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Congratulations New Director, Na Lan!

In 2004, Na Lan arrived in Honolulu as an international student at the University of Hawaii. The following year, she sat in a summer school class on the subject of trusts and estates taught by a passionate law professor. She was captivated by the cases discussed and inspired to see how skilled lawyers aided people, including very smart and successful people, who found themselves entangled in disputes of various sorts.

It was a pivotal time for Ms. Lan, as she set her sights on a legal career that would later combine her own areas of passion with her language skills and cultural acumen. Born and raised in China, Ms. Lan is fluent in Mandarin Chinese and English. She would go on to create her niche in the Honolulu legal community, mastering condominium and community association law, and successfully providing bilingual legal services. Ms. Lan is uniquely qualified to help Mandarin-speaking investors and property or business owners resolve legal issues, overcome language and cultural barriers, and adapt to our legal system.

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Fifteen years after the initial spark of inspiration to practice law and two years after joining Damon Key, Ms. Lan has become the firm's newest Director at Damon Key.

"Na arrived at the firm with an established track record of success in the areas of condominium and community association law and immigration law," said Damon Key Vice President Michael Yoshida. "She remains on the forefront of these dynamic practice groups. She is highly regarded for her expertise in areas related to real estate and her commitment to help immigrant business and property owners succeed."

Ms. Lan practices in the firm's Condominium and Community Association Law; Business & Commercial Law; Real Estate; Immigration & Naturalization; and Litigation, Arbitration & Mediation practice groups. She is a graduate of the University of Hawaii's William S. Richardson School of Law, where she graduated cum laude. Ms. Lan was a 2016 Hawaii State Bar Association Leadership Institute fellow and received the Public Advocate of the Year Award in 2015 from Community Associations Institute, Hawaii Chapter. She also earned her real estate license, and is a member of the National Association of Realtors and the Honolulu Board of Realtors.

Prior to joining Damon Key, Ms. Lan provided legal services through her Honolulu-based law office, The Law Office of Na Lan, LLLC, which focused on business, employment and family-based immigration law. She also practiced condominium and business law as an associate at a boutique law firm in Honolulu.

"Together with my colleagues at Damon Key, we provide a full-service, one-stop shop to meet all the legal needs of business and property owners in the immigrant communities..."

Ms. Lan not only assists new Mandarin-speaking visitors and investors to explore business opportunities and secure investments in Hawaii, but also helps many hardworking business and property owners who settled down in our community as immigrants on their daily operational legal matters and safeguarding their existing assets. She is uniquely qualified to help familiarize them with the legal system and resolve their legal problems by helping them overcome language and cultural barriers.

"Together with my colleagues at Damon Key, we provide a full-service, one-stop shop to meet all the legal needs of business and property owners in the immigrant communities, including but not limited to due diligence, acquisition and sales, leasing, business operation, property management, immigration, legal compliance, dispute resolution and litigation matters," said Ms. Lan. "As the firm's newest Director, I look forward to continuing to devote my efforts to the delivery of cost-effective

problem solving and free annual legislative updates," she added.

Ms. Lan has been active with the Hawaii Chapter of the Community Association Institute (CAI) since 2013 and currently serves on the Legislative Action Committee. She is chair of the Hawaii State Bar Association's International Law Section and secretary of the American Immigration Lawyers Association, Hawaii Chapter.

She supports the community through involvement in a myriad of organizations, including the Supreme Court Committee on Court Interpreters and Language Access, the Hawaii Chinese Association, US-China Friendship Association, Honolulu Chapter, and the Chinese Chamber of Commerce of Hawaii, where she sits on several key committees. This year, she is co-teaching Property I class in the spring semester at her law school alma mater.

Ms. Lan has presented at numerous local seminars and published articles in trade publications and newsletters, providing timely legislative updates and insights on condominium and community association law and related topics. She is a regular guest speaker on Condo Insider Show with Think Tech Hawaii, appearing eight times in the past few years to discuss foreclosure law, association documents request, board fiduciary duty and meeting requirements, assistance animals, a primer of HRS 514B, and new legislation affecting condominiums in Hawaii.

