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The Office of Information Practices (“OIP”) is authorized to resolve complaints concerning compliance with part I of chapter 92, Hawaii Revised Statutes (“HRS”) (the “Sunshine Law”) pursuant to section 92F-42(18), HRS. This is a memorandum opinion and will not be relied upon as precedent by OIP in the issuance of its opinions.

**MEMORANDUM OPINION**

**Requester:** Pat Tummons  
Environment Hawai`i, Inc.  
**Board:** Forest Stewardship Advisory Committee  
**Date:** July 20, 2011  
**Subject:** Determination whether the Hawai`i Forest Stewardship Advisory Committee is subject to the Sunshine Law (S RFO-P 10-3)

**Request for Opinion**

Requester seeks an opinion as to whether the Hawai`i Forest Stewardship Advisory Committee (“Committee”) is subject to the Sunshine Law.

Unless otherwise indicated, this advisory opinion is based solely upon the facts presented in Requester’s letter of October 2, 2007; a letter and materials from the Department of Land and Natural Resources’ (DLNR) Forestry Division dated October 26, 2007; phone conversations with the DLNR Cooperative Resource Management Forester; and an email with attachments dated May 11, 2011, from the Forester. The attachments include information on the Forest Stewardship Program National Standards and Guidelines dated February 2009 and Implementation Guidelines for the Forest Legacy Program, both of which originated from the U.S. Department of Agriculture; and the State of Hawai`i Forest Stewardship Advisory Committee Guidelines dated April 2, 2009.

## Opinion

The Hawai'i Forest Stewardship Advisory Committee is a board as defined by the Sunshine Law and therefore is subject to the requirements of the Sunshine Law. HRS § 92-2(1).

## Statement of Reasons for Opinion

The Sunshine Law governs the interactions of boards and board members as a way of opening up government processes to public scrutiny and participation. Haw. Rev. Stat. § 92-1. In order to be a "board" under Hawaii's Sunshine Law, a body must have five elements: (1) be an agency, board, commission, authority, or committee of the State or its political subdivisions; (2) created by constitution, statute, rule, or executive order; (3) have supervision, control, jurisdiction or advisory power over specific matters; (4) required to conduct meetings; and (5) required to take official actions. Haw. Rev. Stat. § 92-2(1); OIP Op. Ltrs. No. 05-01 at 4 and 01-01 at 11.

The establishment, composition, and duties of the Committee are required by the federal Cooperative Forestry Assistance Act. 16 U.S.C. §§ 2101, 2113. The purpose of this Act is to

[a]uthorize the Secretary of Agriculture ... to assist in ... the establishment of a coordinated and cooperative Federal, State, and local forest stewardship program for management of the non-Federal forest lands....

16 U.S.C. § 2101(b).

The federal Act specifically states that it is in the national interest to cooperate with state foresters to implement federal programs affecting non-federal forest lands. 16 U.S.C. § 2101(e). The law goes on to establish a federal Forest Resource Coordinating Committee and requires the Secretary of Agriculture to establish a State Forest Stewardship Coordinating Committee for each state. While it provides for the composition of the state committee, duties, and terms, the act also states that "[n]othing in this section shall be construed to compel action by any State official." 16 U.S.C. § 2113(b)(4).

The state has established a forest stewardship program under chapter 195F, Hawaii Revised Statutes, which is administered by the board of the Department of Land and Natural Resources (DLNR). H.R.S. §§ 195F-2, -3. The Committee was expressly created by Hawai'i Administrative Rule (HAR) § 13-109-3, to advise and assist the DLNR in implementing the program.

OIP has previously addressed the question of whether Hawaii's Sunshine Law governs a board created by federal law and determined that a board resulting solely

from federal law is not a board subject to Hawaii's Sunshine Law. OIP Op. Ltr. No. 04-19. Only boards created by the state or its political subdivisions are subject to the Sunshine Law. *Id.* at 4-5. Here, as the Committee was created by state rule, it meets the first two of the five elements for a board to be subject to Hawaii's Sunshine Law.

The Committee is also given authority over specific matters, is required to conduct meetings, and take actions relating to those matters. HAR § 13-109-3. Although the DLNR suggested that the Committee is not a board for purposes of the Sunshine Law because it is not required to take official actions, the definition of a "board" explicitly includes "advisory power" in the types of action a board may be required to take on the matters within its purview. HRS § 92-1; OIP Op. Ltr. No. 05-01 at 4-5. The Committee, in other words, is required to take official action, even though its actions take the form of recommendations to decision-makers. The Committee therefore meets the remaining three of the five required elements.

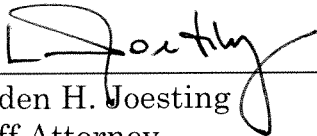
Because this Committee was created by state rule and meets the definition of a board, OIP concludes that the Committee is subject to the Sunshine Law.

### **Right to Bring Suit to Enforce Sunshine Law and to Void Board Action**

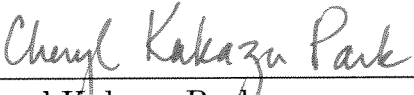
Any person may file a lawsuit to require compliance with or to prevent a violation of the Sunshine Law or to determine the applicability of the Sunshine Law to discussions or decisions of a government board. Haw. Rev. Stat. § 92-12 (1993). The court may order payment of reasonable attorney fees and costs to the prevailing party in such a lawsuit. *Id.*

Where a final action of a board was taken in violation of the open meeting and notice requirements of the Sunshine Law, that action may be voided by the court. Haw. Rev. Stat. § 92-11 (Supp. 2007). A suit to void any final action must be commenced within ninety days of the action. *Id.*

### **OFFICE OF INFORMATION PRACTICES**

  
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APPROVED:

  
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