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## HAWAII INVASIVE SPECIES COUNCIL

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TOURISM

TAMMY LEE  
DEPARTMENT OF TRANSPORTATION

November 4, 2024

### SUBMITTAL

Co-chairs and Members  
Hawaii Invasive Species Council  
State of Hawaii  
Honolulu, Hawaii

### **Request for Final Approval To Adopt Proposed New Subtitle and New Chapters Under Hawaii Administrative Rules as Title 13, Subtitle 14, Chapters 325 “General Provisions” and 326 “Control and Eradication of Invasive Species”**

### PURPOSE

Submitted to the Hawaii Invasive Species Council (HISC) for your consideration and approval is a request to adopt the proposed new subtitle as Hawaii Administrative Rules Title 13, Subtitle 14, “Hawaii Invasive Species Council” comprised of two new chapters, Chapters 325 “General Provisions” and 326 “Control and Eradication of Invasive Species” to effectuate the authorities set out in chapter 194, Hawaii Revised Statutes (HRS). The new subtitle includes the following:

1. **Chapter 325** contains 3 sections that set out the general provisions as follows:
  - **Section 325-1 “Purpose”** sets out that the purpose of the rules is to implement HISC authorities under chapter 194 HRS.
  - **Section 325-2 “Definitions”** sets out the definitions for the subtitle.
  - **Section 325-3 “Relationship to other laws”** clarifies that the proposed rules may not be construed to limit existing authorities.
2. **Chapter 326** contains 6 sections that are related to the authority of HISC departments, the counties, and their agents to carry out actions to control or eradicate invasive species identified by the HISC, as follows:
  - **Section 326-1 “Invasive species identified by the council for control or eradication”** sets out the list of invasive species identified by HISC for control or eradication (identified species).
  - **Section 326-2 “Requirements for control or eradication on private property”** sets out the requirements for a HISC department or country or an agent to control or eradicate an identified species on private property.
  - **Section 326-3 “Notice”** sets out the requirements for notice to a private property owner, or tenant or occupant, before control or eradication actions may be

carried out on the private property.

- **Section 326-4 “Requirement for control or eradication by private property owner”** authorizes a HISC department or county or their agent to order a private property owner to control or eradicate an identified species if the identified species was intentionally and knowingly established on the private property.
- **Section 326-5 “Requirements for control or eradication on public property”** sets out the requirements for a HISC department or its agent to order an entity in charge of State or county property to control or eradicate an identified species on the public property.
- **Section 326-6 “Warrants”** sets out the requirements for a HISC department or county to seek a warrant to carry out a control or eradication action on private or public property without the consent of the property owner, tenant, occupier, or entity in charge, as appropriate.

The proposed amendments are described in greater detail in the submittal requesting approval to initiate rulemaking proceedings for the proposed rules and the presentation on the proposed rules for the May 29, 2024, Council meeting which are available online at [https://dlnr.hawaii.gov/hisc/files/2024/05/Submittal\\_HISC-DRAFT-Admin-Rules.pdf](https://dlnr.hawaii.gov/hisc/files/2024/05/Submittal_HISC-DRAFT-Admin-Rules.pdf) and [https://dlnr.hawaii.gov/hisc/files/2024/05/HISC-Admin-Rules\\_5-29-2024.pdf](https://dlnr.hawaii.gov/hisc/files/2024/05/HISC-Admin-Rules_5-29-2024.pdf).

## BACKGROUND

In 2003, HISC was established in statute by the enactment of Act 85. That law, as amended, is set out in chapter 194, HRS. The law sets out the duties and membership of the HISC. It also requires HISC to create a list to “[i]dentify and record all invasive species present in the State” and a list of “invasive species identified by the council for control or eradication.” HRS §§ 194-2(a)(6) (emphasis added), 194-4, 194-5. The statute authorizes the departments of the HISC, the counties, and their agents to control or eradicate invasive species identified by the HISC on private property and the departments of the HISC and their agents to control any invasive species on public property. HRS §§194-5, 194-6. In the years since 2003, there has been interest and efforts to adopt administrative rules to authorize the HISC departments, the counties, and their agents to carry out the authorities set out in chapter 194 HRS. However, ultimately none of those efforts were successful. More details about historical efforts to adopt administrative rules and species lists for HISC may be found in the submittal requesting approval to initiate rulemaking proceedings for the proposed rules for the May 29, 2024, Council meeting which is available online at [https://dlnr.hawaii.gov/hisc/files/2024/05/Submittal\\_HISC-DRAFT-Admin-Rules.pdf](https://dlnr.hawaii.gov/hisc/files/2024/05/Submittal_HISC-DRAFT-Admin-Rules.pdf).

At that May 29, 2024 Council meeting, the HISC members voted to initiate rulemaking for the proposed rules. More details about that meeting and the other steps in the rulemaking process may be found in **Exhibit 1**. On September 25, 2024 from 6 to 7:30pm, HISC staff held a hybrid statewide public hearing<sup>1</sup> via Zoom, with an in-person host site at the

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<sup>1</sup> The format of the public hearing was a hybrid virtual/in-person format with an in-person host site for those wishing to provide in-person testimony on Oahu as well as a virtual option via Zoom. The in-person site had a TV, speakers, microphone, and camera setup and was logged into the Zoom meeting that was shown on the TV for all in attendance to watch. The public hearing officer provided a presentation on the proposed rules and then collected testimony.

Department of Land and Natural Resources (DLNR) Board Room on Oahu.<sup>2</sup> Written testimony was accepted until the end of the public hearing. After the public hearing, the testimony was compiled, reviewed, analyzed, and summarized.

## PUBLIC TESTIMONY

A total of eight oral testimonies and seven written testimonies were received. Three people provided oral testimony in person at the public hearing host location and five people provided oral testimony on-line via Zoom. Of those who provided oral testimony, three also provided written testimony and four other written testimonies were submitted by email.

At the public hearing, oral testimony was initially completed at 6:19pm. The zoom recording was stopped and the hearing room and Zoom access were open in the event additional testifiers arrived. One additional oral testimony was given at 7:22pm at which time the zoom recording was restarted. The public hearing concluded at 7:30pm.

All testimony submitted was in support of the proposed rules, except for one individual testifier who did not identify support or opposition. Two individuals suggested changes to the proposed rules, including changes to the list of species identified by the Council for control or eradication set out in section 13-326-1(b) of the proposed rules.

