MS. PISCIOTTA: Aloha. We ask you Akua to abide with us this day as we speak on these issues. We ask blessings for all, and we ask for forgiveness of the trespasses that may occur.

E kala mai, I'm not used to reading, but I'm going to read because I'm kind of tired and I hope that's okay. Just forewarning.

I want to open up by asking why are we here today? We're here today because BLNR said yes when they should have said no. The job of any regulatory agency, including BLNR, is to regulate, and that means it must sometimes say no to projects, like the Thirty Meter Telescope, that are inconsistent with the purpose and mandate of the laws that govern the Mauna Kea Conservation District.

We do not know if the Department of Land and Natural Resources staff did not do due diligence when scrutinizing the University TMT Corporation's Conservation District Use Application, but nevertheless BLNR has a non-transferable duty to protect the public rights and reasonable exercise of traditional and customary Hawaiian cultural and religious rights.

That means they cannot let a private entity
like the TMT Corporation or a subdivision of the State that is not mandated to oversee Conservation Districts like UH to perform those duties instead. BLNR has an affirmative duty to protect the people of Hawaii as the Supreme Court of Hawaii has repeatedly upheld.
We believe the evidence has demonstrated that the TMT project is inconsistent with the laws and policies of this state.

To understand why BLNR should have said no instead of saying yes, we need to briefly trace the origins of BLNR's responsibility to the people of Hawaii, that is identify why BLNR has fiduciary duty to protect the rights and interests of Hawaiians and the general public.

These duties and obligations are enumerated in the following documents: The Admissions Act, the State of Hawaii Constitution, and all of the related statutes, rules and regulations governing the conservation lands of Mauna Kea.

Let us review. The Admissions Act is a federal act, compact or agreement made between the United States Congress and the people of Hawaii, thus forming what is now known as the State of Hawaii.

Regardless of the tenuous history that led up to statehood, the Admissions Act clearly identifies certain agreements made by America, and they take precedence as they establish some of the fiduciary obligations that BLNR, as the state agency, has towards the people of Hawaii.

The Admissions Act establishes, one:
The lands of Hawaii are to be held in trust for the purpose of the betterment of the condition of Native Hawaiians and the general public. The state shall be the trustee, it says. And, in other words, the lands of Hawaii must be used in a manner consistent with the Admissions Act which is, again, a federal law.

I would like to note that the racial identification for Native Hawaiians came into existence in 1920 and '21 when Congress made the 50 percent blood quantum requirement for Hawaiian Home Lands. However, the Admissions Act provided for Hawaiians of less than 50 percent, and other actual subjects of the kingdom of all ethnicities. And that was Hawaiian, as a political identification, not a racial one.

So the general public are all those who trace their ancestry of all ethnicities prior to actually 1921, 1893, at least 1898. I don't consider the republic real.

Mauna Kea Conservation District lands are entirely comprised of those public trust lands that are identified in the Admissions Act. However, these lands have protection not only under the public trust laws, but under the Conservation and Historic
Preservation laws of the state as well.

Therefore, in considering the TMT Conservation District Use Permit, BLNR must consider how proposed projects like the TMT benefit the people of Hawaii. Better the conditions of Native Hawaiians and the general public, not the interest of the international astronomy industry or foreign direct investment to be subsidized on public lands by taxpayers.

Now, the state constitution contains or reflects the Admissions Act agreements as well. Article 12, Section 9 affords the protection of Native Hawaiian traditional and customary rights, while Article 9, Section 8 provides that all people have the right to conservation and a clean and healthful environment, and further that any one individual or group may bring suit for the conditions outlined in the provisions.

Hawaii is unique. Lucky we live in Hawaii. Because of the provisions established in both the Admissions Act and the Constitution, we now have, among other things, protection for the environment and conservation written right into our Constitution.

So when the question arises, should a new
telescope project be approved, the BLNR must consider
their obligation. But did they consider it?

Well, when the TMT proposal came before
BLNR and UH, the DLNR staff report, both affirmed
that, and I quote:

From a cumulative perspective, the impact
of past and present actions on cultural,
archaeological, and historic resources is
substantial, significant and adverse.

These impacts would continue to be
substantial, significant and adverse with the
consideration of the TMT project, and other
reasonably foreseeable future actions.

Further, the DLNR chairperson is quoted as
saying:

It is our view that the effect of astronomy
development on cultural resources and on the
landscape of Mauna Kea has been significant and
adverse. While a project such as TMT can bring new
resources into play that may mitigate certain
cultural impacts and even benefit Native Hawaiians,
we believe that the project will increase the level
of impact on cultural resources, which remains to be
significant and adverse.

