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LAND USE COMMISSION

STATE OF HAWAI'I

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|--------------------------------------|------|
| ACTION MEETING                       | PAGE |
| A97-721 MAKENA RESORT CORP. (Maui) ) | 9    |
| _____)                               |      |

TRANSCRIPT OF PROCEEDINGS

The above-entitled matter came on for an action meeting at Maui Arts & Cultural Center-Alexa Higashi Room, One Cameron Way, Kahului, Maui, Hawai'i commencing at 9:30 a.m. on August 2, 2012, pursuant to Notice.

REPORTED BY: HOLLY M. HACKETT, CSR #130, RPR  
Certified Shorthand Reporter

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A P P E A R A N C E S

COMMISSIONERS:

SHELDON BIGA  
RONALD HELLER (Vice Chair)  
LANCE INOUE  
CHAD McDONALD  
ERNEST MATSUMURA  
NICHOLAS TEVES, JR.

EXECUTIVE OFFICER: DAN ORODENKER  
CHIEF CLERK: RILEY HAKODA  
STAFF PLANNER: BERT SARUWATARI

DEPUTY ATTORNEY GENERAL: SARAH HIRAKAMI, ESQ.

AUDIO TECHNICIAN: WALTER MENCHING

Docket No. A97-721 Makena Resort Corp.

For the Petitioner: MARTIN LUNA, ESQ.  
STANFORD CARR

For the County: JAMES GIROUX, ESQ.  
Deputy Corporation Counsel  
KURT WOLLENHAUPT, Planning Dept.

For the State: BRYAN YEE, ESQ.  
Deputy Attorney General  
LOREN MAKI, OP  
Office of Planning

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DOCKET WITNESS

PAGE

Stanford Carr

Direct Examination by Mr. Luna

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1 VICE-CHAIRMAN HELLER: (Gavel) Okay. Let's  
2 get started. I apologize for the late start.  
3 Personally my preference is to start meetings on time,  
4 but we had some flight delay issues that were beyond  
5 our control.

6 This is an action meeting to consider  
7 Petitioner's Motion for Sixth Amendment to the  
8 Findings of Fact, Conclusions of Law and Decision and  
9 Order filed on February 19, 1998. Will the parties  
10 please identify themselves for the record.

11 MR. LUNA: I'm Martin Luna representing ATC  
12 Makena. Stanford Carr is here as the principal of  
13 this ATC Makena.

14 VICE-CHAIRMAN HELLER: Thank you.

15 MR. GIROUX: Good morning, Chair. James  
16 Giroux representing the county.

17 MR. YEE: Good morning. Deputy Attorney  
18 General Bryan Yee on behalf of the Office of Planning.  
19 With me is Lorene Maki from the Office of Planning.

20 VICE-CHAIRMAN HELLER: Thank you. I  
21 realize that we neglected to adopt the minutes from  
22 last time, so let's pause this for just a second and  
23 ask does anybody have a motion on the minutes.

24 COMMISSIONER TEVES: So moved.

25 COMMISSIONER INOUYE: Second.

1 VICE-CHAIRMAN HELLER: All in favor?  
2 (voting aye) Any opposed?

3 COMMISSIONER INOUYE: I have a couple  
4 corrections, typo corrections. On Page 13 I think  
5 it's the second line under "Intervenor Bolomet." I  
6 think that Exhibit 1 should be 12, but please confirm.  
7 And on Page 6 of the second day, the third paragraph  
8 down "July 21st" I think should be "July 19th."  
9 That's all. Thanks.

10 VICE-CHAIRMAN HELLER: Thank you. Any other  
11 comments, questions? The minutes are approved as  
12 corrected. Let me go back to our proceeding and  
13 update the record.

14 On May 2, 2012 the Commission received  
15 Petitioner's Motion for Sixth Amendment to the  
16 Findings of Fact, Conclusion of Law and Decision and  
17 Order filed on February 19th, 1998 and for release of  
18 certain conditions; Exhibits A. through E.

19 On May 18, 2012 the Commission received  
20 county of Maui's reply to Petitioner's motion.

21 On June 1, 2012 the Commission received the  
22 request for time extension from OP. And a letter from  
23 the LUC granting the extension was mailed the same  
24 day.

25 On June 19, 2012 the Commission received

1 OP's response to Petitioner's Motion for Sixth  
2 Amendment to the Findings of Fact, Conclusions of Law  
3 and Decision and Order filed on February 19, 1998 and  
4 for release of certain conditions Exhibits A through  
5 E.