The hearing officer's report is attached as **Exhibit 2**. The written testimony submitted during the comment period is attached as **Exhibit 3**. The Analysis of Public Hearing Testimony on Proposed Adoption of a New Subtitle 14 of title 13 of Hawaii Administrative Rules, Including Chapter 325 "General Provisions," and Chapter 326 "Control and Eradication of Invasive Species," which includes the HISC response to testimony proposing changes to the proposed rules is attached as **Exhibit 4**. The recording of the public hearing may be viewed on the HISC YouTube Channel at <https://youtu.be/GFsxSul3wCU>.

## KA PA'AKAI ANALYSIS

On September 11, 2000, the Hawaii Supreme Court (Court) ruled in *Ka Pa'akai O Ka 'Āina vs. Land Use Commission, State of Hawai'i*<sup>3</sup> (Ka Pa'akai) that State and government agencies have an obligation to "preserve and protect traditional and customary Native Hawaiian rights" and that an appropriate analytical framework was needed to assess whether these rights were unduly violated.<sup>4</sup> The Court developed a three-pronged test, dubbed the "Ka Pa'akai Analysis," which is triggered when government agencies consider proposed uses of land and water resources that may impact the exercise of Native Hawaiian traditional and customary rights.

Although the Court stated that an agency's constitutional obligation to reasonably protect Native Hawaiian traditional and customary practices was widely applicable to all agency actions, the Court did not opine as to whether the Ka Pa'akai Analysis could or should be applied outside of (FCO) that the obligation described in Ka Pa'akai not

<sup>2</sup> The DLNR Boardroom is located at 1151 Punchbowl Street, Room 132 (Kalanimoku Building), Honolulu, HI 96813.

<sup>3</sup> *Ka Pa'akai o ka 'Āina v. Land Use Comm'n (Ka Pa'akai)*, 94 Hawai'i 31, 7 p.3d 1068 (2000) (Ka Pa'akai)

<sup>4</sup> "Following up on PASH, we recognized in Ka Pa'akai that in contested case hearings, the State and its agencies have an 'affirmative duty ... to preserve and protect traditional and customary native Hawaiian rights' and provided a framework 'to effectuate the State's obligation to protect native Hawaiian customary and traditional practices while reasonably accommodating competing private interests.'" *Flores-Case 'Ohana v. University of Hawai'i*, 153 Hawai'i 76, at 83 (2023) (quoting Ka Pa'akai at 45-47, 1082-1084)

only applied to contested case hearings, but also to rulemaking actions.<sup>6</sup> In doing so, the Court provided a modified Ka Pa‘akai Analysis to be used in rulemaking actions. The analysis outlined in FCO requires agencies to consider:

1. The identity and scope of Native Hawaiian traditional and customary rights affected by the rule, if any;
2. The extent to which Native Hawaiian traditional and customary rights will be affected or impaired by the rule; and
3. Whether the proposed rules reasonably protect Native Hawaiian traditional and customary rights, if they are found to exist, as balanced with the State's own regulatory right.

Subsequently, HISC staff provides the following analysis on the effects of the proposed administrative rules on Native Hawaiian traditional and customary practices:

**1. Identity and Scope of Native Hawaiian Traditional and Customary Rights Affected by the Rule, if Any.**

The current proposed administrative rules authorize HISC departments, the counties, and their agents to control or eradicate invasive species identified by the HISC (identified invasive species) on private property and authorize the HISC departments and their agents to order the control or eradication of identified invasive species on public property. The proposed rules authorize a HISC department, county, or their agent to order a private property owner to control or eradicate an identified invasive species if that owner intentionally and knowingly established the identified invasive species on the property. The proposed rules require that control or eradication be carried out either: (1) with the consent of the property owner, entity in charge of the property, and the tenant or occupant if appropriate; or (2) without that consent only after thirty day’s notice and pursuant to a warrant issued by a court. The objective of the proposed rules is to prevent, control, and eradicate infestations of harmful, high-impact invasive species throughout the State. Use of the authorities in the proposed rules will result in the protection of State resources and protect quality of life for the residents of Hawaii. The authorized activities to control or eradicate identified invasive species are not, in and of themselves, Native Hawaiian traditional and customary practices and do not directly affect any known Native Hawaiian traditional and customary practices.<sup>7</sup> The published notice of public hearing for the proposed rules specifically sought “testimony from any person on any Native Hawaiian traditional or customary rights or practices that may be impacted by the adoption of the proposed [rules].” No such testimony or other feedback was received during the public comment period that indicated that any traditional and customary rights or practices will be impacted by the proposed rules.

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<sup>5</sup> [Flores-Case ‘Ohana v. University of Hawai‘i, 153 hawai‘i 76, \(2023\)](#)

<sup>6</sup> “In sum, the Ka Pa‘akai framework applies to administrative rulemaking in addition to contested case hearings. Requiring the State and its agencies to consider Native Hawaiian traditional and customary rights in these contexts “effectuate[s] the State's obligation to protect native Hawaiian customary and traditional practices[.]” ” [Flores-Case ‘Ohana v. University of Hawai‘i, 153 hawai‘i 76, at 84 \(2023\)](#)

<sup>7</sup> “When undertaking this analysis, the agency is not required to negative any and all native Hawaiian rights claims regardless of how implausible the claimed right may be.” [Flores-Case ‘Ohana v. University of Hawai‘i, 153 hawai‘i 76, 85 \(2023\)](#) (quotation marks omitted) (quoting [State v. Hanapi, 89 Hawai‘i 177, 184 \(1998\)](#))

## 2. Extent to Which Native Hawaiian Traditional and Customary Rights Will Be Affected or Impaired by the Rule.

There were no Native Hawaiian traditional and customary rights or practices identified or implicated as affected by the proposed rules.<sup>8</sup>

## 3. Reasonable Protections for Native Hawaiian Traditional and Customary Rights, if They are Found to Exist, as Balanced with the State's Own Regulatory Right

There were no Native Hawaiian traditional and customary rights or practices identified or implicated as affected by the proposed rules.<sup>9</sup>

### CHANGES TO PROPOSED RULES

In response to the two comments requesting changes to the list of species identified by the Council for control or eradication set out in section 13-326-1(b) of the proposed rules, after internal discussions with HISC staff, Chelsea Arnott, the appointed public hearing officer, proposes:

1. Removal of "*Andesanthus* – all species in the genus" from the species list based on the testimony and further research that there are no members in this genus that are currently naturalized or targets of any department or organization for control or eradication efforts in Hawaii.
2. Removal of the genera *Chaetogastra*, *Pleroma*, and *Tibouchina* from the species list and replaced by the specific species: *Chaetogastra herbacea* and *Pleroma urvilleanum* which are known targets for control and eradication in Hawaii.
3. Removal of the genus *Miconia* from the species list and replacing it with the single species *Miconia calvescens*.