Therefore, the record demonstrates that, if
built, the TMT would contribute significant, adverse
and substantial harm to conservation resources on
Mauna Kea, including cultural and natural resources,
which are public trust resources meant to be
protected.

And so these are two of the reasons why
BLNR should have said no when they said yes.

Conservation laws. The rules governing
Conservation District Use, or in this case
development of yet another telescope on Mauna Kea,
allow for this contested case hearing to happen.

Generally, the purpose of a contested case
hearing is to afford members of the public with
specific interests, legal rights, duties or
privileges, an opportunity to present evidence,
examine witnesses and so on, in order to help BLNR
make an informed decision.

I have to note here that in this case BLNR
approved the TMT CDUA prior to conducting a contested
case hearing, which we believe violated our due
process rights, potentially shifting the burden of
proof, and thereby forcing us to have to change
BLNR's mind, rather than BLNR listening with an open
mind to hear all evidence.

Nevertheless, the University has rightly
affirmed that they, as the Applicant, have the burden of proof, and we are here today to provide evidence and present witness testimony to help BLNR make an informed decision now before they dispose of more public lands and conservation lands belonging to the people.

The purpose of the Mauna Kea Conservation District is enumerated in Hawaii Revised Statute 183C-1: The legislature finds that lands within the State Land Use Conservation District contain important natural resources essential to the preservation of the state's fragile natural ecosystem and the sustainability of the state's water supply. It is therefore the intent of the legislature to conserve, protect and preserve the important natural resources of the state through appropriate management and use to promote their long-term sustainability and the public health, safety and welfare.

The law is clear, the purpose of the Mauna Kea Conservation District, as is the case of all Conservation Districts, is conservation. The purpose is not development. Development can occur if and only if the critical cultural natural resources are conserved, protected and preserved.

In order to determine BLNR meets its legal
requirements and obligations, they're supposed to apply a set of rules, or the eight criteria. BLNR applies these -- they must meet all of the eight, that's also part of the rule. So do you have the rule?

Along with the eight rules there's one other condition, and that is that the Applicant shall have the burden of demonstrating that they have met all of these conditions. Which also means that it's not our job to prove that the impacts will occur, it's the University's job to prove that they won't. We submit the evidence has shown that they have not met their burden under the law.

Number 1: The TMT project does not meet the first criteria. It does not meet the purpose, because it does not meet the purpose of the conservation district. Again, they admit that the cumulative impact of the cultural natural resources is substantial, significant and adverse.

Secondly: In order for the TMT to be built, the land will have to be hoe rammed, dynamited, and bulldozed and other heavy machinery used to carve up and destroy more than five acres of Mauna Kea sacred lands. So it is not consistent with the purpose of Conservation District.
Second, the TMT project does not meet the second criteria. It doesn't meet the purpose of the subzone, because no subzone purpose can override the first purpose which is conservation. While astronomy is a permitted sub-use, again, it is permitted if and only if no substantial adverse impact occurred in Conservation District, but the UH has already admitted that those impacts will occur and they will be adverse, substantial and significant.

The TMT project does not meet the fourth criteria prohibiting substantial adverse impact. I'll get back to that, but I do want to mention that the evidence have demonstrated there is not only historical injury, but continued injury and there will be additional injury if TMT is allowed to be built.

The TMT project does not meet the fifth criteria because it is not compatible with the locality and surrounding area. The TMT if built will sit right smack dab in the middle of what is called the ritual landscape or the ring of shrines that surround the set of summit cinder cones, also known as Kukahau'ula. These features are part of the Historic District, which contain many traditional cultural properties, which is further affirmed in the
Cultural Impact Assessment and cultural reports that have been done throughout the years.

The TMT project does not meet the sixth criteria, protecting open space or natural beauty, because it does not preserve or improve upon the natural characteristics such as open space or natural beauty. The operative word in natural is natural, not industrial. Open space means just that, open space. Both of which are considered by the state and the county as public trust resources. And the loss of those resources therefore constitute an injury to the public.

The TMT project does not meet the eighth criteria regarding the public health, safety and welfare, which requires the project not be materially detrimental to the public health, safety and welfare of the people. We heard UH witnesses testify that the complex hydrology including groundwater flows of Mauna Kea are not known.

We also heard that groundwater is the primary source of drinking water. Mauna Kea sits over five aquifers. And the problem that we have here today is while somebody can promise that they intend not to hurt it, if it is hurt, we have no way to clean it up. And that is waters that all life
forms rely on. If they can't clean it up, we need to err on the side of caution. When we look at the precautionary principle in the Public Trust Doctrine, the supreme court has already discussed that.

