

February 24, 2026

MEMO TO: David Raatz, Director of Council Services

F R O M: Carla Nakata, Legislative Attorney *Carla Nakata*

SUBJECT: **2026 FUTURE OF PROPERTY LAW CONFERENCE** (PAF 25-010(22))

I attended the 2026 Future of Property Law Conference on February 13, 2026, at the William S. Richardson School of Law, University of Hawaii at Manoa. The one-day conference provided 7.5 hours of continuing legal education credits.

A copy of the conference schedule is attached.

This report highlights presentation points, with particular focus on housing reforms discussed.

Keynote presentation

The keynote speaker discussed his work on stabilizing and preserving property rights through the Uniform Partition of Heirs Property Act. Twenty-four states have enacted this law, including Hawaii, where it is codified at Chapter 668A, Hawaii Revised Statutes, and can provide a framework for dealing with kuleana lands. The Act took effect on January 1, 2017.

Physical and regulatory takings

The panel discussed the following issues:

- What duty does a county have to get fair market value on foreclosed property?
 - Is the property owner entitled to more than the return of the surplus, i.e., the difference between the fair market value and the tax sale auction price? The U.S. Supreme Court has not taken that position in the past.
- What is the public use clause, and does it require more than a minimal rational basis of review?

- Is rent control an unconstitutional taking of private property rights? See the outline for references.
- Should government be allowed to use its eminent domain powers broadly?
- A panelist used the acronym “DUDE” to mean developer under delusion of entitlement. He discussed how far regulation can go.

Housing

The panel discussed the following issues:

Recent reforms:

- Recent reforms on housing supply include missing middle housing, duplexes, triplexes, and other less restrictive housing types.
- Some laws have recently made it easier to build accessory dwelling units.
 - ADU production in California was about 1/10 of the housing production in the State over the last year.
 - Laws applying to ADU production often preempt contrary local regulations.
 - Washington passed zoning to allow two units per lot in some situations and four units per lot in others.
 - Homeowners might not have financial expertise to position themselves to take advantage of the legislation.
- Minimum lot size reforms include a ballot measure in Massachusetts to impose a 5,000-foot maximum lot size if the property owner is relying on public infrastructure such as a municipality’s sewer system.
- Transfer of development right reforms include:
 - Allowing a fixed number of family units as of right.

- Some states require local government to rezone around mass transit.
- YIGBY (Yes in God's back yard). Eighteen states have introduced proposals; only two states have passed them.
 - Allows faith-based communities to build multifamily housing at a certain density on underused portions of their land.
 - Fresno built senior housing cottages.
 - Boxabl shippable houses were used for women transitioning out of homelessness. BOXABL
- Substantive building code reform examples:
 - Single-stair reform. Under the International Building Code, buildings need to have two stairways if they are over three stories. This requirement can make it difficult to develop above three stories on smaller lots. A number of places have modified the requirement.
 - In Seattle, two stairwells are not necessary, which allows a greater variety and larger units for families.
 - Use of engineered wood for construction, which is more sustainable and able to achieve the same fire ratings with less of a carbon footprint.
 - Laws governing elevators may be modified, although there may be reasons under the Americans with Disabilities Act that a larger elevator is required.
- Procedural reform examples:
 - The City of San Diego has reformed its planning process, with development approved ministerially rather than through a discretionary process.

- The whole idea behind the Hawaiian Homes Commission Act was to get beneficiaries back to the land.
- Lands set aside were marginal; no money was provided.
- The program is trying to address 29,000 beneficiaries on the waitlist.
- The State Legislature passed Act 279, appropriating \$600 million to the program.
- Kali Watson, Chairman of the Hawaiian Homes Commission, discussed the 28 projects being developed across the State, noting half of the \$600 million is being invested on Maui.

ALI Restatement on property law

The panel discussed issues being addressed in the update to the ALI Restatement on property law, including:

- Aerial trespass, including the use of drones. The ALI solution is to say there's an extralegal norm—or bubble—of possession. In that bubble, any intrusion is per se trespass. If you are permanently in that zone, that is per se substantial harm. If you are temporarily in that zone, substantial harm must be shown.
 - The ALI is trying to solve the problem up to a point and allow state legislatures to deal with the problem as well.
 - In Hawaii, HRS Section 711-1125 addresses trespass by drones.
- Intangibles, primarily through the tort of conversion. What is property, what things can you own, and what is conversion? Can intangibles, such as crypto, be stolen, made inaccessible, or destroyed?
- To what degree will artificial intelligence impact what is done on the Restatement?

Artificial intelligence

A panelist discussed how an AI model is generated and the possible application of copyright law to generative AI. On the question of whether generative AI is itself property, she said the answer is mostly yes. What the scope of protection would be is not clear. There are currently more than seventy lawsuits pending in the U.S. on the subject.