These proposed changes respond to the public testimony, while recognizing that that this initial proposed list of species identified for control or eradication is not intended to be a comprehensive list of invasive species in the State. Instead, it is intended to include species that are current targets of State departments and partner organizations where active prevention, control, or eradication efforts are already underway.

The proposed rules also include minor, non-substantive edits that were suggested by the Governor's office for clarity.

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<sup>8</sup> Where no Native Hawaiian right or practice is identified or implicated, the agency may say so in a short statement and the need for analysis ends there." [Flores-Case 'Ohana v. University of Hawai'i, 153 Hawai'i at 85 \(2023\)](#).

<sup>9</sup> "Where no Native Hawaiian right or practice is identified or implicated, the agency may say so in a short statement and the need for analysis ends there." [Flores-Case 'Ohana v. University of Hawai'i, 153 Hawai'i at 85 \(2023\)](#)

## RECOMMENDATIONS

That HISC approve the proposed administrative rules as Title 13, Subtitle 14, Chapters 325 “General Provisions” and 326 “Control and Eradication of Invasive Species,” as set out in **Exhibit 5**.

Respectfully submitted,

*Chelsea Arnott*

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Chelsea Arnott, Program Supervisor  
Hawaii Invasive Species Council

APPROVED FOR SUBMITTAL



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DAWN N. S. CHANG

Co-Chairperson

Hawaii Invasive Species Council

### Attachments:

- Exhibit 1 – Rulemaking Process
- Exhibit 2 – Public Hearing Officer’s Report
- Exhibit 3 – Written Testimony
- Exhibit 4 – Analysis of Testimony
- Exhibit 5 – Draft Proposed Rules Subtitle 14 of Title 13 HAR (Ramseyer)



## EXHIBIT 1

### Description of the Rulemaking Process for Proposed New Subtitle and New Chapters Under Hawaii Administrative Rules as Title 13, Subtitle 14, Chapters 325 “General Provisions” and 326 “Control and Eradication of Invasive Species”

The Hawaii Invasive Species Council (HISC) considered a submittal on the proposed new subtitle 14 of title 13, Hawaii Administrative Rules (HAR), including chapters 325 “General Provisions” and 326 “Control and Eradication of Invasive Species” at a meeting the Council on May 29, 2024. At that meeting, the Council unanimously approved requests:

1. For approval to initiate rulemaking proceedings, including conducting public hearings on adoption of new subtitle 13-14, HAR, to effectuate chapter 194, Hawaii Revised Statutes, including by developing a list of invasive species that could be controlled or eradicated on private and public property by the departments of the Hawaii Invasive Species Council or a county or agent thereof; and
2. To delegate authority to the Chairperson of the Department of Land and Natural Resources (DLNR) to set the dates and times for the aforementioned public hearing(s) and appoint a hearing officer for the public hearing(s).

The Council also authorized HISC staff to make certain technical corrections and to review the scientific names of species identified in the proposed rules to ensure that the most current scientific names are included.

In response to submitted written testimony and in accordance with the Council authorization to review the scientific names of species, HISC staff made the following changes to the list of species identified by the Council for control or eradication set out in section 13-326-1(b) of the proposed administrative rules:

1. The initial list of species included “*Tibouchina* – all species in the genus”. It was determined that the genus *Tibouchina* has been split into four different genera that included the species that were formerly lumped into the one genus *Tibouchina*. To address that taxonomic change, the following items were included in the proposed administrative rules:  
  
*Andesanthus* – all species in the genus, *Chaetogastra* – all species in the genus, *Pleroma* – all species in the genus, and *Tibouchina* – all species in the genus. All the species in these four genera were formerly included under the genus *Tibouchina*.
2. The species *Pennisetum villosum* was updated to its current taxonomic name *Cenchrus longisetus*.
3. The genus name *Aphis* was corrected to *Apis* for the taxon *Apis mellifera scutellate*.

## EXHIBIT 1

HISC staff submitted a Small Business Impact Statement for the proposed administrative rules to the Small Business Regulatory Review Board (SBRRB) for consideration at their June 20, 2024 meeting. The SBRRB voted unanimously to pass the proposed administrative rules on to public hearing.

On August 14, 2024, the Chairperson of DLNR approved a request to appoint hearing officers to conduct a hybrid virtual/in-person statewide public hearing on the adoption of subtitle 14 of title 13, HAR, including chapter 325, “General Provisions,” and chapter 326, “Control and Eradication of Invasive Species.”

Notice of a hybrid statewide public hearing was published on August 25, 2024, in the Sunday edition of the Honolulu Star-Advertiser.<sup>1</sup> Notice of the public hearing was sent to the HISC listserve on August 23, 2024, and posted on the HISC website.<sup>2</sup>

On September 25, 2024, from 6 to 7:30pm,<sup>3</sup> the appointed hearing officers held a hybrid statewide public hearing via Zoom, with an in-person host site at the DLNR Board Room on Oahu.<sup>4</sup> Written testimony was accepted until the end of the public hearing. After the public hearing, the testimony was compiled, reviewed, analyzed, and summarized.

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<sup>1</sup> <https://statelegals.staradvertiser.com/2024/08/25/0001465926-01/>

<sup>2</sup> <https://dlnr.hawaii.gov/hisc/news/upcoming-public-hearing-proposed-hisc-administrative-rules/>

<sup>3</sup> The format of the public hearing was a hybrid virtual/in-person format with an in-person host site for those wishing to provide in-person testimony on Oahu as well as a virtual option via Zoom. The in-person site had a TV, speakers, microphone, and camera setup and was logged into the Zoom meeting that was shown on the TV for all in attendance to watch. The public hearing officer provided a presentation on the proposed rules and then collected testimony.

<sup>4</sup> The DLNR Boardroom is located at 1151 Punchbowl Street, Room 132 (Kalanimoku Building), Honolulu, HI 96813.



## EXHIBIT 2

### HEARING OFFICER'S REPORT OF:

Public Hearing for the Proposed Adoption of a New Subtitle 14, of Title 13 of the Hawaii Administrative Rules, Including New Chapter 13-325, "General Provisions" and New Chapter 13-326 "Control and Eradication of Invasive Species"

In person and online via Zoom at 1151 Punchbowl St. Room 132 (Kalanimoku Building),  
Honolulu, Hawaii 96813

September 25, 2024, 6 to 7:30pm

#### I. SUMMARY OF TESTIMONY RECEIVED

*Written testimonies are kept on file with the Hawaii Invasive Species Council (HISC) for public review.*

Eight oral testimonies and seven written testimonies were received.

