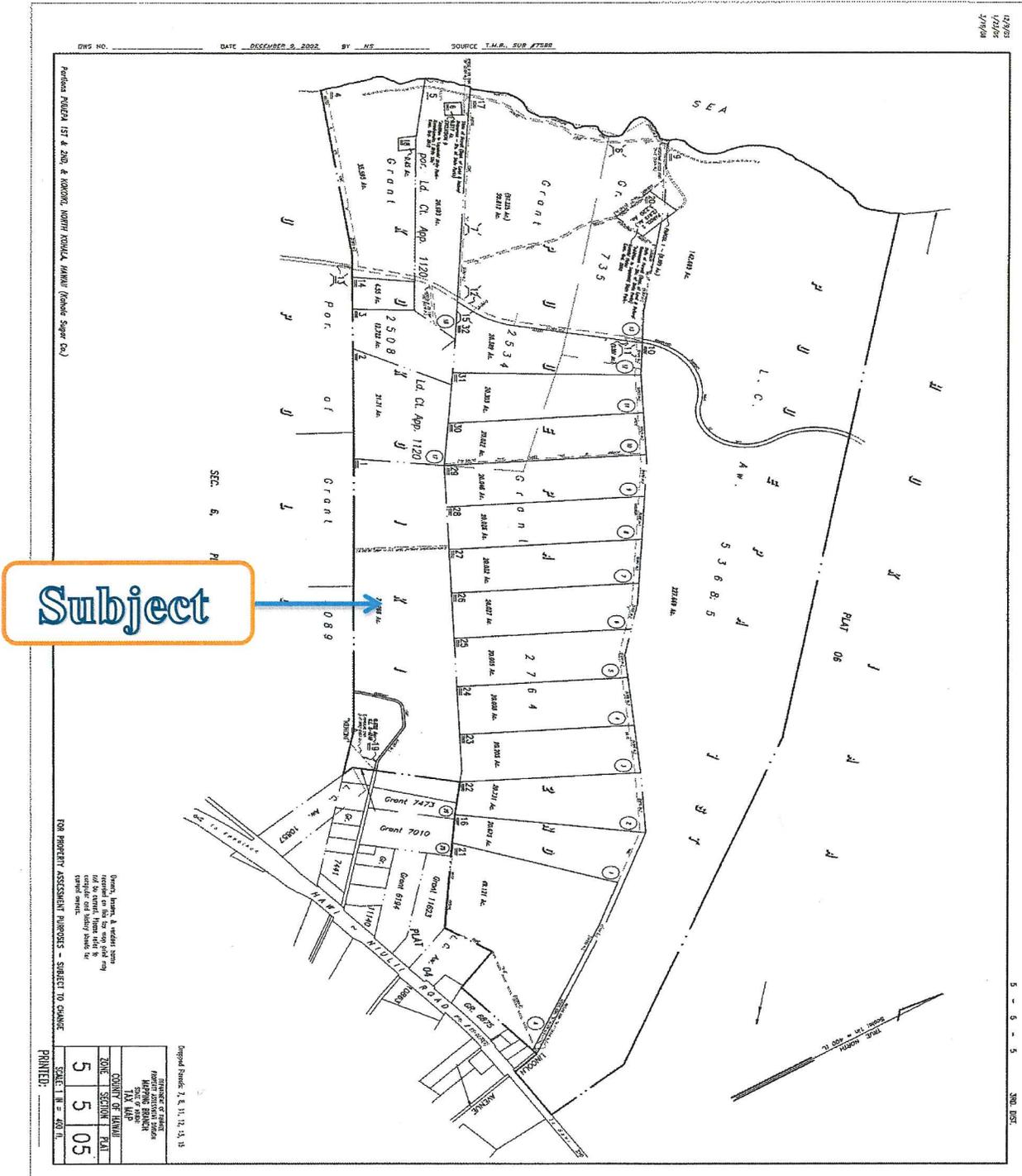
BLNR-Consent to Assign GLS-6024  
Boteilho Hawaii, Inc. to Mauna Kea Moo, LLC.  
TMK: (3) 5-5-003:003, 004, 005 & 006, 5-5-005:001,  
and 5-5-006:002, 003, 004 & 015.