Coastal protection and public trust

The panel discussed:

- Conflicts over water allocation and managed retreat strategies and the application of the public trust doctrine to those issues.
- Issues surrounding the water management area designation in West Maui, including the presumption that existing uses can continue until a determination is made by the Commission on Water Resource Management. A panelist noted that while permits for new uses aren't being processed, new uses are essentially frozen.
- Act 16, SLH 2020, amended the Coastal Zone Management Act to prohibit shoreline hardening structures based in part on the public trust doctrine.
- A 2022 case involving an application by Maui Electric for a solar photovoltaic farm on Maui. In the decision, the Hawaii Supreme Court included a lengthy footnote 15 on the right to a life-sustaining climate system. In 2021, Hawaii declared a climate emergency. The right is constantly evolving.

Climate change

The panel discussed:

- Island vulnerabilities in the context of climate change. What parts can be restored in the wake of disaster, and what parts must be relinquished?

- Different solutions are needed to address climate change. The old model is insufficient.
 - The panel touched on Lahaina properties destroyed by wildfire. Insurance is a replacement model. The County is saying we won't pay you for what's there, but we will pay you for the denuded piece.
 - Passing a vacancy tax on empty homes failed at the Honolulu City Council. People buy real estate in Hawaii as though they are buying art because they know it will accrue value. Are there better property regimes like the konohiki system? If you don't steward the land someone else gets it.
- Federal changes were raised, including the recent rescission of the endangerment finding—that greenhouse gases endanger public health and welfare—and the exemption of nuclear plants from environmental review.
- Hawaii's constitutional right to a clean and healthful environment is being used for the first time in the last three years in a substantive way.
- How do we deal with the de-risking occurring in the insurance market?

Thank you for the opportunity to attend this conference.

paf:cmn:25-010(22)a

Attachment

Follow this QR Code to Get More Details About the
Conference Speakers and Presentations:



Mahalo to the Conference Organizing Committee:

David Callies, Organizing Chair
Jennifer Tung
Derek B. Simon
Troy J.H. Andrade
Brian Simon
Nikolette Hartmann
Anne Sumangil

Future of Property Law Conference

Friday, February 13, 2026

**William S. Richardson Law School
2515 Dole Street
Honolulu, Hawai'i 96822**

***Sponsored by HSBA Real Property and Financial
Services Section, William S. Richardson Law School,
First Hawaiian Bank, and co-sponsored by HSBA***

Future of Property Law Conference

Friday, February 13, 2026

8:30 a.m. | Welcome and Introductions

- Camille A. Nelson, Dean and Professor of Law, William S. Richardson School of Law
- Jason Korta, Board Chair, HSBA Real Property and Financial Services Section
- David L. Callies, Kudo Chair in Law Emeritus, William S. Richardson School of Law

8:45 a.m. | Keynote Presentation

- Thomas W. Mitchell, Robert F. Drinan, S.J. Endowed Chair, Boston College Law School

9:15 a.m. | Physical & Regulatory Takings

- James S. Burling, Esq., Pacific Legal Foundation
- Robert H. Thomas, Esq., Pacific Legal Foundation
- Brad Saito, Corporation Counsel, City and County of Honolulu

10:15 a.m. | Break

10:30 a.m. | Housing

- John Infranca, Professor of Law, Suffolk University Law School
- Stanley Chang, State Senator
- Kati Watson, Director, Department of Hawaiian Home Lands

11:30 a.m. | ALI Restatement, 4th, Property Law

- Henry E. Smith, Chief Reporter and Fessenden Professor of Law, Harvard Law School
- Mitchell A. Imanaka, Esq., Imanaka Asato, ALI
- Sharon V. Lovejoy, Esq., Starn O'Toole Marcus & Fisher, ALI

12:30 p.m. | Lunch

1:30 p.m. | IP/Artificial Intelligence

- Pamela Samuelson, Sherman Distinguished Professor of Law, UC Berkeley Law
- Alina Ng Boyte, Professor of Law, William S. Richardson School of Law
- Seth M. Reiss, Esq., Watanabe Ing LLP

2:30 p.m. | Coastal Protection/Public Trust

- Thomas W. Merrill, Charles Evans Hughes Professor of Law, Columbia Law School
- Calvert G. Chipchase, Esq., Cades Schutte
- Douglas A. Codiga, Esq., Schlack Ito LLLC

3:30 p.m. | Break

3:45 p.m. | Climate Change

- Maxine Burkett, Stanford University Doerr School of Sustainability
- Joshua W. Stanbro, Chief Administrator, Kalāhiki, Hawaiian Council
- Richard Wallsgrove, Associate Professor of Law, William S. Richardson School of Law

4:45 p.m. | Conclusion

Please join us in the courtyard following the program for light refreshments.