Ryan Chang – Provided oral testimony as an individual. He expressed support for the proposed rules and urged pushing the rules through public hearing.

Charles Chimera – Provided written testimony in support of the proposed rules. He noted that invasive species pose a significant and increasing threat to Hawaii's unique biodiversity. He noted invasive species cause damage to ecosystems, agricultural lands, urban environments, which lead to economic losses, health concerns, and destruction of native species and habitats. He listed five key reasons for his support of the proposed rules: (1) they propose a clear framework for invasive species management; (2) they effectively identify and prioritize specific harmful invasive species to ensure that resources will be focused on the most pressing invasive species issues; (3) they provide for invasive species control on both public and private lands while including procedures that respect property rights; (4) they are aligned with other laws and regulations and do not limit existing authorities; and (5) the requirements for a detailed control or eradication program and regular reporting will promote accountability and transparency in carrying out the proposed rules. He further noted that while the list of invasive species is not compressive, he hopes that adoption of the proposed rules will establish a precedent for consideration of future additions to the list of invasive pests target species.

Nate Dube – Provided oral testimony as the Manager of the Oahu Invasive Species Committee (OISC). He expressed strong support for the proposed rules and urged pushing the rules forward. He stated that OSIC does invasive species management on the ground and while OISC has good relationships with the public and private property owners, there are a handful that do not respond or deny access. This can lead to a fragmented response or threaten the success of

## EXHIBIT 2

invasive species containment efforts. He indicated this is particularly true for invasive plants, some of which are watershed destroying species, such as *Miconia*. He further noted that the proposed rules will fill a gap in the existing regulations.

Kevin Faccenda – Provided oral and written testimony and identified himself as an individual conservationist and botanist. He expressed strong support for the proposed rules and appreciation for the work HISC is doing to manage invasive species. He suggested changes to the proposed list of species identified for control or eradication. Specifically, he suggested: (1) removing *Andesanthus* from the list as no members of this genus have been reported as naturalized in Hawaii; (2) removing the genera *Chaetogastra*, *Pleroma*, and *Tibouchina* from the list as he indicates they all refer to the same plant which should be listed as *Chaetogastra herbacea* (Cane ti); (3) removing the genus *Miconia* and replacing it with the single species *Miconia calvescens* because recent studies indicate that the genus *Miconia* now includes species previously referred to as *Clidemia hirta* and this species is widespread and beyond the possibility of eradication in Hawaii; (4) he supports including *Cenchrus longisetus*, *Cenchrus setaceus*, *Chromolaena odorata*, *Cortaderia jubata*, *Cortaderia selloana*, *Senecio madagascarensis* on the list of species identified for control or eradication; (5) expanding the species list to add additional invasive plant species, including *Imperata cylindrica*, *Delairea odorata* (synonym *Senecio mikanioides*), *Miscanthus floridulus*, *Thalia geniculata*, *Alstonia macrophylla*, *Jatropha gossypifolia*, *Phenax hirtus*, *Bischofia javanica*, *Oxyspora paniculata*, *Leptospermum scoparium*, *Andropogon bicornis*, and *Blechnum orientale*, as these species are invasive/particularly aggressive/fire promoting and are appropriate targets for control or eradication; and (6) modifying the list to designate islands on which a species identified for control or eradication would not be an appropriate eradication target because the species is widespread and beyond control on that island.

Danielle Frohlich – Provided written testimony that expressed support for the overall intent of the proposed rules but raised several points that she believes should be addressed for the rules to achieve their intended goal of safeguarding Hawaii's environment from the impacts of invasive species. First, she suggested the rules be revised to provide additional clarification among stakeholders, especially as multiple agencies will carry out the proposed rules. She suggested ambiguity could undermine the objectives of the rules. Second, she stated there is uncertainty regarding the application of the proposed rules on federal lands; she suggested the rules harmonize with federal regulations and other frameworks to avoid gaps in management or conflicting mandates. Third, she raised concerns about including entire genera in the list of species identified for control or eradication which could inadvertently target widespread species (such as *Clidemia hirta* = *Miconia crenata*) or non-invasive species (certain species in the genus *Tibouchina*). She suggests removing entire genera (*Chaetogastra*, *Pleroma*, *Tibouchina*, *Miconia*, and others) and targeting specific species of concern, specifically *Chaetogastra herbacea* and *Miconia calvescens*. Finally, she raised questions about the balance of authority between different government entities with respect to the authority to order control or eradication activities on public lands. She supports modifying the proposed rules to address these areas of concern.

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Dexter Kishida - Provided oral testimony as the Deputy to the Chairperson of the Department of Agriculture. He expressed strong support for the proposed rules. He noted that since the initial approval of the proposed rules by HISC, Act 231 was signed into law. He stated that the any changes to law made by Act 231 should be taken into consideration in the next stages of rules development.

Kimeona Kane – Provided oral testimony both on behalf of the Waimanalo Board and as an individual. He expressed support the proposed rules. He noted that there are challenges facing communities, especially with regard to decision-makers, and they need the best tools and opportunities to do the job well. He agreed that the proposed rules are a great start and recognizes that more works still needs to be done.

Carol Kwan – Provided oral testimony and identified herself as a certified arborist in the landscaping industry. She expressed support for the proposed rules and wishes they had been adopted long ago.

Christy Martin – Provided oral and written testimony as the Program Manager for the Coordinating Group on Alien Pest Species (CGAPS). She expressed strong support for the proposed rules. She noted the CGAPS was formed in 1995 following a congressional report that documented Hawaii had the worst invasive species problem of any State. She also noted that in the decades since HISC was created it has been unable to adopt any administrative rules, despite numerous attempts and legislators asking for them year after year. She states that the lack of any administrative rules has resulted in the HISC departments being unable to utilize the authorities granted to them in chapter 194 Hawaii Revised Statuts to control or eradicate serious pests, such as little fire ant. She stated the most important part of the rules are the access provisions, which allows HISC departments and counties to have a process to contact landowners that have a pest, and then gain access to carry out a control or eradication program. She expressed that the proposed rules are a great start and urged the rules be moved along through the process.