Reflecting on the role of legal counsel for condominium and community associations, Ms. Lan believes an attorney's mission is to help clients solve problems expeditiously within their legal budget, prevent and reduce disputes, and provide legal support for directors and managers to guard all association member investments in their building or community. "In recent years, our community had to deal with more claims and lawsuits filed by unit owners against common interest project associations and their directors, and the resulting increasing insurance premiums for association liability and D&O (directors and officers) policies. There is a common ground for our community to explore and use more cost-effective alternative disputes resolution processes for such matters, as we want to ultimately improve the quality of living in condominium and planned community projects to make it truly affordable and aloha style," said Ms. Lan.

Ms. Lan moves into this exciting chapter of her legal career with optimism and gratitude. "Entering the eleventh year of my legal practice, I am fortunate to follow my passion into this profession, and always have the trust and support from my family, friends, colleagues, and clients as I grow with them. My sincere thanks go to each of them who make my life so fulfilling and enjoyable!"

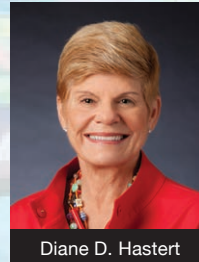
2020 Best Lawyers and Super Lawyers



Matthew T. Evans



Tred R. Eyerly



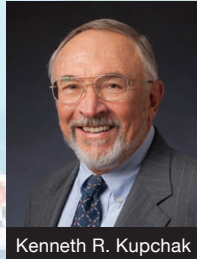
Diane D. Hastert



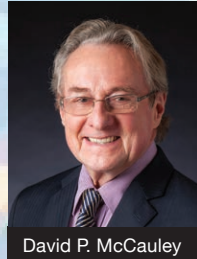
Christine A. Kubota



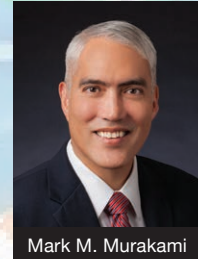
Gregory W. Kugle



Kenneth R. Kupchak



David P. McCauley



Mark M. Murakami



Anna H. Oshiro



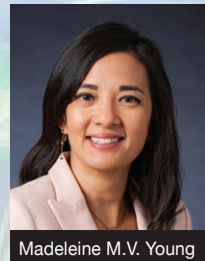
Douglas C. Smith



Robert H. Thomas



Michael A. Yoshida



Madeleine M.V. Young

Creative Solutions. Commitment to Excellence.

We congratulate our colleagues on being selected to the latest edition of The Best Lawyers in America®. At Damon Key we are independent thinkers, yet work as a team to provide creative and excellent service to our clients for over 50 years.

Matthew T. Evans
Super Lawyers: Business
Litigation

Tred R. Eyerly
Insurance Law
Super Lawyers: Insurance Coverage

Diane D. Hastert
Arbitration
Commercial Litigation
Litigation – Real Estate
Super Lawyers: Business Litigation

Christine A. Kubota
Corporate Law
Employment Law – Management
Real Estate Law
2013 Lawyer of the year:
Corporate Law

Gregory W. Kugle
Commercial Litigation
Construction Law
Land Use & Zoning Law
Litigation – Construction
Litigation – Land Use & Zoning
Real Estate Law
2017 Lawyer of the Year:
Litigation – Land Use & Zoning
2013 Lawyer of the Year:
Land Use & Zoning Law
Super Lawyers: General Litigation

Kenneth R. Kupchak
Corporate Law, Construction Law
Litigation – Construction
Litigation – Land Use & Zoning
Eminent Domain & Condemnation
Real Estate Law
2017 Lawyer of the Year:
Eminent Domain & Condemnation
2015 Lawyer of the Year:
Litigation – Land Use & Zoning
Super Lawyers: Construction
Litigation

David P. McCauley
Super Lawyers: Immigration

Mark M. Murakami
Commercial Litigation
Eminent Domain & Condemnation
Land Use & Zoning Law
Litigation – Real Estate
Litigation – Trusts & Estates
Real Estate Law
Litigation – Trusts & Estates
2013 Lawyer of the Year:
Eminent Domain & Condemnation
Super Lawyers: Business Litigation

Anna H. Oshiro
Arbitration
Construction Law
Government Contracts
Litigation – Construction
Super Lawyers: Construction
Litigation