6 On July 25, 2012 the Commission mailed the  
7 agenda notice for this meeting to the parties and the  
8 statewide and Maui mailing list.

9 Let me briefly describe our procedure for  
10 today on this docket. First, I will give the  
11 Petitioner an opportunity to comment on the  
12 Commission's policy regarding reimbursement of hearing  
13 expenses.

14 I will then call for those individuals  
15 desiring to provide public testimony for this public  
16 hearing to identify themselves. All such individuals  
17 will be called in turn to our witness box. After  
18 completion of the public testimony the Commission will  
19 hear the Petitioner's presentation.

20 After the Petitioner's presentation we will  
21 receive any comments from the County. After the  
22 County has given its presentation we will receive any  
23 comments from the Office of Planning. Are there any  
24 questions on the proceedings today?

25 MR. LUNA: No, Mr. Chair.

1           VICE-CHAIRMAN HELLER: Hearing none,  
2 Mr. Luna, has our staff informed you of the  
3 Commission's policy regarding the reimbursement of  
4 hearing expenses?

5           MR. LUNA: Yes, they have.

6           VICE-CHAIRMAN HELLER: If so, would you  
7 please state your client's position with respect to  
8 the policy.

9           MR. LUNA: We accept the policy.

10          VICE-CHAIRMAN HELLER: Thank you. Are  
11 there any individuals desiring to provide public  
12 testimony on this docket?

13          MR. ORODENKER: Mr. Chair, we don't have  
14 anyone signed up this morning.

15          VICE-CHAIRMAN HELLER: Is there anyone  
16 present desiring to provide public testimony? (no  
17 responses) Okay. Mr. Luna, please go ahead with your  
18 presentation.

19          MR. LUNA: Thank you. We have only one  
20 witness, Mr. Chair and that witness is Stanford Carr.

21          COMMISSIONER INOUYE: Mr. Luna, I just  
22 wanted to make a disclosure. Is this the appropriate  
23 time?

24          VICE-CHAIRMAN HELLER: Yes. Go ahead.

25          COMMISSIONER INOUYE: I just wanted

1 everybody to know that even though there's no  
2 pecuniary interest or financial, and maybe I don't  
3 need to disclose, but I do. Mr. Luna is a family  
4 friend. His children and my children play tennis  
5 together. He even housed us at one time. So I just  
6 wanted to make that disclosure. I don't think it'll  
7 affect my decision-making in this matter. But if  
8 there's any objections let me know.

9 MR. YEE: No objection.

10 MR. GIROUX: No objection from the county.

11 VICE-CHAIRMAN HELLER: Thank you. Please  
12 go ahead.

13 MR. LUNA: As I was saying, Mr. Chair, we  
14 only have one witness and it's Mr. Carr will be  
15 testifying in support of the motion. And we will be  
16 hopefully going through fairly quickly so that the  
17 Commission and the rest of the parties will have time  
18 to question also.

19 As Mr. Carr is going there, I think I'd  
20 like to point out to the Commission that we  
21 supplemented our exhibits yesterday but only two maps  
22 to show the location of the property and the property  
23 itself. Then also to the testimony of Mr. Carr and  
24 his resumé.

25 VICE-CHAIRMAN HELLER: Were there any

1 objections to those additional exhibits?

2 MR. GIROUX: No objections from the county.

3 MR. YEE: No objection.

4 STANFORD CARR

5 being first duly sworn to tell the truth, was examined  
6 and testified as follows:.

7 THE WITNESS: Yes, I do.

8 VICE-CHAIRMAN HELLER: Please proceed.

9 MR. LUNA: Thank you.

10 DIRECT EXAMINATION

11 BY MR. LUNA:

12 Q Mr. Carr, will you state your full name and  
13 the name of your firm.

14 A Stanford Shigeo Carr. The firm, I'm the  
15 managing director of Stanford Carr Development, LLC.

16 Q I'm going to hand you the Petition,  
17 Exhibit -- I'm sorry. I'm going to hand you the  
18 Exhibit H, which is your resumé on it. It contains  
19 also some accomplishments of your firm. Was this  
20 resumé done under your direction and supervision?

21 A Yes.

22 Q What is the name of your firm that is  
23 involved in the ownership of the property stated in  
24 the Petition?

25 A It's SCD Makena Holdings, LLC.

1 Q What is the address of the SCD Makena  
2 Holdings?

3 A 1100 Alakea Street, 27th floor Honolulu,  
4 Hawai'i.

5 Q The same as your Stanford Carr Development,  
6 correct?

7 A That is correct.

8 Q I'm going to hand you now the Petitioner's  
9 Motion for Sixth Amendment to the Findings of Fact,  
10 Conclusion of Law and Decision and Order for the  
11 Release of Certain Conditions. You've seen that  
12 document before, have you not?