APPROVED FOR SUBMITTAL:

  
\_\_\_\_\_  
Suzanne D. Case, Chairperson









DAVID Y. IGE  
GOVERNOR OF  
HAWAII



SUZANNE D. CASE  
CHAIRPERSON  
BOARD OF LAND AND NATURAL RESOURCES  
COMMISSION ON WATER RESOURCE MANAGEMENT

KEKOA KALUHIWA  
FIRST DEPUTY

JEFFREY T. PEARSON, P.E.  
DEPUTY DIRECTOR - WATER

AQUATIC RESOURCES  
BOATING AND OCEAN RECREATION  
BUREAU OF CONVEYANCES  
COMMISSION ON WATER RESOURCE MANAGEMENT  
CONSERVATION AND COASTAL LANDS  
CONSERVATION AND RESOURCES ENFORCEMENT  
ENGINEERING  
FORESTRY AND WILDLIFE  
HISTORIC PRESERVATION  
KAHOOLAWE ISLAND RESERVE COMMISSION  
LAND  
STATE PARKS

STATE OF HAWAII  
DEPARTMENT OF LAND AND NATURAL RESOURCES

POST OFFICE BOX 621  
HONOLULU, HAWAII 96809

July 7, 2016

Ref. No.: GLS-6024

MEMORANDUM

TO: Suzanne D. Case, Chairperson  
THROUGH: Russell Y. Tsuji, Division Administrator  
FROM: Gordon C. Heit, Land Agent  
SUBJECT: In-House Recommendation – Assignment of Lease Calculation

GL No.: S-6024  
Lessee/Assignor: Boteilho Hawaii Enterprises, In  
Assignee: Mauna Kea Moo, LLC  
Location: Opihipau-Hukiaa, Kokoiki, North Kohala, Hawaii.  
Land Area: 879.549 acres more or less  
Tax Map Key: (3) 5-5-003:004, 005 & 006, 5-5-005:001, and  
5-5-006:002, 003, 004 & 015.  
Char. of Use: Dairy and allied purposes

We have been requested to provide an in-house evaluation of the assignment premium due to the State for an assignment of GL S-6024 due to the acquisition of the assets of Boteilho Hawaii Enterprises, Inc. A review of the lease documents and information provided by lessee was analyzed and staff applied the formula approved by the Land Board on December 15, 1989, agenda item F-10, comprising of the Assignment of Lease Evaluation Policy.

**EXHIBIT B**

Net consideration		\$576,000
Actual improvement cost	\$1,115,500	
Adjusted improvement cost	\$1,523,886	
Trade fixture cost	<u>\$0</u>	
Total improvement and trade fixture cost	\$1,523,886	
Less depreciation (10 yr. lifespan)	<u>\$(524,894)</u>	
Depreciated value of improvements & fixtures	\$ 998,992	
Less adjusted improvement cost (inc. trade fixtures)		<u>\$ 998,992</u>
Excess		\$(422,992)
Premium % (1-10 years elapsed)		<u>50%</u>
Premium		<b>\$(211,496)</b>

Based on these calculations resulting in a negative premium calculation, the premium due the State is \$0.

Approved/Disapproved:

  
 \_\_\_\_\_  
 Suzanne D. Case, Chairperson

8/1/16  
 \_\_\_\_\_  
 Date

cc: District Branch Files  
 Central Files

**EXHIBIT B**

NAKAMOTO, OKAMOTO & YAMAMOTO  
ATTORNEYS AT LAW, A LAW CORPORATION

ROY K. NAKAMOTO  
ALAN M. OKAMOTO  
JEREL I. YAMAMOTO

187 KAPIOLANI STREET  
HILO, HAWAII 96720-2687

TELEPHONE (808) 961-0641  
FAX (808) 935-3872

ROY@NOYHAWAII.COM

OF COUNSEL  
CHARLES H. HITE  
JAMES H. KUNIMURA

May 20, 2016

Mr. Gordon Heit, District Land Agent  
Land Division  
Department of Land and Natural Resources  
75 Aupuni Street, Room 204  
Hilo, Hawaii 96720

RECEIVED  
LAND DIVISION  
HILO, HAWAII  
MAY 23 2016

Re: Underground Storage Tanks (UST)  
on 55-297 Upolu Road, Hawi, Hawaii  
Lease No. S-6024  
TMK (3) 5-5-006:003 (portion of lease)

Dear Mr. Heit:

As you know my client, Boteilho Hawaii Enterprises, Inc. was trying to sell/assign the lease to a third party. During that transaction period, my client first learned that there was Underground Storage Tanks (UST) on the property. My client started removing the UST while studying the responsibility of the removal of the UST from the premises. At that time my client worked with the State Department of Health of the clean-up and the State had determined that the State through the DLNR is responsible of the clean-up. A copy of the letter dated October 26, 2015 from Steven Y. K. Chang to you is enclosed. My client had started the work of the clean-up so it could assign the lease to the third party, but since the State is responsible, my client contacted the State for reimbursement for the work done to date. The amount it had paid as follows:

Insight Environmental LLC	3/25/15	\$5,862.85
	9/18/15	\$12,780.35
D. L. Dowing General Contractor	3/19/15	\$12,000.00
	11/20/15	<u>\$12,120.68</u>
Total Cost		\$42,763.88

Time has passed but there has been no reimbursement to date. In our situation, my client is paying you for the lease rent on the property. In this case instead of receiving payment, is it

**EXHIBIT C**

NAKAMOTO, OKAMOTO & YAMAMOTO

ATTORNEYS AT LAW, A LAW CORPORATION

Mr. Gordon Heit

May 20, 2016

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feasible to make an arrangement that the reimbursement amount be a credit be applied to the rent which should result at the same.

If you have any questions, please let me know.

Very truly yours,

A handwritten signature in black ink, appearing to read "Roy K. Nakamoto". The signature is stylized and cursive, with a large initial "R" and "N".

Roy K. Nakamoto

RKN:sat  
Enclosure

cc: Boteilho Hawaii Enterprises, Inc

DAVID Y. IGE  
GOVERNOR OF HAWAII



VIRGINIA PRESSLER, M.D.  
DIRECTOR OF HEALTH

STATE OF HAWAII  
DEPARTMENT OF HEALTH  
P. O. BOX 3978  
HONOLULU, HI 96801-3378

In reply, please refer to:  
File:

October 26, 2015

U1010JN

Mr. Gordon Heit, District Land Agent  
Land Division

Department of Land and  
Natural Resources  
75 Aupuni Street, Room 204  
Hilo, Hawaii 96720

Dear Mr. Heit:

SUBJECT: 55-297 Upolu Road  
Facility ID No. 9-603948 / Release ID No. 150019

The Department of Health (DOH) has reviewed the letter, *Subject: Identification of Operator/Owner and Request for Determination of Financial Responsibility for UST Facility 9-603948, 55-297 Upolu Road, Hilo, Hawaii*, dated July 20, 2015, and prepared by Insight Environmental (Insight) on behalf of Boteilho Hawaii Enterprises, Inc. (BHE).

The letter states that four (4) underground storage tanks (USTs) were discovered by BHE through Tetra Tech, Inc. during a Phase I Environmental Site Assessment. Subsequently, BHE hired Insight to remove the USTs, piping, and "surface infrastructure" in April 2015. Contamination above the DOH Tier 1 Environmental Action Levels (EALs) was discovered in samples collected from the excavation. Over-excavation of contamination was carried out, but not all soil with contamination greater than EALs was removed.

Attachments to the letter evidence that the USTs were on the property prior to BHE's lease of the property, and appear to have been installed and operated by Hawaii Biogenics, Ltd. during their lease of the property. Furthermore, the letter states, "BHE was not aware of the presence of UST infrastructure on the property and had not operated the UST facility."

Based on the evidence provided, the DOH has determined that the Department of Land and Natural Resources (DLNR) is the owner of the USTs and is responsible for cleanup of the release from the USTs. Unless evidence is provided to the contrary, the DLNR

Mr. Gordon Heit  
October 26, 2015  
Page 2

should provide an Initial Release Response Report/UST Closure Report with a summary of the removal actions and results for sampling. Additionally, the DLNR should conduct further sampling to detail the extent and magnitude on contamination remaining in place at the facility or attempt further over-excavation of contamination with confirmation sampling.

Please send the Initial Release Response Report/Closure Report and a work plan detailing further actions planned to address contamination at the facility to this office within ninety (90) days of receipt of this letter.

If you have any questions regarding this letter or would like to discuss this case with the DOH, please contact Mr. Josh Nagashima of our Underground Storage Tank Section at (808) 586-4226 or email at [josh.nagashima@doh.hawaii.gov](mailto:josh.nagashima@doh.hawaii.gov).

Sincerely,



STEVEN Y.K. CHANG, P.E., CHIEF  
Solid and Hazardous Waste Branch

c: Mr. Ed Boteilho, Boteilho Hawaii Enterprises, Inc.  
Mr. Wade Hargrove III, Department of the Attorney General

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