

CARLSMITH BALL WICHMAN MURRAY CASE & ICHIKI

ATTORNEYS AT LAW

A PARTNERSHIP INCLUDING LAW CORPORATIONS

121 WAIANUENUE AVENUE

POST OFFICE BOX 686

HILO, HAWAII 96721-0686

TELEPHONE (808) 935-6644

FAX (808) 935-7975

GUAM OFFICE

TELEPHONE (671) 472-6813

FAX (671) 477-4375

SAIPAN OFFICE

TELEPHONE (670) 322-3455

FAX (670) 322-3368

KONA OFFICE

TELEPHONE (808) 242-6464

FAX (808) 329-9450

MAUI OFFICE

TELEPHONE (808) 242-4535

FAX (808) 244-4974

KAPOLEI OFFICE

TELEPHONE (808) 523-2500

FAX (808) 674-0850

HONOLULU OFFICE

TELEPHONE (808) 523-2500

FAX (808) 523-0842

LOS ANGELES OFFICE

TELEPHONE (213) 955-1200

FAX (213) 623-0032

LONG BEACH OFFICE

TELEPHONE (310) 435-5631

FAX (310) 437-3760

MEXICO CITY OFFICE

TELEPHONE (52-5) 281-2428

FAX (52-5) 281-2196

WASHINGTON, D.C. OFFICE

TELEPHONE (202) 508-1025

FAX (202) 508-1026

June 28, 1994

ORIGINAL

Ms. Esther Ueda  
Executive Officer  
Land Use Commission  
State of Hawaii  
335 Merchant Street  
Old Federal Building  
Room 104  
Honolulu, Hawaii 96813

Re: 1994 Annual Progress Report  
LUC Docket No. A84-570  
W. H. Shipman, Limited (Increment II)

Dear Ms. Ueda:

In compliance with the Findings of Fact, Conclusions of Law, and Decision and Order filed on July 2, 1993, in State Land Use Commission Docket No. A84-570, Petitioner W. H. Shipman, Limited submits its 1994 annual report regarding compliance with the substantive conditions of approval, listing in order the governmental "CONDITION" and the Petitioner's "RESPONSE".

PROJECT STATUS

State Land Use Commission Approvals

On June 28, 1984, Petitioner W. H. Shipman, Limited (hereinafter "Petitioner") filed in this docket a petition to reclassify approximately 487.74 acres at Keaau, in the District of Puna, Island and County of Hawaii (hereinafter the "Property"), from the Agricultural to the Urban District for development of an industrial park in two increments. By

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LAND USE COMMISSION  
STATE OF HAWAII

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Decision and Order in Docket No. A84-570 dated February 19, 1985, the Land Use Commission (hereinafter the "Commission") approved reclassification of approximately 312 acres for development of Increment I, with the incremental redistricting of approximately 175.74 acres for Increment II subject to Petitioner's substantial completion of required on-site and off-site improvements in Increment I. On December 14, 1992, Petitioner filed its Motion to Confirm Substantial Completion of Development of Increment I and to Approve Urbanization of Increment II, which motion was granted by the Land Use Commission in its Decision and Order dated July 2, 1993.

#### Office of State Planning Recommendation

On April 23, 1993, in its "Memorandum in Support of Petitioner's Motion Requesting the State Land Use Commission to Approve Redistricting of Increment II", the Office of State Planning noted that the subject property is situated over a major groundwater body and recommended that the reclassification from the Agricultural to the Urban District be conditioned on the establishment of systems and methods of treatment and mitigation of hazardous waste, disposal and spill contamination.

This recommendation had already been implemented voluntarily by the Petitioner, wherein on December 28, 1990, Petitioner recorded in the Land Court as Document No. 1991651 an "Additional Amendment to Covenants, Conditions and Restrictions and Owners' Association Contract" which adopted language recommended by the State Health Department for mitigation measures addressing potential groundwater contamination.