Witnesses have testified to the cultural and religious importance of the waters from Mauna Kea, like the snow, ice and water, and the clean water such as those found in the lake and other pu'u used for ceremonial, medicinal and other religious practices.

Those practices will not be able to be conducted if the water is contaminated. The University cannot affirm that they will not be.

We also heard two witnesses, Dr. Kawika Liu and Kehaulani Kauanui who testified that the University and the Corporation did not even consider, let alone analyze the impacts resulting from highly destructive development upon the landscape on the health and well-being of Native Hawaiian people, and especially those with high cultural affiliations, such cultural practitioners. The landscape of Mauna Kea is a historic, cultural and ritual landscape.

Laws are meant to be followed. TMT is the elephant that breaks the law and the camel's back. The University's admission regarding the substantial,
significant and adverse impacts that the development
has had and will continue to have if the TMT is built
to the cultural and natural resources of the Mauna
Kea Conservation District mean that the regulatory
constraints or limits regarding impacts to resources
have already been met, and to allow further impacts
would cause these limits to be exceeded.

But there are -- the limits are established
in the law. And the rules say, no project may have
substantial adverse impact. So there are no
exceptions provided for in the law or the regulations
that there can be no exceptions.

If the BLNR allowed the limits to be even
more exceeded, then they will be in breach of trust
and acting in excess of their authority. And in the
case of TMT, the TMT is not only the straw that
breaks the camel's back, it is the elephant that will
cause the system to break down.

This is the case, because TMT is the
world's largest telescope, and the largest structure
ever proposed for construction on Mauna Kea, and as
such, the TMT cannot possibly be construed to reduce
the substantial, adverse and significant impacts as
they claim.

The University has attempted to argue that
because impacts are already substantial, adverse and significant, adding more to that impact is not going to change those impacts, while simultaneously claiming their proposed mitigation measures will offset and reduce the negative impacts to less than significant.

We disagree, because painting a building a different color, silver, adding furnishings that engender a sense of place, while that place is being destroyed, providing cultural sensitivity workshops or other off-site mitigations, including the THINK program, do not offset the project's destruction of the landscape, or the real impacts to the ecosystem and the living cultural practices in any way.

When the impacts are overridden, then the impacts such as the following will occur:

Cultural practices will be impacted. In this case the actual injuries are cumulative, historic and also immediate.

For example, before the construction of the first telescope in 1967 had a 360-degree view of the skyline, of the island, and even the view down the island chain. Before that time commanding views of the sun, moon, stars, constellations and even the great shadow of Mauna Kea could be enjoyed by all.
Since that time, there are no more 360-degree views. Views are limited to where and however anyone can get around the observatories to find an open space.

The natural beauty is marred with the industrial buildings, and cultural practitioners and the public have to shift and adopt their practice to find a clear path for their traditional and cultural and religious practices. Yet all of these views and aspects -- and yet they're all considered public trust resources that BLNR is mandated to protect.

When we go to practice on Mauna Kea, we don't only go to the summit, as University would have us all believe. Practices are dependent on the reason the ceremony is being conducted, and the hundreds of cultural and historic shrines placed around the summit region demonstrate practice is wide spread.

Viewplanes, viewscapes are public trust resources too. Viewplanes, viewscapes and open spaces are also traditional cultural properties.

The TMT being placed in the middle of the ring of shrines contain hundreds if not thousands of sites on the northwestern flank of the summit plateau will be impacted because the views used in ceremonies
will be blocked in very significant ways.

From the ground level, south to north. If
we are standing at ground level on the south side of
the TMT on the plateau from any of the ahu's or
cultural, historic sites looking northward, we will
not be able to see Haleakala, as we saw during the
site visit, nor any of the other islands in the chain
which views are used in some ceremonies, nor will we
be able to observe the motion of the northern stars
or constellations without direct interference from
the TMT, as the height alone is too high.

If you're standing at ground level on the
east side, we will not be able to see or observe the
motion of the western stars or constellations without
direct interference from the high reaching TMT.

And if you're standing on the ground level
on the west side at any of the sites, you will not be
able to see or observe motions of the eastern stars
or constellations without direct interference from
the TMT.

And if you're standing on the ground level
north of the TMT on the plateau from any of these
sites, you will not be able to see or observe the
motion of the sun and stars or constellations without
direct interference from the TMT.
From the pu'u level. Many of the pu'u are considered traditional cultural properties in the Cultural Impact Assessments and studies. They are important as they are often burial sites, places where water, pooling water is collected. And because ceremonies are performed on or from them, many practitioners, including myself, conduct ceremony on the top of Pu'u Poli'ahu.