Wayne Tanaka – Provided written and oral testimony and identified himself as the Director of the Sierra Club of Hawaii. He expressed strong support for the proposed rules. He stated biosecurity infrastructure in Hawaii has been neglected over past decades and the proposed rules are a critical step forward to address those gaps. He noted that invasive species, such as coconut rhinoceros beetle and little fire ant, have caused significant harm in Hawaii and that the authority to control and eradication these species on both public and private land will empower State and local agencies to prevent their further spread. He further noted that the procedures for notice and other requirements provide a balanced approach that respects property rights while safeguarding the State’s unique ecosystems.

Selena Vanapruks – Provided written testimony in strong support of the proposed rules. She stated that the rules are common sense practices that must be enacted to protect Hawaii’s native ecosystem.

## EXHIBIT 2

Joe Watt – Provided written testimony in support of adoption of the proposed rules. He noted that ambiguities in the law have prevented accountability for action to control invasive species in Hawaii. He stated he hopes the clarification made by the proposed rules will lead to all HISC agencies contributing funds and staff toward managing invasive species. He highlighted the high cost of invasive species already present in the State and noted that while management for eradication is currently difficult, it will become more difficult in the future and impossible in a decade. He suggested that invasive species management become a requirement for leasing property from a HISC department.

### II. SUMMARY OF PUBLIC HEARING PROCEEDINGS

The public hearing was called to order at 6pm. In attendance were the following HISC staff and employees of the Department of Land and Natural Resources, Division of Forestry and Wildlife:

Chelsea Arnott – Hearing Officer	HISC Program Manager
Rob Hauff – Hearing Officer	State Protection Forester
Jack Reef – Hearing Officer	HISC Planner
Chuck Chimera – Zoom technical support	HISC Weed Risk Assessment Specialist

Chelsea Arnott read prepared information that included a description of the proposed administrative rules, as published in the public hearing notice, and the procedures for providing oral testimony at the public hearing.

Six individuals attended the public hearing in person, three of whom provided oral testimony in person and one of whom had provided on-line oral testimony prior to arriving to the public hearing location. Four additional people provided oral testimony on-line via Zoom. Six written testimonies were submitted by email prior to the hearing and one was submitted by email during the hearing.

Oral testimony was initially completed at 6:19pm. The Zoom recording was stopped and the hearing room and Zoom access were open in the event additional testifiers arrived. One additional testimony was given at 7:22pm.

The public hearing concluded at 7:30pm.

### III. APPROVALS AND NOTICES OF PUBLIC HEARING

A. Approval to hold this public hearing on the proposed rules and to appoint Chelsea Arnott, as the hearing officer, Rob Hauff as the alternate hearing officer, and Jack Reef as the Zoom hearing officer, was obtained from Department of Land and Natural Resources Chair, Dawn Chang, on August 14, 2024.

## EXHIBIT 2

B. Report prepared and respectfully submitted by HISC Program Manager, Chelsea Arnott, on September 26, 2024.



September 25, 2024

Hawai'i Invasive Species Council  
Public Hearing  
Wednesday, September 26, 2024  
DLNR Board Room, 1151 Punchbowl Street  
Honolulu, Hawai'i, 96813

Aloha Co-Chair Chang, Co-Chair Hurd, and Council Members,

My name is Christy Martin and I am the Program Manager for the Coordinating Group on Alien Pest Species (CGAPS). I am writing in strong support of the proposed draft HISC rules.

As you may know, CGAPS was formed in 1995 following a 1994 congressional report that found that Hawai'i had the worst invasive species problem of all the states and that additional coordination could address some of the issues. CGAPS aimed to engage agency leads but over the years we have found that we function best at the management level. The need for engagement of agency leads remained, so CGAPS worked with agencies, NGOs, and legislators to request the 2002 Legislative Reference Bureau report, *Filling the Gaps in the Fight Against Invasive Species*, and subsequently to request that a state-level council be enacted for cabinet-level leadership and coordination.

Since the 2004 enactment of Chapter 194 which created the HISC, support staff and Attorneys General have attempted to draft administrative rules that describe how the authorities would be applied to this complex statute. After years of starts and stops, changes in personnel, and changes in the statute adding important authorities, we finally have a proposed draft rule. One of the most important authorities that could finally be accessed with the passage of this proposed draft rule is the language that lays out a process for communicating with landowners to request and gain access to control serious pests such as little fire ants (LFA). In communities where all the neighbors have banded together to locally eradicate LFA, we have seen where one resident refuses access, which places the entire community in perpetual jeopardy.

HDOA's rules include similar language. However, the response to LFA and some other high-priority pests is being conducted by partner agencies and groups that do not have these authorities. Similar notification and access language can be found in cases of fire and public health hazards, and certain pests certainly rise to this level where the health of the community may outweigh an individual's privacy preferences.

Chapter 194 also requires the HISC to identify all invasive species present in Hawai'i

## EXHIBIT 3

And to designate one of three departments (Agriculture, Health, or Land and Natural Resources) as the lead agency for prevention, control, education, and more, thus the proposed list of high-priority species is also a good step.

“(6) Identify and record all invasive species present in the State;(7) Designate the department of agriculture, health, or land and natural resources as the lead agency for each function of invasive species control, including prevention, rapid response, eradication, enforcement, and education;” Haw. Rev. Stat. § 194-2

As a final comment, the proposed draft rules may not be perfect, they may not access all the authorities in the statute. However, year after year legislators ask why these rules are not in place. They recognized that more agencies need to share the kuleana of addressing invasive species and that’s why they have included these provisions in the statute. Mahalo for the opportunity to share my thoughts and I urge your support for the advancement of these proposed draft rules.

Aloha,



Christy Martin, Program Manager  
Coordinating Group on Alien Pest Species (a project of the University of Hawai‘i at Mānoa-Pacific Cooperative Studies Unit)



# EXHIBIT 3

## Testimony in Support of the Adoption of Subtitle 14 of Title 13, Hawaii Administrative Rules (Chapters 13-325 and 13-326)

**Date:** 9/25/24

**To:** Department of Land and Natural Resources, Hawaii Invasive Species Council, and Interested Parties

**Subject:** Support for the Adoption of Chapters 13-325 and 13-326, Hawaii Administrative Rules

Dear Co-Chairpersons Chang and Hurd, Members of the Hawaii Invasive Species Council, and Interested Stakeholders,

I am submitting testimony in strong support of the adoption of Subtitle 14 of Title 13, encompassing Chapters 13-325 and 13-326 of the Hawaii Administrative Rules. These proposed rules are a vital step forward in safeguarding Hawaii's natural environment, agricultural resources, public health, and the economy from the devastating impacts of invasive species.