13 A Yes, sir.

14 Q Did SCD Makena Holdings authorize the  
15 filing of a motion in this docket in the Land Use  
16 Commission?

17 A Yes, sir.

18 Q Petitioner in the Petition comprised of 12  
19 entities all of them starting with the name ATC  
20 Makena.

21 A That is correct.

22 Q Does SCD Makena Holdings have an ownership  
23 holding in the ATC Makena entities?

24 A That is correct. Just for clarification.  
25 ATC stands for Area Trinity Carr. That's how the name

1 was derived. SCD Makena Holdings, LLC is a member of  
2 ATC Makena.

3 Q Thank you. And what is the responsibility  
4 of SCD Makena Holdings with respect to the Makena  
5 properties?

6 A We're charged with all of the entitlements,  
7 coordination with public agencies, land planing. We  
8 have commissioned all of the studies that are ongoing  
9 right now for archaeological inventory surveys,  
10 cultural surveys, all the environmental issues.

11 Q So as far as this responsibility SCD Makena  
12 Holdings on behalf of the 12 entities filed this  
13 motion in this Petition.

14 A That is correct.

15 Q I'm going to hand you Exhibit I. Exhibit I  
16 is your written testimony. And the written testimony  
17 is in support of this motion?

18 A Yes, sir.

19 Q Was this testimony prepared under your  
20 direction and supervision?

21 A Yes, sir.

22 Q Do you confirm that to the best of your  
23 knowledge this testimony is true and correct and  
24 contains the information you seek to provide the  
25 Commission to approve the motion?

1           A       Yes, sir.

2           Q       And do you represent to the best of your  
3 knowledge Exhibits A through G that was filed with the  
4 Petition and yesterday, are correct copies of the  
5 original documents and maps that have been recorded in  
6 the Bureau of Conveyances issued by the stated  
7 government agency and signed by the parties noted on  
8 the document?

9           A       That is correct, sir.

10           MR. LUNA: So, Vice-Chair Heller, we would  
11 ask on behalf of the ATC Makena entities move to have  
12 the Exhibits A through H as well as Mr. Carr's resumé  
13 and testimony be entered and accepted into evidence as  
14 part of this record.

15           VICE-CHAIRMAN HELLER: County, any  
16 objections?

17           MR. GIROUX: No objection.

18           VICE-CHAIRMAN HELLER: OP?

19           MR. YEE: No objection.

20           VICE-CHAIRMAN HELLER: Exhibits A through I  
21 are admitted.

22           MR. LUNA: That's correct, yes, thank you.

23           Q       Based on this testimony ATC Makena Entities  
24 are requesting the Commission to grant its Motion to  
25 Amend Condition.

1 A Yes.

2 Q And release them for Conditions 4, 15, 21  
3 and 22?

4 A That is correct.

5 Q Condition 12 is the condition where the  
6 owners of the Makena property are required to enter  
7 into an agreement with the state Department of  
8 Transportation on transportation improvements in the  
9 local as well as regional improvements?

10 A That is correct. We just submitted a  
11 revised iteration of that agreement to the state  
12 Department of Transportation approximately two months  
13 ago. So it's in their hands now to await for their  
14 concurrence or approval. And the rest of the release  
15 of conditions are more of a housekeeping matter  
16 because they have been satisfied.

17 Q So the release is being requested because  
18 they have already been satisfied by your predecessors  
19 or by you.

20 A That's correct. As well as and we've  
21 complied with the conditions. And so we're requesting  
22 the amendment to release those items.

23 MR. LUNA: We have no other questions,  
24 Mr. Chair.

25 VICE-CHAIRMAN HELLER: County, any

1 questions?

2 MR. GIROUX: We have no questions.

3 VICE-CHAIRMAN HELLER: OP?

4 MR. YEE: No questions, thank you.

5 VICE-CHAIRMAN HELLER: Mr. Luna, that  
6 concludes your presentation?

7 MR. LUNA: Yes.

8 VICE-CHAIRMAN HELLER: County, do you have  
9 anything to present?

10 MR. GIROUX: No. We do not have any  
11 witnesses or exhibits.

12 VICE-CHAIRMAN HELLER: Okay. OP?

13 MR. YEE: No. I'm not sure if you're into  
14 argument, but the Office of Planning is prepared to  
15 rest on our pleadings.