Robert H. Thomas
Eminent Domain & Condemnation
Land Use & Zoning Law
Litigation – Land Use & Zoning
Real Estate Law
2019 Lawyer of the Year:
Litigation – Land Use & Zoning
2018 Lawyer of the Year: Eminent
Domain & Condemnation Law
2017 Lawyer of the Year:
Land Use & Zoning Law
2014 Lawyer of the Year:
Eminent Domain & Condemnation
Super Lawyers: Appellate

Douglas C. Smith
Tax Law
Trusts & Estates
Litigation – Trusts & Estates
2015 Lawyer of the Year:
Litigation – Trusts & Estates
2013 Lawyer of the Year:
Trusts & Estates
Super Lawyers: Estate Planning
& Probate

Michael A. Yoshida
Business Organizations
(including LLC's & Partnerships)
Construction Law
Mortgage Banking Foreclosure
Real Estate Law
Super Lawyers: Creditor Debtor
Rights

Madeleine M.V. Young
Litigation – Trusts & Estates

Super Lawyers

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The Tale of Two Towers: Damon Key Wins Important Hawaii Supreme Court Land Use Case

By: Loren A. Seehase

“It was the best of times, it was the worst of times,” is how Damon Key attorney Greg Kugle started off his winning oral argument before the Hawaii Supreme Court. While the quote was from Charles Dickens’ *A Tale of Two Cities*, this case is the tale of two towers. Two new Ritz Carlton towers on Kuhio Avenue in Waikiki to be precise.



The two towers of the Ritz Carlton Residences have been the subject of several lawsuits since conception, for a number of reasons. Foremost being the improper segmentation of a two-tower project into two phases. The developer presented one tower as if it was the total project, but then once approved the developer came back and sought approval for a second tower. Both towers were each presented as hotels, but the ownership of the individual units was subject to a condominium property regime.

Waikiki is designated as a special district subject to heightened permitting requirements, and either a major or minor Waikiki Special District permit (WSD) is required prior to beginning construction. Under the Land Use Ordinances (LUO), how a building is used determines certain requirements, one of which is off-street parking accommodations. For example, if a building with dwelling units is used for transient accommodations, such as a hotel, then the developer is only required to provide one parking spot for every four dwelling units. But, if that same building uses the dwelling units for residential use then the developer is required to provide one parking spot for every single dwelling unit. A determination of how a building is going to be used prior to construction is imperative for the Department of Planning and Permitting (DPP) to ensure adequate off-street parking is provided, especially in the already scarce parking of Waikiki.

This tale began in 2013 when the developer was granted a WSD permit for the first tower, at 2121 Kuhio Avenue (First WSD). The First WSD issued by the DPP included a number of conditions. One of which was placing a restrictive covenant on the title to all the units requiring each unit be used for transient accommodations, and if the owner ever decided to convert the use to residential then they would have to notify the DPP and provide proof of a dedicated off-street parking spot.

During the processing of the First WSD, Unite Here! Local 5, Hawaii’s hotel workers union, (Local 5) actively participated in the permit’s public hearings, provided the DPP comments, and advocated for a restrictive covenant condition. About a year later, the developer submitted, and the DPP approved, a WSD permit for a second tower at 2139 Kuhio Avenue, directly adjacent, and connected, to the First WSD (Second WSD). The Second WSD was being built by the same developer, managed by the same company, physically joined together, and would operate as one building. But, inexplicably the Second WSD did not contain the same restrictive covenant condition as the First WSD.

Well unbeknownst to Local 5, and the public, the developer behind closed doors had negotiated with the DPP to secretly remove the restrictive covenant condition from the First WSD. Here is where the case began.

Faced with two WSD permits for the same building, but with very different conditions, Local 5, represented by Damon Key, contested the Second WSD, arguing that it was textbook arbitrary and capricious for the DPP to treat two nearly identical permits differently. The appeal was filed with the Zoning Board of Appeals (ZBA). It was during the ZBA appeal that Local 5 first learned of the developer's secret deal with the DPP to remove the restrictive covenant condition on the First WSD. There the developer argued, and the ZBA agreed, that it was not arbitrary and capricious because the two WSD's were not actually different since the First WSD no longer had a restrictive covenant condition. Local 5 then argued that the removal of the condition from the First WSD was improper because the developer failed to go through the major or minor WSD modification process as required under the LUO. The ZBA disregarded that argument on the grounds that the First WSD was not the subject of the appeal, so it lacked jurisdiction to render an opinion on the First WSD.

