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HEARINGS OFFICER AOKI: We're on the record. The hearing is reconvened.
I understand there's some procedural matters to discuss before we actually start with testimony again. So do you want to start?

MR. LUI-KWAN: Tim Lui-Kwan on behalf of the Applicant. With me today is Ian Sandison and Jay Handlin representing University of Hawaii Hilo.

MS. TOWNSEND: Marti Townsend with KAHEA.

MS. WARD: Deborah Ward representing myself.

MS. PISCIOITTA: Kealoha Pisciotta for Mauna Kea Anaina Hou.

MR. CHING: Kukauakahi, Clarence Ching, Petitioner.

MR. NEVES: Kumu Paul Neves for myself and my halau.

MS. CASE: Aloha, I'm Pua Case. I'm representing the Flores-Case Ohana.

MR. LUI-KWAN: The first thing I have to take up is where we left off last week with the so-called joint exhibits.

We've actually -- well, I think everybody has seen the exchange in e-mails. We've actually prepared what is formally known as state exhibits and
I regularly use Mauna Kea for hiking,
including access and use of traditional Hawaiian trails of Mauna Kea. I view and enjoy the wilderness. I enjoy the natural beauty and open spaces and other forms of recreation, including wildlife observation, esthetic enjoyment, educational study and spiritual contemplation.

As a recreational user, I have participated in hikes and service projects on Mauna Kea, and I participate in solstice ceremonies on the summit.

In my capacity as natural resource faculty, I've served on the Big Island Invasive Species Committee. I've co-led student field trips for the Hawaii Community College, 4-H Youth Development Program, and Sierra Club High School Hikers on Mauna Kea. And I've taken part in community advisory meetings regarding Mauna Kea with the Department of Land and Natural Resources, State Historic Preservation Division and the U.S. Fish and Wildlife Service in the mid 1990s.

I'm not paid to be here. My involvement in issues regarding the management of Mauna Kea began in the 1970's. The vast wilderness vistas from the highest peak in the Pacific was awe inspiring to me and breathtaking and serene. The sound of silence...

The vastness of the land and the ocean are awe inspiring to me. I enjoy the wild sailing, and I hike the mountains. I feel the presence of the sage and the silence of wilderness.

The cumulative impact of intensified industrial land use at the summit has impacted my recreational enjoyment and my spiritual practice. The cumulative impact of the destruction of habitat, widespread waste accumulation, modified viewplane, constant sound, alteration of the geology and negative impact to cultural practice of my colleagues is a source of personal grief. The noise of the observatory air-conditioners, blowers, generators, associated vehicles and industrial activity is present and disturbing to recreational users who hope for the pristine silence of wilderness.

Development of five additional acres of industrial infrastructure, called the new visual element on the northern plateau, on the last remaining unobstructed viewplane facing Haleakala will significantly and negatively affect my recreational practices.

The view of Mauna Kea summit from my vantage point from my farm in Pu'au, or from the beach at Hilo Bay, or from my hiking trails on Mauna Loa, are all fettered by the presence of multiple domes in the skyline. It is difficult to find a location on the Island of Hawaii where one cannot see a telescope in one’s view of Mauna Kea. I believe I’m not alone in finding these visual obstructions a significant annoyance and an adverse impact.

On a recreational visit to the summit of...
Mauna Kea with Nelson Ho and Fred Stone in 1996, we
discovered actions which directly violated conditions
of the BLNR approved Mauna Kea Management Plan.
Weiku bug habitat on the slopes of Pu‘u Hau‘oki was
altered to fill the lower part of the inner cinder
cone and trench into the outer slopes of the cone,
both high quality Weiku bug habitat, and the
discovery was the nexus for greater involvement in
efforts to improve the management of this highly
delicate and fragile natural environment.
Following the Legislative Audit in 1999,
and development of 2000 Master Plan, and the
Initiation of the Office Mauna Kea Management, I have
served at the request of Mauna Kea Management on the
Environment Committee since December 2000. I’ve
worked with a committee of scientists working in the
fields of biology, geology and environmental
management who formulated recommendations for
biological inventoring and monitoring in 2002.
Studies of Weiku bug populations were
monitored, and Jesse Eiben began his work on
understanding its autecology in 2005. However, most
of the other recommendations have not been carried
out at this point.

