



DEPT. COMM. NO. 376

*The Senate*  
*Office of Joy A. San Buenaventura*

January 18, 2024

The Honorable Ronald D. Kouchi,  
President and Members of  
the Senate  
Thirty-Second State Legislature State  
Capitol, Room 409 Honolulu, Hawaii  
96813

The Honorable Scott K. Saiki, Speaker  
and Members of the House of  
Representatives  
Thirty-Second State Legislature State  
Capitol, Room 431 Honolulu, Hawaii  
96813

Dear President Kouchi and Speaker Saiki:

I am writing to provide an update for the Act 200 Working Group, tasked with addressing the urgent infrastructure issues in housing subdivisions in the County of Hawai'i. Our mandate focuses on subdivisions approved without mandatory funding for private road and infrastructure maintenance, leaving property owners with few options beyond voluntary dues. The lack of oversight in these areas has led to hazardous conditions, notably affecting emergency response times.

Our group, comprising members from various sectors, including Sen. Joy San Buenaventura, Rep. Chris Todd, and representatives from community associations and local government, has met approximately six times during the 2023 legislative and interim period. We have focused on developing a governance structure for homeowner associations in subdivisions lacking compulsory associations, along with drafting governing documents and proposing amendments to Chapter 421J.

We faced one funding obstacle caused by the County of Hawai'i administration issues. During the 2024 Legislative Session, I am planning to introduce a bill to extend the funds of ACT 200 to FY 2024. This step is crucial to ensure the continuation of our work without the lapse of necessary funds.

For any further questions or concerns regarding this report or the upcoming bill, please do not hesitate to contact me.

Mahalo,

  
Joy A. San Buenaventura

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## **Executive Summary**

Basis for the formation of the Act 200 Working Group: The legislature finds that some housing subdivisions in the State have been approved without a requirement that the lot owners fund the repair and maintenance of the private roads and other infrastructure within the subdivision. Thus, property owners buying into these subdivisions did not know that there is no recourse other than voluntary dues payment to fix the private roads. In Hawaii County, these private unmaintained roads are hundreds of miles; and emergency vehicles have no choice but to slow down and the delayed response to emergency has caused at least one death – Dana Ireland – and a number of structure fires that could not be stopped.

Accordingly, the Courts have created a patchwork system through judgments in various lawsuits that does not provide adequate oversight. In the case of *Paradise Hui Hanalike v. Hawaiian Paradise Park Corp.*, 66 Haw. 362, 662 P.2d 211 (1983), the Hawaii supreme court found that lot owners whose lots abut on subdivision roads have a legal duty to contribute to the necessary maintenance of those subdivision roads even though their deeds are silent on the matter. More recently, in *Kaanapali Hillside Homeowners' Ass'n ex rel. Bd of Directors v. Doran*, 112 Hawaii 356, 145 P.3d 899 (Ct. App. 2006), property owners questioned an association's authority to impose an assessment because that authority was not recorded against the property owners' lot.

Unlike condominiums, these subdivisions have no basic procedures to form associations for the coordinated maintenance of the private roads nor the collection of contributions from property owners. Thus, at times, courts did not approve the voluntary associations and property owners have no dispute resolution process to contest assessments, collection procedures or maintenance disputes.

Accordingly, the purpose of this Act is to establish a working group to examine and address the problem of infrastructure repair and maintenance in planned housing subdivisions that do not have compulsory homeowner associations.

### **MEMBERS:**

Pursuant to ACT 200, the following members comprised of the WG:

- Sen. Joy San Buenaventura, member of the Senate
- Rep. Chris Todd, member of the House of Representatives
- Jean Miskovich (formerly Steve Bader), member of the Office of the Mayor
- Jane Sugimura, member of the Hawai'i Council of Community Associations
- Richard Emery, member of the Hawai'i Chapter of Community Associations Institute
- Jordan Epperson, Community Stakeholder designated by Sen. San Buenaventura
- Councilmember Matt Kaneali'i-Kleinfelder, Community Stakeholder designated by Representative Chriss Todd

**GOALS:** The WG met approximately 6 times during the 2023 legislative and interim period with the purpose to discuss the findings and recommendations, including any proposed

legislation, to the legislature no later than twenty days prior to the convening of the regular 2024 session.

**Interim Goals:**

1. Development of a governance structure to establish a homeowner association.
2. Development of governing documents for the homeowner association to provide for maintenance and repair of the infrastructure and including the collection of assessments.
3. Proposed amendments to Chapter 421J to support the association, infrastructure requirements, and collection of assessments.

**OBSTACLES:**

At the last meeting, the WG agreed that at the very least a basic set of by-laws should be drafted and a procedure be established for subdivisions who wish to form a Homeowner Association. However, to move further, the WG needed the advice of a consultant conversant with the formation of homeowners association.

During these scheduled meetings the members awaited the approval from the county regarding a consultant. According to the Consultant, his contract was submitted to Hawai'i County Director of Finance in May. However, since May, Hawai'i County had a change in finance director and also a change in the assignee to this WG. Although there were meetings by the WG since May, it was agreed no further progress toward the interim goals can be made without feedback from the consultant who did not get any response from the County to his May contract. The current assignee to this WG submitted the draft contract template recommended by the County Corporation Counsel did not reach the consultant until December 1<sup>st</sup>, 2023.

The draft of the contract has been reviewed by the consultant and is not feasible to complete and finalize the duties before the start of the 2024 legislative session.