Although I didn't go up on the site visit, I spend a lot of time up there and I'm very familiar with the viewplanes from there. I spent seven consecutive nights camping on the top in ceremony.

From the summit pu'u's. We specifically asked on the site visit to go to those locations on the north-facing side of the summit to demonstrate how much of an impact that will be from over there. As we said earlier, we have to move already around the telescope, so taking away even that viewplane adds even more injury.

The shrines are specifically set up to be in relationship to the commanding viewplanes, that is what is stated in the Cultural Impact Assessment. So I want to be clear, because when we say alignments, we mean tangible and intangible connections between those places and Mauna Kea. We mean that we can
literally see, or not see the other sacred peaks of
the hill on the island, or even other -- one of the
islands such as the one on Kauai.

Once in my life on Mauna Kea I saw the
whole island chain, but this view is rare.
Nevertheless, Poli'ahu Heiau on Kauai was constructed
specifically to be in alignment with the ceremonial
direction established on Mauna Kea. Mauna Kea is the
fulcrum and baseline for all alignments of this
nature.

Therefore, when we speak of alignments
being blocked, it means we cannot do ceremony in the
way that we need to be a part of those alignments,
because we are -- they are being physically and
spiritually blocked. That in turn interrupts our
ability to perform those ceremonies and other
cultural practices.

A couple of things. Historical injuries
that have occurred that have been outlined in a lot
of our testimony include the University continuing to
impact our religious sites, like my family ahu site.
It was desecrated and destroyed three different
times, which are documented by the University
personnel themselves.

Now, as of July 18th of 2011, it was again
desecrated. So when the University accuses us of
being backward-looking and extremist, both are wrong,
because the injuries continue to the present. The
lele was taken down, I don't know how many times.
These are not okay. When the University claims they
were operating with a new paradigm, our practice is
being directly impacted. And as for being
extremists, I object.

We have participated in three contested
case hearings on these issues, development of
telescopes on Mauna Kea. We believe in justice. We
believe in the rule of law and order, and we have
participated in order to exhaust our administrative
remedy. We have gone into state and federal court.
In federal court we were witnesses; in state court we
were plaintiffs. In both those courts we won. So
the accusation that we are extremists is just not
fair and it's unreasonable and it conjures images of
people who are extreme.

I would say to the University, no Hawaiians
have ever gone and desecrated any of the telescopes.
But the fundamental difference would be if we had,
that those Hawaiians would be criminalized and put in
jail for damage to property. The question is,
knowing these criminal acts was damage to our temple,
it's not even considered. When my family ahu was
destroyed, the state DOCARE officers investigated me.
I was criminal, even though I turned in the person
who did it.

It was the State Historic Preservation
Officer who actually got me out of that, and had to
write a letter on my behalf saying that I had a right
to continue my practice.

So I want to say one last thing on the
correlation the University attempted to make about
culture and science. We believe, it is true and we
agree with them, it is really about land use. If the
University were attempting to build a hospital, the
issues would be the same, although that would not
mean we were against health care, culture is science
and science has its own culture.

And some even argue that science is a
religion in this modern time. But the modern
astronomers are not Galileo and we are not the
Vatican. We have been willing to share this mountain
for many decades. Our position still is, since 2001,
and published in our actual Temple Report, we're
willing to share and have shared, but they reached
their limit and our position is no further
development.
This is also Exhibit F-2, page 18. You can find our positions. No further development.

International observatories should pay rent, and independent management authority should be created to take the control of Mauna Kea out of the hands of the University.

In conclusion, because the TMT will interfere with the public rights and Native Hawaiians rights to fully enjoy the landscape wilderness, open spaces, natural beauty, including the sun, the moon and starscapes obtainable only from Mauna Kea, means the public trust resources are not being protected and the TMT cannot meet its burden under the Conservation District rules. Therefore BLNR must say no. We submit if they say yes, they will be acting in excess of their authority.

And I would like to say, mahalo, Ke Akua, Na Akua ame Na Aumakua for giving us this honor to stand and speak for the temple.

I would like to say thank you to all of you, Jean, Mr. Aoki, Julie for your patience. I know you know we don't know how everything is supposed to work sometimes. I like to thank the University for listening, and I hope that we didn't offend you in any way, we don't mean to, but we have a right to try.
to put on a strong case, and that's what we're hoping
to do.

Mahalo to all of you in the audience for
all of your patience, your time and your
consideration. And I think I'm done, mahalo.