Local 5 appealed to the Circuit Court arguing that the DPP's secret modification of the First WSD was improper without adherence to the major or minor permit modification process. And, that the failure to notify both Local 5 and the public about the modification of the First WSD was a constitutional violation of Local 5's due process rights, and the Circuit Court has jurisdiction to decide constitutional questions. The Circuit Court disagreed.

Local 5 appealed the decision to the Intermediate Court of Appeals. Then through a procedural mechanism Local 5 submitted an application for transfer of the case to the Hawaii Supreme Court, which the Court granted.

In December of 2019, after six years of litigation and with both towers fully constructed, Damon Key's litigation and appellate team – Greg Kugle, Loren Seehase, and Joanna Zeigler – secured another Hawaii Supreme Court victory. The Hawaii Supreme Court in a unanimous published decision agreed with Local 5. *Unite Here! Local 5 v. Dep't of Planning & Permitting/Zoning Bd. of Appeals*, 145 Haw. 453, 454 P.3d 394, (Haw. 2019). When the DPP secretly removed the conditions from the First WSD without notice to Local 5, it violated Local 5's due process right.

As such, the State's highest court ordered the case to be remanded to the ZBA to allow Local 5 to challenge the removal of the conditions on the First WSD. The Court vacated the ZBA's decision to approve the Second WSD and remanded back to the ZBA to determine whether the DPP's decision to approve the Second WSD without the restrictive covenant condition was an abuse of discretion.



**For more information on this article, please call Greg or Loren at 531-8031,
or email Greg at gwk@hawaiiilawyer.com or Loren at las@hawaiiilawyer.com.**

Damon Key Earns Meritas Recertification

Damon Key is a founding member of Meritas, a global alliance of independent business law firms. This affiliation allows Damon Key the ability offer its clients access to quality legal expertise around the world.

Damon Key is proud to announce that it was recently awarded recertification in Meritas, a global alliance of independent, full-service business law firms located in over 90 countries worldwide. Damon Key joined Meritas in 1990 – the same year Meritas (formerly known as Commercial Law Affiliates) was founded – and, as a condition of its continued membership, is required to successfully complete a robust recertification process every three years.

The recertification process includes exacting self-assessment, peer review by other law firms, and client feedback. It examines such factors as timeliness and quality of a firm's client service, professional conduct, and adherence to Meritas' policies, including acknowledgment of Meritas firm or client correspondence within 24 hours.

"Businesses trust the Meritas alliance of law firms for top-tier quality, convenience, consistency and value," said Tanna Moore, president and CEO of Meritas. "Damon Key has demonstrated its commitment to world-class client service, and therefore has successfully earned its recertification in Meritas."

As an international alliance of commercial law firms, Meritas works across jurisdictions to provide clients the best of both worlds: a local law firm offering full-service capabilities and access to legal expertise on a global scale, but also cost efficiency and personal attention unmatched by "mega" law firms.



Each member law firm is required to adhere to rigorous and specific service standards on a regular basis. In fact, Meritas is the only law firm alliance with an established and comprehensive means of monitoring



Gregory W. Kugle



Matthew T. Evans

the quality of its member firms—a process that can save clients time in seeking to validate law firm credentials and experience. Meritas membership is extremely selective and by invitation only. Member firms are regularly assessed and recertified for the breadth of their practice expertise and client satisfaction. The organization's extensive due diligence process ensures that only firms meeting the tenets of Meritas' unique Quality Assurance Program are allowed to maintain membership. Further, Member firms' performance and quality feedback are tracked regularly to ensure continued excellence in providing client-driven legal services.