#### Hawaii County Approvals

Effective August 19, 1986, Hawaii County Change of Zone Ordinance No. 86-85 rezoned the 487.74-acre Property from an Agricultural (A-20a) to a General Industrial (MG-20) zoned district, said zoning being conditioned upon reclassification of the property from the Agricultural to the Urban District by the State Land Use Commission. The 312 acres, which comprises Increment I in this docket, were rezoned into two smaller increments by Hawaii County, the first increment being comprised of approximately 158 acres, and the second being comprised of approximately 127 acres and conditioned on substantial development of the first 158-acre increment.

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In December 1986, Petitioner submitted a subdivision application to the Hawaii County Planning Department for 19 industrial lots involving approximately 28 acres in the County-zoned Increment I. Final subdivision approval of said Phase 1A was granted on December 30, 1987.

In December 1988, Petitioner submitted a subdivision application for 36 industrial lots involving approximately 77 acres in the County-zoned Increment I. Final subdivision approval of said Phase 1-B was granted on December 5, 1989.

In July 1990, Petitioner submitted a subdivision application for 32 industrial lots involving approximately 48 acres in the County-zoned Increment I. Final subdivision approval of said Phase 1-C was granted on December 11, 1991.

In December 1991, Petitioner submitted a subdivision application for 21 industrial lots involving approximately 30 acres in the County-zoned Increment I. Final subdivision approval of said Phase 1-D is pending installation of electrical poles to service said lots.

Effective July 22, 1992, Hawaii County Change of Zone Ordinance No. 92-87 amended original Change of Zone Ordinance No. 86-85, reducing Petitioner's buildout requirement from 25% to 15% of the lots and allowing Petitioner to proceed with development of the County-zoned Increment II. Subsequently, on December 2, 1992, Hawaii County accepted Petitioner's Affordable Housing Need Study, thereby allowing Petitioner to proceed with development of said Increment II without imposition of an additional affordable housing requirement.

To date, Petitioner has expended some \$13 million in on-site and off-site improvements for the project and has substantially completed the same in accordance with the development plan it submitted to the State Land Use Commission and Hawaii County. A water supply and storage system for the entire industrial park and a 5,000 lineal foot 16-inch water main to transport water from Keaau Village to the industrial park have been installed. State highway improvements consisting of a channelized intersection and acceleration/ deceleration lanes have been completed to provide access to the industrial park from and onto the Volcano Highway. The Petitioner has also received preliminary approval from the

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State Highways Division to install traffic lights at that intersection and will bear the \$300,000 cost of said installation. With the exception of installation of power poles in the County-zoned Phase 1-D, all other on-site improvements, including internal roadways, have been completed for the State-zoned Increment I.

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Compliance with LUC Conditions of Docket No. A84-570

Condition 1: Petitioner shall coordinate with the County of Hawaii and the State Department of Health regarding the establishment of appropriate systems to contain spills and prevent materials associated with industrial uses such as petroleum products, chemical or other pollutants, from adversely affecting the groundwater.

Response: On December 28, 1990, Petitioner recorded at the Land Court of the State of Hawaii as Document No. 1991651 an "Additional Amendment to Covenants, Conditions and Restrictions and Owners' Association Contract Originally Recorded as Land Court Document No. 1568649 and Noted on Transfer Certificate of Title No. 309914 on August 1, 1988". Said amendment adopted language recommended by the State Health Department relating to mitigation measures against potential groundwater contamination.

On March 19, 1993, in its "Memorandum in Support of Petitioner's Motion Requesting the State Land Use Commission to Confirm Substantial Completion of Development of Increment I and to Approve Redistricting of Increment II", the County of Hawaii determined that the Petitioner had substantially completed required off-site and on-site improvements within Increment I and recommended that the Commission approve reclassification of the State-zoned Increment II.

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The Petitioner, its lessees and purchasers have complied with the requirements of the State Department of Health for groundwater protection, sewage treatment and the storage and/or disposal of hazardous wastes on the Property.

Condition 2: Petitioner shall comply with the requirements of the State Department of Health and the County of Hawaii Department of Public Works with respect to the installation of the project's sewage system.

Response: Please refer to foregoing response to Condition 1.