16 VICE-CHAIRMAN HELLER: I was going to give  
17 each of you a chance to add anything you wanted to add  
18 by way of argument or explanation. Mr. Luna, anything  
19 else to add in terms of argument or explanation?

20 MR. LUNA: No, Mr. Chair. I think  
21 Mr. Carr's written testimony is in full support of the  
22 motion.

23 VICE-CHAIRMAN HELLER: County?

24 MR. GIROUX: The County's going to rest on  
25 its reply. The only emphasis we wanted to make is

1 that we would hope that the negotiations for the road  
2 improvements are completed within the two-year period.

3 VICE-CHAIRMAN HELLER: Thank you. Nothing  
4 further?

5 MR. YEE: Nothing further, thank you.

6 VICE-CHAIRMAN HELLER: Commissioners, any  
7 questions?

8 COMMISSIONER INOUYE: I just have a couple.  
9 One may be to the Maui Department of Planning. Have  
10 you verified that the documents' in the Bureau of  
11 Conveyances? That's for OP, but the zoning changes?  
12 Because I read the exhibit about what the council did.  
13 And I didn't see anything in there. But I just wanted  
14 to verify that you have checked that the county did  
15 approve the zoning changes.

16 MR. GIROUX: Yes. The county -- I guess  
17 the county council is the body that does the zoning  
18 change. And so by the zoning ordinance number it's  
19 confirmed that the zoning has been changed.

20 COMMISSIONER INOUYE: Okay.

21 MR. GIROUX: And we do have a copy of  
22 ordinance No. 3613 and that would be the ordinance  
23 that changed the zoning for the area.

24 COMMISSIONER INOUYE: Okay. Thank you.  
25 And for the Office of Planning as far as the Bureau of

1 Conveyance documents, that has been verified?

2 MR. YEE: I believe among the documents  
3 submitted by Petitioner is a file stamped copy with  
4 the Bureau of Conveyances. So we were satisfied.

5 COMMISSIONER INOUYE: Okay. I may be  
6 confusing dockets. But I think this is the one where  
7 -- 'cause it was too voluminous, is that the one that  
8 it wasn't in the exhibit itself but could be checked?  
9 Is that the one?

10 MR. LUNA: Which document is this one?

11 COMMISSIONER INOUYE: This is the Bureau of  
12 Conveyances exhibit which is voluminous. So I don't  
13 think you would put it into -- am I in the same  
14 docket?

15 MR. LUNA: Is that one with the Petition?

16 COMMISSIONER INOUYE: Yes. I think it's  
17 Exhibit E. Was it on a CD?

18 MR. HAKODA: Could have been.

19 COMMISSIONER INOUYE: Okay. Okay. But as  
20 long as it's there. I just wanted to make sure it's  
21 on the record, yes.

22 MR. YEE: I think Office of Planning is  
23 satisfied that they correctly filed with the Bureau of  
24 Conveyances.

25 COMMISSIONER INOUYE: Okay. Thank you.

1 VICE-CHAIRMAN HELLER: Anything further?

2 COMMISSIONER INOUYE: No. That's it.

3 Thank you.

4 VICE-CHAIRMAN HELLER: Commissioners, what  
5 is your pleasure on this?

6 COMMISSIONER TEVES: Mr. Chairman,  
7 regarding the Docket No. A97-721 Makena Resort  
8 Corporation and their request for Motion for Sixth  
9 Amendment, I make a motion to approve that.

10 VICE-CHAIRMAN HELLER: Is there a second?

11 COMMISSIONER BIGA: Second.

12 VICE-CHAIRMAN HELLER: Any discussion,  
13 Commissioners?

14 COMMISSIONER INOUYE: I'm sorry. The  
15 motion was to approve it, approve the...

16 VICE-CHAIRMAN HELLER: To grant the motion.

17 COMMISSIONER INOUYE: Grant the motion  
18 without any changes?

19 VICE-CHAIRMAN HELLER: Is that correct,  
20 Commissioner Teves?

21 COMMISSIONER TEVES: Correct.

22 COMMISSIONER INOUYE: Okay. I'm going to  
23 put in a condition that -- well, let me just suggest  
24 an amendment that approve everything except for the  
25 Condition No. 22. Rather than deleting that

1 requirement A, approve the amendments thereto should  
2 be filed acknowledging that in the zoning changes --  
3 I'm sorry, not the zoning -- but the conditions have  
4 been recorded up to this point. But if there's any  
5 amendments to the conditions in the future that they  
6 also be recorded at that time.