The State of Hawaii is unique in its biodiversity, with countless native species and ecosystems found nowhere else on Earth. However, invasive species pose a significant and ever-increasing threat to this rich natural heritage. They can cause irreparable damage to ecosystems, agricultural lands, and urban environments, leading to severe economic losses, health concerns, and the destruction of Hawaii's native species and habitats. The establishment and implementation of these rules are critical in addressing this pressing issue effectively.

### Key Reasons for Support

- 1. Clear Framework for Invasive Species Management:** Chapter 13-325 provides clear definitions, purpose, and guidance for implementing the Hawaii Invasive Species Council's authorities. It establishes a consistent and structured framework for preventing, controlling, and eradicating harmful invasive species across the state. By outlining the roles, responsibilities, and relationships between various departments and agencies, this chapter ensures a coordinated approach to addressing invasive species threats.
- 2. Identification and Prioritization of Harmful Invasive Species:** Chapter 13-326 effectively identifies specific invasive species known to cause economic, environmental, and health-related harm within Hawaii. By establishing an initial list of invasive species requiring control or eradication, this chapter enables the council, state departments, and counties to take targeted actions against these threats. The inclusion of scientifically backed evidence ensures that resources are focused on addressing the most pressing invasive species issues. In addition, while the invasive species list is not comprehensive, it is my hope that adoption of these rules will establish a precedent for consideration of future additions to the list of invasive pests targeted for control or eradication.
- 3. Protection of Private and Public Lands:** The proposed rules provide a balanced approach to managing invasive species on both private and public properties. They include clear procedures for accessing private property with due notice and obtaining warrants when necessary, respecting the rights of property owners while ensuring that urgent invasive species control can take place when needed. The inclusion of provisions for urgent

## EXHIBIT 3

responses and memoranda of understanding with experts will enhance the efficiency and effectiveness of control and eradication actions.

4. **Alignment with Other Laws and Regulations:** These administrative rules appropriately recognize and do not limit the authority provided to other departments, agencies, or counties under existing laws. This relationship ensures that the adoption of Chapters 13-325 and 13-326 complements existing regulations and frameworks, allowing for seamless integration and collaboration across various sectors in addressing invasive species threats.
5. **Promotion of Accountability and Transparency:** The requirement for regular reporting and the submission of detailed control or eradication programs by departments and counties foster transparency and accountability in invasive species management efforts. This approach ensures that actions taken are based on sound evidence, best practices, and the most effective methodologies available.

In conclusion, the adoption of Subtitle 14 of Title 13, including Chapters 13-325 and 13-326, represents a critical and proactive step toward protecting Hawaii's natural resources, economy, and public health from the ongoing and emerging threats posed by invasive species. By establishing a robust, coordinated, and scientifically grounded framework, these rules will significantly enhance the state's capacity to respond to invasive species challenges, ensuring a healthier and more sustainable future for Hawaii.

I respectfully urge the Hawaii Invasive Species Council and the Department of Land and Natural Resources to adopt these rules as proposed. This comprehensive framework will empower the state, local agencies, and communities to take decisive and effective action against invasive species, ultimately safeguarding Hawaii's unique ecosystems, cultural heritage, and way of life.

Thank you for your consideration and commitment to protecting Hawaii's natural resources.

Sincerely,



Charles Chimera  
Honokaa, HI  
[REDACTED]@gmail.com

## EXHIBIT 3

Hi, Chelsea-

Check out the below for my testimony on the proposed changes.

Thanks,  
Danielle

Thank you for the opportunity to provide testimony on the proposed adoption of new regulations related to the control and eradication of invasive species in Hawai'i. While I support the overall intent of these rules to protect our ecosystems and natural resources, I would like to raise several points for consideration to ensure the effectiveness and clarity of implementation.

First, the proposed rules may require additional clarification to avoid confusion or misinterpretation among stakeholders. Clear guidance is essential for effective implementation, especially as multiple agencies and organizations will be responsible for enforcing these measures. Ambiguity could lead to inconsistent practices and undermine the overall objectives of the rules.

Second, there is uncertainty regarding the application of the rule to federal lands or other entities, which could complicate the management of invasive species across different jurisdictions. Hawai'i's ecosystem extends across various land ownership types, and it is crucial that the rule harmonizes with federal regulations and other existing frameworks to avoid gaps in management or conflicting mandates.

Third, I have concerns about the species list included in the proposed rule, particularly the inclusion of entire genera. This approach may inadvertently target widespread (such as *Clidemia hirta* = *Miconia crenata*) or non-invasive species (certain species in the genus *Tibouchina*) leading to unnecessary control measures or confusion regarding the appropriate control measures. I suggest removing entire genera (*Chaetogastra*, *Pleroma*, *Tibouchina*, *Miconia*, and others) and targeting specific species of concern, specifically *Chaetogastra herbacea* and *Miconia calvescens*.

Lastly, the proposed rule appears to grant the Hawai'i Invasive Species Council (HISC) authority to order government entities to control or eradicate listed invasive species on public property. This could raise questions about the balance of authority between different government entities, so clarification on how this power will be exercised, and mechanisms for resolving conflicts, will be important to ensure smooth implementation and cooperation across agencies.

I appreciate the committee's consideration of these points and support further refining the rules to address these concerns. With careful adjustments, I believe the proposed regulations can better achieve their intended goal of safeguarding Hawai'i's environment from the impacts of invasive species.

Mahalo for your time and the opportunity to provide testimony.

## EXHIBIT 3

Sincerely,  
Danielle Frohlich

# EXHIBIT 3

Aloha,

As a conservationist, I appreciate the role of HISC in managing damaging organisms across the state. While much of the legalese of these rules goes above my head, I have the following suggestions, based primarily on the species list:

1. With regard to the plants defined for control or eradication, the name *Andesanthus* should be removed from this list. No members of this genus have been reported as naturalized in Hawai'i.
2. The names *Chaetogastra*, *Pleroma*, and *Tibouchina* all apparently refer to the same plant, now accepted as *Chaetogastra herbacea* (Cane ti) which is an OISC eradication target. This species should be listed using the name *Chaetogastra herbacea* (formerly *Tibouchina herbacea*) and the entries "Chaetogastra - all species in the genus", "Pleroma - all species in the genus", and "Tibouchina - all species in the genus" should be removed.
3. Based on recent studies of Melastomataceae (Michelangeli et al. 2019), the genus *Miconia* now includes the species previously referred to as *Clidemia hirta*. *Miconia crenata* is a ubiquitous weed present in wet forests across the pae 'āina o Hawai'i and is far beyond what is possible to be eradicated. I advise changing the language remove "Miconia - all species in the genus" and replacement with "Miconia calvescens"
  1. Michelangeli, F. A., Goldenberg, R., Almeda, F., Judd, W. S., Bécquer, E. R., Ocampo, G., ... & Penneys, D. S. (2019). Nomenclatural novelties in *Miconia* (Melastomataceae: Miconieae). *Brittonia*, 71, 82-121.  
<http://dx.doi.org/10.1007/s12228-018-9546-0>
4. I support the inclusion of *Cenchrus longisetus*, *Cenchrus setaceus*, *Chromolaena odorata*, *Cortaderia jubata*, *Cortaderia selloana*, *Senecio madagascarensis* as eradication species.
5. Further species which should also be included are the following, with the most important species listed first:
  1. *Imperata cylindrica* should also be added as it is occasionally found in cultivation and is an aggressive, fire promoting grass which has already been eradicated from Hawai'i island and is likely to reappear either from a cultivated plant, or from use as packing material.
  2. *Delairea odorata* (synonym *Senecio mikanioides*) as it is currently under an eradication campaign by the O'ahu Invasive Species Committee (OISC).
  3. *Miscanthus floridulus*, occasional plants have been found on controlled on O'ahu and may appear again. This is an aggressive species in the south pacific and should not let be established here.
  4. *Thalia geniculata*. This has been found naturalized once in Kailua and will be a major weed if it manages to spread to the wetlands of Kawainui or He'eia.
  5. *Alstonia macrophylla*. Currently found in the Puna district and limited occurrences on O'ahu. It is an aggressive, rapidly growing tree and should be controlled if found on other islands.

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6. *Jatropha gossypifolia*. There is a population at Le'ahi where it is an aggressive weed and populations should not be allowed to spread.
  7. *Phenax hirtus*. This is a BIISC containment species on Hualālai which invades native forest and should be eradicated if found outside of that mountain. It is likely to spread as people may collect it due to its similarity to māmaki
  8. *Bischofia javanica*. This is an aggressive weed tree on O'ahu invading native forests which has not yet established on other islands.
  9. *Oxyspora paniculata*. This is an aggressive weed tree on O'ahu invading native forests which has not yet established on other islands.
  10. *Leptospermum scoparium*. This is an aggressive weed tree on O'ahu and Lāna'i invading native forests which has not yet established on other islands.
  11. *Andropogon bicornis*. This grass is an aggressive species invading native dominated forests where it increases fire risk. It is widespread on Kaua'i and Hawai'i and should be eradicated if it spreads to other islands.
  12. *Blechnum orientale*. This fern is spreading in the forests of O'ahu where it invades native dominated forest.
6. Many of these species are widespread and beyond control on certain islands, yet worthy of control on other islands. It would be reasonable to define which islands the species are NOT eradication targets on, e.g. *Cenchrus setaceus* should not be a target on Hawai'i island as that population is not eradicable.

Thank you,  
Kevin Faccenda



# SIERRA CLUB OF HAWAI'I

To: Hawai'i Invasive Species Council  
Department of Land and Natural Resources  
1151 Punchbowl Street Room 330  
Honolulu, Hawai'i 96813  
Via e-mail: [chelsea.l.arnott@hawaii.gov](mailto:chelsea.l.arnott@hawaii.gov)

Date: September 25, 2024

Re: **Support for HISC Rule Amendments**

Aloha e Co-Chair Chang, Co-Chair Hurd, and members of the Hawai'i Invasive Species Council,

The Sierra Club of Hawai'i, on behalf of its 20,000 members and supporters, **STRONGLY SUPPORTS** the proposed Hawai'i Administrative Rules Chapter 13-325 and 326. These rules are a critical step forward in the fight to protect Hawai'i's environment and communities from the growing threat of invasive species.

Invasive species, such as the coconut rhinoceros beetle and little fire ant, have already caused significant harm across the islands. By granting the authority to control and eradicate these species on both public and private lands, the proposed rules will empower state and local agencies to take necessary action before these threats spread further.

The outlined procedures for notice to property owners and requirements for control and eradication ensure a balanced approach that respects property rights while safeguarding Hawai'i's unique ecosystems.

I urge the council to quickly adopt these rules to strengthen our ability to protect Hawai'i's environment and the health of our communities, for present and future generations.

Mahalo for your consideration.

Sincerely,

Wayne Tanaka, Director  
Sierra Club of Hawai'i



## EXHIBIT 3

Aloha,

I condemn the state of our invasive species management. Therefore, I STRONGLY SUPPORT the PROPOSED ADOPTION OF NEW A SUBTITLE 14 OF TITLE 13 OF HAWAII ADMINISTRATIVE RULES, INCLUDING CHAPTER 325, "GENERAL PROVISIONS," AND CHAPTER 326, "CONTROL AND ERADICATION OF INVASIVE SPECIES".

These rules are common sense practices that must be enacted to protect our native ecosystem.

Mahalo nui loa  
selena vanapruks  
a resident of Kapolei 96707

## EXHIBIT 3

Aloha nui kakou,

I am writing in support of the planned addition of subtitle 14 of title 13 for HISC administrative rules in tonights meeting.

For too long state agencies have pointed to ambiguities in the written law to avoid responsibility and accountability for direct action to control invasive species in Hawai'i. I hope that clarification of these rules will lead to all member agencies of HISC contributing both financial and staffing resources towards managing invasive species.

I cannot overstate how dramatic the cost of invasive species already present in Hawai'i will be. While management for eradication may be difficult, it will be much easier now than in a year. And almost impossible in a decade.

At some point, I would suggest invasive species management being a requirement for leasing property from HISC member departments. Too many ag lots are not held accountable for the damage they are doing to our environment, community, and access to cultural resources. End ag leases for non-compliant leasers.