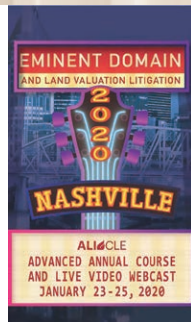
Over the years, Damon Key has been very active in Meritas. Several Directors of Damon Key have served on the Meritas Board of Directors and as members of the organization's Executive Committee. Currently, Damon Key Directors Greg Kugle and Matt Evans serve as the firm's Member Contacts for Meritas, and both are very active in leadership roles for the organization: Greg was formerly a member of the Board of Directors and is now serving as a member of the U.S. Leadership Committee, and Matt is currently serving as a member of the Meritas Young Lawyer Advisory Board.

Damon Key is excited to be recertified and continue its active membership in Meritas, allowing it to offer the firm's clients access to quality legal services provided by nearly 200 Meritas member firms (comprised of over 7,000 lawyers) across more than 240 global markets.

For more information on Meritas, email Matt Evans at mte@hawaiiilawyer.com.

To find a Meritas member law firm, visit meritas.org.

American Law Institute- CLE Eminent Domain Conference, Nashville



In January, the American Law Institute-CLE produced the 37th Annual Eminent Domain and Land Valuation Litigation Conference in Nashville, Tennessee. Damon Key's Robert Thomas is the Co-Planning Chair for the Conference and is responsible along with his colleague Joseph T. Waldo of Norfolk, Virginia, for planning and coordinating the Conference.

This Conference is the annual gathering of the nation's most experienced eminent domain and property lawyers and is two-and-a-half days of legal education programming on topics such as jury presentations, appeals, expert appraisal testimony, and ethical issues for property lawyers.

Damon Key's Mark M. Murakami was featured in the presentation on "Unity of Lands and the First Question in Every Valuation Case: What Property Do You Appraise," a session devoted to how courts treat condemnees who possess more than a single parcel, and how advocates can structure their cases to maximize just compensation.

The conference saw record attendance, with nearly 300 registrants, faculty, and staff. The 2021 Conference will be held in Scottsdale, Arizona.



Damon Key's Mark Murakami speaking on "Unity of Lands and the First Question in Every Valuation Case: What Property Do You Appraise"



In addition to nearly 300 in-person attendees from across the nation and internationally, the Conference was live-streamed on the web. Shown: Nancie Marzulla (Washington, D.C.,) speaking about water law and takings issues



Economist William Wade, Ph.D., (Nashville, TN) speaks about the U.S. Supreme Court's legal standards for regulatory takings cases in Saturday's National Forum



Lawyers, judges, appraisers, legal scholars, and law students attended. Pictured here: Dwight Merriam (CT), one of the nation's leading lawyers in land use and condemnation law, and Professor Bethany Berger of the University of Connecticut Law School.



Texas colleague Clint Schumacher (right) brought his Eminent Domain Podcast studio to Nashville, where he recorded future episodes (here, with law students from William and Mary Law School)



It was not all business. The Nashville conference provided attendees with many opportunities for social and networking events.

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Legal Alert is published periodically by Damon Key Leong Kupchak Hastert to inform clients of legal matters of general interest. It is not intended to provide legal advice or opinion.

Attorneys in the News

Christine A. Kubota was elected the first woman Director of the Waialae Country Club for the term of 2020-2022. Christine is also on the Always Dream Foundation as a new member of the Board of Directors, and is a Director for Tau Productions.

Mark M. Murakami was featured in the *West Hawaii Today* which reported on a condemnation lawsuit by Hawaii County in which the firm represents the property owner. The story reports, "In the motion and a supporting memorandum, Mark M. Murakami, attorney for Papa'ikou Landing Inc., argued for dismissal, saying the "county filed a half-baked complaint" that sought "to condemn an incomplete easement that cannot be used for its stated purpose, a pedestrian walkway connecting the public road to the public beach."

Full Story: <https://bit.ly/2VZXmyO>

Kelly Y. Uwaine has been elected as the President of the Korean American Bar Association of Hawaii for the term of 2020-2021.

The William S. Richardson School of Law's Native American Moot Court Team competed at the National Native American Law Students Association's 28th annual Moot Court Competition at the University of California, Berkeley School of Law on February 21-23.

Nick Ernst was a Summer Associate with the firm in the summer of 2019, and has accepted the firm's offer to return full time as an Associate upon bar passage. Congratulations, Nick!

From left: Nick Ernst '20, Terina Faagau '21, Gloria-Leilani Palma '21, Janessa Maddox '20, and Ian Tapu '20.

