

MAR 12 2021

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# SENATE CONCURRENT RESOLUTION

REQUESTING THE FORMATION OF A WORKING GROUP TO EXAMINE THE  
GOVERNANCE AND MAINTENANCE OF SHARED AREAS IN NON-PLANNED  
COMMUNITY SUBDIVISIONS.

1           WHEREAS, in Hawaii, the governance and maintenance of  
2 common areas in condominium associations are governed by section  
3 514B, Hawaii Revised Statutes, and the governance and  
4 maintenance of common areas in planned community associations  
5 are governed by section 412J, Hawaii Revised Statutes; and  
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7           WHEREAS, there is a lack of statutory guidance on the  
8 rights and responsibilities of homeowners or entities on the  
9 governance and maintenance of shared areas, such as private  
10 roads, recreational facilities, mailboxes, and infrastructure,  
11 of non-planned community subdivisions that were created prior to  
12 statehood; and  
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14           WHEREAS, the failures of these pre-statehood, non-planned  
15 community subdivisions to maintain these shared areas negatively  
16 impacts the public, like the delayed arrival of emergency  
17 response vehicles due to unmaintained roads or mailed  
18 prescriptions of essential medications due to lack of mail  
19 delivery; and  
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21           WHEREAS, though the Hawaii Supreme Court held in *Paradise*  
22 *Hui Hanalike v. Hawaiian Paradise Park Corporation*, 66 Haw. 362,  
23 662 P.2d 211 (1983), that landowners have a duty to contribute  
24 to the maintenance of private roads that abut the landowners'  
25 property even without any recorded instrument stating covenants  
26 and declarations, yet there still are no formal procedures nor  
27 rules on the collection and expenditure of these contributions;  
28 and  
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30           WHEREAS, the lack of guidance regarding the shared areas of  
31 nonplanned community subdivisions result in the constant need  
32 for homeowners and entities of these nonplanned community



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1 subdivisions to litigate to resolve issues related to the  
2 governance and maintenance of shared areas, such as voting  
3 rights, use of collected contributions, and authority to audit;  
4 and

5  
6 WHEREAS, it is in the public interest to establish a  
7 procedure for the governance and maintenance of the shared areas  
8 within non-planned community subdivisions; now, therefore,

9  
10 BE IT RESOLVED by the Senate of the Thirty-first  
11 Legislature of the State of Hawaii, Regular Session of 2021, the  
12 House of Representatives concurring, that a working group be  
13 formed to examine the governance and maintenance of shared  
14 spaces, improvements, and infrastructure in non-planned  
15 community subdivisions; and

16  
17 BE IT FURTHER RESOLVED that the working group is requested  
18 to:

19  
20 (1) Examine any guidance on the rights and  
21 responsibilities of homeowners of a non-planned  
22 community subdivision regarding the governance and  
23 maintenance of its shared areas, including but not  
24 limited to any agreements, leases, or other contracts  
25 under which the entities have any obligation or  
26 responsibility;

27  
28 (2) Examine any guidance on the rights and  
29 responsibilities of shared management and governance  
30 entities of a non-planned community subdivision  
31 regarding the governance and maintenance of its shared  
32 areas, including but not limited to any agreements,  
33 leases, or other contracts under which the entities  
34 have any obligation or responsibility;

35  
36 (3) Examine the various forms of regulation and  
37 governance, including any statutory frameworks,  
38 oversight agencies, and related programs over the  
39 shared areas of non-planned community subdivisions in  
40 other jurisdictions, including but not limited to  
41 voluntary homeowners' associations;

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- 1           (4) Examine the maintenance strategies of shared areas in  
2           the non-planned community subdivisions in other  
3           jurisdictions, including but not limited to any  
4           procedures for the collection of contributions or dues  
5           towards the maintenance of shared areas, the creation  
6           of an entity that collects and/or manages the  
7           contribution or dues, and any audit authority of a  
8           governmental agency;  
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  - 10          (5) Gather information on the costs, including the  
11          potential budget, assessments, shared area maintenance  
12          fees, reserve accounts for expenditures and capital  
13          maintenance, and any cost-savings to the creation of  
14          an entity that governs and/or maintains the shared  
15          areas in the non-planned community subdivisions in the  
16          State; and  
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  - 18          (6) Review pertinent resources, including prior state  
19          legislation, reports, and studies regarding the  
20          governance and/or maintenance of shared areas in non-  
21          planned community subdivisions; and  
22
- 23           BE IT FURTHER RESOLVED that the working group is requested  
24   to be comprised of the following members or their designees:  
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- 26          (1) A member of the House of Representatives representing  
27          an affected district to be appointed by the Speaker of  
28          the House of Representatives;  
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  - 30          (2) A member of the Senate representing an affected  
31          district to be appointed by Senate President;  
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  - 33          (3) The President of the Hawaii State Association of  
34          Parliamentarians;  
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  - 36          (4) The President of the Hawaii Council of Community  
37          Associations; and  
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  - 39          (5) The Chairperson of the Community Associations  
40          Institute, Hawaii Chapter, Legislative Action  
41          Committee; and  
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BE IT FURTHER RESOLVED that the working group is also requested to consist of an additional member with expertise in mediating issues related to non-planned community subdivisions, such as a trained or certified mediator from the Ku'ikahi Mediation Center or another similar organization that facilitates or practices alternative dispute resolution; and

BE IT FURTHER RESOLVED that the working group should serve without compensation; and

BE IT FURTHER RESOLVED that the working group is requested to submit a report of its findings and recommendations, including any proposed legislation, regarding the governance and maintenance of shared areas in non-planned community subdivisions, to the Legislature no later than twenty days prior to the convening of the Regular Session of 2022; and

BE IT FURTHER RESOLVED that the working group should cease to exist on December 31, 2022; and

BE IT FURTHER RESOLVED that certified copies of this Concurrent Resolution be transmitted to the President of the Hawaii State Association of Parliamentarians; President of the Hawaii Council of Community Associations; and Chairperson of the Community Associations Institute, Hawaii Chapter, Legislative Action Committee.

OFFERED BY:

A large, stylized handwritten signature in black ink, written over a horizontal line. The signature is cursive and appears to be the name of the person offering the resolution.