Condition 3: Storage and/or disposal of hazardous wastes shall be approved by the Department of Health prior to their establishment on the Property.

Response: Please refer to foregoing response to Condition 1.

Condition 4: Petitioner shall complete the proposed project in substantial compliance with the representations made before the Land Use Commission. Failure to so develop the Property may result in reversion of the Property to its former land use classification, or change to a more appropriate classification.

Response: The Petitioner shall so develop the Property in substantial compliance with representations made before the Land Use Commission in obtaining the subject reclassification of the Property.

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Condition 5: Petitioner shall provide annual reports to the Land Use Commission, the Office of State Planning, and the County of Hawaii Planning Department in connection with the status of the subject property and the Petitioner's progress in complying with the conditions imposed.

Response: The Petitioner will continue to provide annual reports to the Land Use Commission, Office of State Planning, and the County of Hawaii Planning Department in compliance with the foregoing condition.

Condition 6: The Land Use Commission may fully or partially release these conditions as to all or any portion of the Property upon timely motion and upon the provision of adequate assurance of satisfaction of these conditions by Petitioner.

Response: To date, the Petitioner has not asked for release of any conditions imposed by the Land Use Commission for the subject reclassification of the Property.

Condition 7: The conditions imposed by the Land Use Commission shall be recorded with the Bureau of Conveyances and Land Court of the State of Hawaii, if applicable, pursuant to Section 15-15-92, H.A.R.

Response: In compliance with the foregoing administrative rule, the Petitioner has recorded against the Property the conditions imposed by the Land Use Commission. A "Declaration of Conditions" was recorded at the Bureau of Conveyances of the State of Hawaii on August 31, 1993 as Document No. 93-143016, and also at the Land Court of the State of Hawaii on August 31, 1993 as Document No. 2061596. Receipt of a file-stamped copy of this document was acknowledged by the Land Use Commission via letter to Petitioner's attorney dated September 23, 1993.

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Condition 8: Within 7 days of the issuance of the Commission's Decision and Order for the subject reclassification, Petitioner shall (a) record with the Bureau of Conveyances or Land Court of the State of Hawaii, whichever is appropriate, a Statement to the effect that the Property is subject to conditions imposed by the Land Use Commission in the reclassification of the Property, and (b) shall file a copy of such recorded statement with the Commission.

Response: A "Notice of Imposition of Conditions by the Land Use Commission" was recorded at the Bureau of Conveyances of the State of Hawaii on July 9, 1993 as Document No. 93-110660, and also at the Land Court of the State of Hawaii on July 9, 1993 as Document No. 2042908. Receipt of a file-stamped copy of this document was acknowledged by the Land Use Commission via letter to Petitioner's attorney dated July 30, 1993.

A "Notice of Correction to Notice of Imposition of Conditions by the Land Use Commission recorded on July 9, 1993" was recorded at the Bureau of Conveyances on August 13, 1993 as Document No. 93-132549, and also at the Land Court on August 13, 1993 as Document No. 2055140. Receipt of a file-stamped copy of this document was acknowledged by the Land Use Commission via letter to Petitioner's attorney dated August 23, 1993.

A "First Amended Notice of Correction to Notice of Imposition of Conditions by the Land Use Commission recorded on July 9, 1993" was recorded at the Bureau of Conveyances on August 31, 1993 as Document No. 93-143015, and also at the Land Court on August 31, 1993 as Document No. 2061595. Receipt of a file-stamped copy of this document was acknowledged by the Land Use Commission via letter to Petitioner's attorney dated September 23, 1993.

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The foregoing discussion comprises Petitioner W. H. Shipman, Limited's 1994 annual report to the Land Use Commission. Please feel free to call me in Hilo at 935-6644 should you have any questions concerning this report. Thank you for your consideration in this matter.

Very truly yours,

CARLSMITH BALL WICHMAN  
MURRAY CASE AND ICHIKI



STEVEN S. C. LIM

SSCL:JEC

xc: Hawaii County Planning Department  
Office of State Planning  
W. H. Shipman, Limited  
Mr. William Moore