7 MR. LUNA: Fine.

8 VICE-CHAIRMAN HELLER: Commissioner Teves,  
9 is that an acceptable amendment?

10 COMMISSIONER TEVES: Yes. I accept that  
11 friendly amendment.

12 VICE-CHAIRMAN HELLER: Commissioners,  
13 anything further? Okay. There's been a motion and  
14 second. Let's call for the vote.

15 MR. ORODENKER: Thank you, Mr. Chair. The  
16 motion is to approve the amendments to the conditions.  
17 And the motion has been amended by Commissioner  
18 Inouye.

19 Commissioner Teves?

20 COMMISSIONER TEVES: Yes.

21 MR. ORODENKER: Commissioner Biga?

22 COMMISSIONER BIGA: Yes.

23 MR. ORODENKER: Commissioner Matsumura?

24 COMMISSIONER MATSUMURA: Yes.

25 MR. ORODENKER: Commissioner Inouye?

1 COMMISSIONER INOUYE: Yes.

2 MR. ORODENKER: Commissioner McDonald?

3 COMMISSIONER McDONALD: Yes.

4 MR. ORODENKER: Vice-Chair Heller?

5 VICE-CHAIRMAN HELLER: Yes.

6 MR. ORODENKER: Mr. Chair, the motion  
7 passes unanimously.

8 VICE-CHAIRMAN HELLER: Thank you. Anybody  
9 have anything further on this matter?

10 MR. GIROUX: County has no further  
11 discussion.

12 VICE-CHAIRMAN HELLER: Then our next item  
13 on the agenda is an executive session so we will  
14 recess. I'm sorry, somebody needs to move for  
15 executive session.

16 COMMISSIONER BIGA: So moved.

17 COMMISSIONER McDONALD: Second.

18 VICE-CHAIRMAN HELLER: We will recess and  
19 go into executive session.

20 (Executive session was held. 10:10 to 10:24)

21 VICE-CHAIRMAN HELLER: Back on the record.  
22 We have one other small item of business to take care  
23 of. In the Bridge Aina Le'a case the federal court is  
24 apparently requesting that the Commission send a  
25 representative to a mediation. And has asked us to

1 designate somebody to be that person. So is there a  
2 motion?

3 COMMISSIONER TEVES: So moved to appoint  
4 Ron Heller as our representative. And he cannot bind  
5 the Commission. Only himself in this case. And also  
6 if Chip Lezy accepts to be an alternate I'd like to  
7 make a motion to include in that motion that he be an  
8 alternate.

9 VICE-CHAIRMAN HELLER: Is there a second?

10 COMMISSIONER BIGA: Chair, I second that  
11 motion.

12 VICE-CHAIRMAN HELLER: Thank you. Any  
13 discussion? Okay. Let's call for a vote.

14 MR. ORODENKER: Commissioner Teves?

15 COMMISSIONER TEVES: Yes.

16 MR. ORODENKER: Commissioner Biga?

17 COMMISSIONER BIGA: Yes.

18 MR. ORODENKER: Commissioner Matsumura?

19 COMMISSIONER MATSUMURA: Yes.

20 MR. ORODENKER: Commissioner Inouye?

21 COMMISSIONER INOUE: Yes.

22 MR. ORODENKER: Commissioner McDonald?

23 COMMISSIONER McDONALD: Yes.

24 MR. ORODENKER: Commissioner Heller?

25 VICE-CHAIRMAN HELLER: Yes.

1                   MR. ORODENKER: The motion passes  
2 unanimously.

3                   VICE-CHAIRMAN HELLER: Thank you. I don't  
4 think there's any further business so we are in recess  
5 until the 12:30 site visits for Docket No. A12-795.  
6 Thank you.

7

8                   (The proceedings were adjourned at 10:26 a.m.)

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C E R T I F I C A T E

I, HOLLY HACKETT, CSR, RPR, in and for the State of Hawai'i, do hereby certify;

That I was acting as court reporter in the foregoing LUC matter on the 2nd day of August 2012;

That the proceedings were taken down in computerized machine shorthand by me and were thereafter reduced to print by me;

That the foregoing represents, to the best of my ability, a true and correct transcript of the proceedings had in the foregoing matter.

DATED: This \_\_\_\_\_ day of \_\_\_\_\_ 2012

\_\_\_\_\_

HOLLY M. HACKETT, HI CSR #130, RPR  
Certified Shorthand Reporter