Meanwhile, the Keck Outrigger Telescope

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1 overturned and the need for a management plan was
upheld. Judge Glenn Hara’s Decision and Order in
2007 ruled that a comprehensive management plan that
covers multiple land uses in the conservation
district must be developed for BLNR approval.
The court order requires BLNR to prepare a
comprehensive management plan for Mauna Kea and then
act in accordance with that plan. The ruling
challenged the legal status of the University of
Hawaii’s 2000 Master Plan, which was neither reviewed
nor approved by BLNR.
The University has not demonstrated its
expertise and experience in managing important
natural and cultural resources, nor does it have a
history of protecting traditional and customary
Native Hawaiian practices.
The legislative auditor reported in 1998
that DLNR has failed to define its relationship with
the University, allowing the institution to oversee
its own activities, and not provide a mechanism to
ensure compliance with lease and permit requirements.
The auditor reported that without permit conditions
or controls to ensure the implementation of
management plans, the University was allowed to
continue development without completing prior tasks

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1 project had been proposed in late 1999, and the CDUA
was considered by the Board of Land and Natural
Resources in early 2003. My concerns led me to join
a hull of participants, including Sierra Club, who
took part in a contested case hearing and successful
litigation to overturn the permit for the Keck
Outrigger Telescope development, due to the absence
of a current Comprehensive Management Plan to address
multiple uses on Mauna Kea.
We were forced to intervene in the
management of Mauna Kea because BLNR abdicated its
responsibility under the law to preserve and protect
the summit. BLNR failed to comply with its own rules
requiring that it manage the natural resources
pursuant to a comprehensive management plan.
The BLNR actively opposed the appellants’
efforts to bring BLNR into compliance with its own
administrative rules. The DLNR administrative rules
explicitly state that astronomy facilities are among
the uses requiring approved management plans, and
that management in the Conservation District must
address reliance on management plans to address
cumulative land proposals.
Eventually the board’s decision to allow
construction of the Keck Outrigger Telescopes was

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1 outlined in management plans.
The CMP natural resource sub-plan
identifies a large number of data gaps regarding
Mauna Kea that impede enforced decision making. DLNR
staff contends the lack of staff and funding prevents
them from carrying out management actions. DLNR, by
not collecting payment of lease rents at fair-market
value, places an unacceptable burden on Hawai‘i’s
taxpayers who must subsidize international astronomy.
UH requests funding from the legislature to carry out
management of the Mauna Kea Science Reserve, while
the multinational corporations and universities allow
private entities to profit from patents on
discoveries.
The Office of Conservation and Coastal
Lands staff report for the TMT CDUA states that Mauna
Kea’s infrastructure is crumbling and active
management of resources is constrained by lack of
funds. This bolsters the argument that Sierra Club,
Mauna Kea Anaina Hou, KAHEA and others have made for
years, payment of fair market rent for the use of the
world’s premier astronomical location should pay for
adequate resource management, infrastructure upkeep,
and public safety.
The idea that the only way to fund good

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management is to degrade the resource in order to collect rent from the new developer to pay for the management mistakes of the past, is akin to a Ponzi scheme. The added insult to resource will not reduce the cumulative impact.

The University of Hawaii is proposing to develop the TMT, would like to point to the CMP, the FEIS, the TMT MP, and the TMT CDUA, and claim there is a paradigm for a 21st century. The attorneys representing the UH TMT in this case paint the Petitioners as backward-looking. Sadly, as far as I'm concerned, a new paradigm is not evident. Lessons of the past could be repeated, but should not be, and we are compelled to point out the repeated patterns we see, evidenced by the documents before us.

The University has not met the burden of demonstrating its proposed land use, the construction of the Thirty Meter Telescope and related infrastructure on the summit of Mauna Kea, satisfies the Conservation District rules, including the permit criteria. The TMT project does not conserve, protect, preserve or promote long-term sustainability of the natural resources. And, therefore, it does not meet the eight criteria.

The costly studies and commentary in the FEIS, NRMP, and CDUA outline some of the existing potential risks to the natural resources, but inexplicably, the documents fail to provide adequate guidance to the decision-makers who must evaluate the risks and avoid harm to the natural heritage held in trust for the people.

The guidance documents promise mitigation repeated, but assign the details successively to the decision-makers in the future, in spite of strong recommendations from scientists and DLNR staff. Not only has over-development put our unique biota at risk, it has adversely impacted a national natural landmark. The cumulative, incremental and additive damage to our natural resources has wide-ranging and irreversible impacts, not only to the state of Hawaii, but also to the nation.

The risk extends outside the Mauna Kea Science Reserve into the Ice Age Natural Area Reserve as well. The effect of development adjacent to the Ice Age Natural Area Reserve has significant potential to harm the resources in the Conservation District that extend beyond the area leased by the University.

The statement in the CDUA that potential impacts to cultural, archaeological and historic resources, omitting biological and natural, would cease upon decommissioning, to the extent

practicable. That is an illogical statement. No decommissioning project will restore the cultural and natural landscape that has been altered. The impact is irrevocable.

In summary, the plans proffered by the University to justify its request to intensify the land use on Mauna Kea do not address cumulative adverse impact. They do not provide effective or appropriate or sufficient mitigation for significant and substantial cumulative impact that has already impacted the resource, much less describe mitigation that would address new development. And they do not meet the criteria for protection of natural and cultural resources of the Conservation District as required by statute.

For this reason, it's the duty and responsibility of BLNR to deny this proposal. Thank you.

MR. HANDLIN: The University has no cross-examination of this witness.

HEARINGS OFFICER AOKI: Let's take a break ten minutes.

(REcess taken.)

HEARINGS OFFICER AOKI: Hearing is reconvened. We're on the record. We have a new