

MAR 12 2021

SENATE 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
29

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
33 subdivisions to litigate to resolve issues related to the
34 governance and maintenance of shared areas, such as voting



1 rights, use of collected contributions, and authority to audit;
2 and
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4 WHEREAS, it is in the public interest to establish a
5 procedure for the governance and maintenance of the shared areas
6 within non-planned community subdivisions; now, therefore,
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8 BE IT RESOLVED by the Senate of the Thirty-first
9 Legislature of the State of Hawaii, Regular Session of 2021,
10 that a working group be formed to examine the governance and
11 maintenance of shared spaces, improvements, and infrastructure
12 in non-planned community subdivisions; and
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14 BE IT FURTHER RESOLVED that the working group is requested
15 to:
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17 (1) Examine any guidance on the rights and
18 responsibilities of homeowners of a non-planned
19 community subdivision regarding the governance and
20 maintenance of its shared areas, including but not
21 limited to any agreements, leases, or other contracts
22 under which the entities have any obligation or
23 responsibility;
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25 (2) Examine any guidance on the rights and
26 responsibilities of shared management and governance
27 entities of a non-planned community subdivision
28 regarding the governance and maintenance of its shared
29 areas, including but not limited to any agreements,
30 leases, or other contracts under which the entities
31 have any obligation or responsibility;
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33 (3) Examine the various forms of regulation and
34 governance, including any statutory frameworks,
35 oversight agencies, and related programs over the
36 shared areas of non-planned community subdivisions in
37 other jurisdictions, including but not limited to
38 voluntary homeowners' associations;
39

40 (4) Examine the maintenance strategies of shared areas in
41 the non-planned community subdivisions in other
42 jurisdictions, including but not limited to any



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1 procedures for the collection of contributions or dues
2 towards the maintenance of shared areas, the creation
3 of an entity that collects and/or manages the
4 contribution or dues, and any audit authority of a
5 governmental agency;

6
7 (5) Gather information on the costs, including the
8 potential budget, assessments, shared area maintenance
9 fees, reserve accounts for expenditures and capital
10 maintenance, and any cost-savings to the creation of
11 an entity that governs and/or maintains the shared
12 areas in the non-planned community subdivisions in the
13 State; and

14
15 (6) Review pertinent resources, including prior state
16 legislation, reports, and studies regarding the
17 governance and/or maintenance of shared areas in non-
18 planned community subdivisions; and

19
20 BE IT FURTHER RESOLVED that the working group is requested
21 to be comprised of the following members or their designees:

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23 (1) A member of the House of Representatives representing
24 an affected district to be appointed by the Speaker of
25 the House of Representatives;

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27 (2) A member of the Senate representing an affected
28 district to be appointed by Senate President;

29
30 (3) The President of the Hawaii State Association of
31 Parliamentarians;

32
33 (4) The President of the Hawaii Council of Community
34 Associations; and

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36 (5) The Chairperson of the Community Associations
37 Institute, Hawaii Chapter, Legislative Action
38 Committee; and

39
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41 BE IT FURTHER RESOLVED that the working group is also
42 requested to consist of an additional member with expertise in



1 mediating issues related to non-planned community subdivisions,
2 such as a trained or certified mediator from the Ku'ikahi
3 Mediation Center or another similar organization that
4 facilitates or practices alternative dispute resolution; and
5

6 BE IT FURTHER RESOLVED that the working group should serve
7 without compensation; and
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9 BE IT FURTHER RESOLVED that the working group is requested
10 to submit a report of its findings and recommendations,
11 including any proposed legislation, regarding the governance and
12 maintenance of shared areas in non-planned community
13 subdivisions, to the Legislature no later than twenty days prior
14 to the convening of the Regular Session of 2022; and
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16 BE IT FURTHER RESOLVED that the working group should cease
17 to exist on December 31, 2022; and
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19 BE IT FURTHER RESOLVED that certified copies of this
20 Resolution be transmitted to the President of the Hawaii State
21 Association of Parliamentarians; President of the Hawaii Council
22 of Community Associations; and Chairperson of the Community
23 Associations Institute, Hawaii Chapter, Legislative Action
24 Committee.
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OFFERED BY: 

