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SCOT-17-0000777, SCOT-17-0000811, & SCOT-17-0000812

IN THE SUPREME COURT OF THE STATE OF HAWAII

IN THE MATTER OF CONTESTED CASE HEARING RE CONSERVATION
DISTRICT USE APPLICATION (CDUA) HA-3568 FOR THE THIRTY
METER TELESCOPE AT THE MAUNA KEA SCIENCE RESERVE,
KA'OHE MAUKA, HĀMĀKUA, HAWAII, TMK (3) 404015:009

APPEAL FROM THE BOARD OF LAND AND NATURAL RESOURCES
(BLNR-CC-16-002 (Agency Appeal))

ORDER OF CORRECTION
(By: Wilson, J.)

It is hereby ordered that the Dissenting Opinion by
Wilson, J., filed on November 9, 2018, is corrected as follows:

1. On page 13, footnote 7, numbers (2), (3) and (4) of
the block quote are deleted and replaced with:

(2) mitigation measures of restoring the abandoned Poli'ahu
Road and decommissioning the five telescopes will be
adopted, and (3) other measures to lessen the impacts of the
TMT will be adopted, the BLNR did not clearly err in
concluding that the TMT will not have a substantial adverse
impact to existing natural resources within the surrounding
area, community, or region, as prohibited by HAR § 13-5-
30(c)(4).

2. On page 15, footnote 8, the sentence starting on
line 7 that reads, "However, HAR § 13-5-30(c)(4) prohibits land
use in the conservation district where the land use will cause a

substantial adverse impact." is amended to read "However, contrary to the assumption of the Majority that TMT can proceed conditioned on significant, long-term mitigation measures, HAR § 13-5-30(c)(4) prohibits land use in the conservation district where the land use will cause a substantial adverse impact."

3. On page 17, line 8, the word "international" is deleted and replaced with "widely accepted principles of", and the word "protects" is deleted and replaced with "protect".

4. On page 30, line 6, the words "of Trinidad and Tobago" are inserted between the words "Policy" and "which".

5. On page 31, footnote 18, the citation to "Clean Water Act, 33 U.S.C. § 1362 (2014)" is corrected to "Federal Water Pollution Control Act, 33 U.S.C. §§ 1251-1387 (2012)."

6. The first five sentences of the paragraph beginning on page 34, line 4, are deleted and replaced with a separate paragraph reading:

The degradation principle peels away this protection. It allows further degradation based on damage cumulatively caused by prior impacts. The BLNR's analysis regresses to a former stage of the law—prior to the passage of HAR § 13-5-30(c)(4) in 1994—when the conservation district was not protected by the proscription codified in HAR § 13-5-30(c)(4) barring land use that causes a "substantial, significant and adverse" impact on cultural resources. Per the degradation principle, protection of cultural resources at the summit of Mauna Kea regresses to a time prior to 1994, when the purpose of regulating land use in the conservation district had not yet been specifically defined by regulation as "conserving, protecting, and preserving the important natural and cultural resources of the State[.]" HAR § 13-5-1 (1994).

7. Other technical corrections have been made throughout the dissenting opinion.

An Amended Dissenting Opinion will be filed
concurrently with this order.

DATED: Honolulu, Hawai'i, November 30, 2018.

/s/ Michael D. Wilson

Associate Justice