Aloha no,  
- Joe

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**Joe Wat**  
Community Development Coordinator  
KEY Project

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 [808 239 5777](tel:8082395777)

 [keyproject.org](http://keyproject.org)

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## EXHIBIT 4

### ANALYSIS OF PUBLIC HEARING TESTIMONY ON PROPOSED ADOPTION OF NEW A SUBTITLE 14 OF TITLE 13 OF HAWAII ADMINISTRATIVE RULES, INCLUDING CHAPTER 325, “GENERAL PROVISIONS,” AND CHAPTER 326, “CONTROL AND ERADICATION OF INVASIVE SPECIES”

#### I. BACKGROUND

The Program Support for the Hawaii Invasive Species Council held a hybrid statewide public hearing via Zoom, with an in-person host site on Oahu. Notice was published in the Honolulu Star-Advertiser on August 25, 2024, for the hearing held on September 25, 2024. A total of eight oral testimonies and seven written testimonies were received. Six individuals attended the public hearing in person, three of whom provided oral testimony in person and one of whom had provided on-line oral testimony prior to arriving to the public hearing location. Four additional people provided oral testimony on-line via Zoom. Six written testimonies were submitted by email prior to the hearing, and one was submitted by email during the hearing. Of the oral testimony, there were representatives from the Coordinating Group on Alien Pest Species, the Hawaii Department of Agriculture, the Oahu Invasive Species Committee, and the Sierra Club. The rest identified as individuals. All provided testimony in support except for one individual who did not identify support nor opposition.

#### II. SUMMARY OF TESTIMONY WITH COMMENTS/SUGGESTED EDITS/HISC STAFF RESPONSE

- a. Ryan Chang – Provided oral testimony as an individual. He expressed support for the proposed rules and urged pushing the rules through public hearing.
  - i. Response of HISC Program Support: HISC appreciates this testimony in support. No response necessary.
- b. Charles Chimera – Provided written testimony in support of the proposed rules. He noted that invasive species pose a significant and increasing threat to Hawaii’s unique biodiversity. He noted invasive species cause damage to ecosystems, agricultural lands, urban environments, which lead to economic losses, health concerns, and destruction of native species and habitats. He listed five key reasons for his support of the proposed rules: (1) they propose a clear framework for invasive species management; (2) they effectively identify and prioritize specific harmful invasive species to ensure that resources will be focused on the most pressing invasive species issues; (3) they provide for invasive species control on both public and private lands while including procedures that respect property rights; (4) they are aligned with other laws and regulations and do not limit existing authorities; and (5) the requirements for a detailed control or eradication program and regular reporting will promote accountability and transparency in carrying out the proposed rules. He further noted that while the list of invasive species is not compressive, he hopes that adoption of the proposed rules will

## EXHIBIT 4

establish a precedent for consideration of future additions to the list of invasive pests target species.

- i. Response of HISC Program Support: HISC appreciates this testimony in Support. No response necessary.
- c. Nathan Dube – Provided oral testimony as the Manager of the Oahu Invasive Species Committee (OISC). He expressed strong support for the proposed rules and urged pushing the rules forward. He stated that OSIC does invasive species management on the ground and while OISC has good relationships with the public and private property owners, there are a handful that do not respond or deny access. This can lead to a fragmented response or threaten the success of invasive species containment efforts. He indicated this is particularly true for invasive plants, some of which are watershed destroying species, such as *Miconia*. He further noted that the proposed rules will fill a gap in the existing regulations.
  - i. Response of HISC Program Support: HISC appreciates this testimony in support. No response necessary.
- d. Kevin Faccenda – Provided oral and written testimony and identified himself as an individual conservationist and botanist. He expressed strong support for the proposed rules and appreciation for the work HISC is doing to manage invasive species. He suggested changes to the proposed list of species identified for control or eradication. Specifically, he suggested: (1) removing *Andesanthus* from the list as no members of this genus have been reported as naturalized in Hawaii; (2) removing the genera *Chaetogastra*, *Pleroma*, and *Tibouchina* from the list as he indicates they all refer to the same plant which should be listed as *Chaetogastra herbacea* (Cane ti); (3) removing the genus *Miconia* and replacing it with the single species *Miconia calvescens* because recent studies indicate that the genus *Miconia* now includes species previously referred to as *Clidemia hirta* and this species is widespread and beyond the possibility of eradication in Hawaii; (4) he supports including *Cenchrus longisetus*, *Cenchrus setaceus*, *Chromolaena odorata*, *Cortaderia jubata*, *Cortaderia selloana*, *Senecio madagascarensis* on the list of species identified for control or eradication; (5) expanding the species list to add additional invasive plant species, including *Imperata cylindrica*, *Delairea odorata* (synonym *Senecio mikanioides*), *Miscanthus floridulus*, *Thalia geniculata*, *Alstonia macrophylla*, *Jatropha gossypifolia*, *Phenax hirtus*, *Bischofia javanica*, *Oxyspora paniculata*, *Leptospermum scoparium*, *Andropogon bicornis*, and *Blechnum orientale*, as these species are invasive/particularly aggressive/fire promoting and are appropriate targets for control or eradication; and (6) modifying the list to designate islands on which a species identified for control or eradication would not be an appropriate eradication target because the species is widespread and beyond control on that island.
  - i. Response of HISC Program Support: HISC appreciates this testimony and in response provides the following:

## EXHIBIT 4

1. Removal of “*Andesanthus* – all species in the genus” from the species list based on the testimony and further research that there are no members in this genus that are currently naturalized or targets of any department or organization for control or eradication efforts in Hawai‘i.
  2. Removal of the genera *Chaetogastra*, *Pleroma*, and *Tibouchina* from the species list and replaced by the specific species: *Chaetogastra herbacea* and *Pleroma urvilleanum* which are known targets for control and eradication in Hawai‘i.
  3. Removal of the genus *Miconia* from the species list and replacing it with the single species *Miconia calvescens*.
  4. No additional species will be added to the current list of species identified for control or eradication. This initial list was not meant to be comprehensive, but to include species that are current targets of State departments and partner organizations where active prevention, control, or eradication efforts are already underway. With over 10,000 non-native plant introductions to Hawai‘i and over 200 of those being considered invasive species, it would be challenging to incorporate all parties recommendations on species inclusions. There are opportunities to list and delist species through the Chapter 91 rule-making in the future.
  5. The list will not be modified to designate islands on which a species identified for control or eradication would not be an appropriate eradication. **Section 326-2 “Requirements for control or eradication on private property”** sets out the requirements for a HISC department or country or an agent to control or eradicate an identified species on private property by submitting to the Council a detailed control plan that identifies the specific geographic areas where control or eradication actions will be carried out and the reasons each area is selected.
- e. Danielle Frohlich – Provided written testimony that expressed support for the overall intent of the proposed rules but raised several points that she believes should be addressed for the rules to achieve their intended goal of safeguarding Hawaii’s environment from the impacts of invasive species. First, she suggested the rules be revised to provide additional clarification among stakeholders, especially as multiple agencies will carry out the proposed rules. She suggested ambiguity could undermine the objectives of the rules. Second, she stated there is uncertainty regarding the application of the proposed rules on federal lands; she suggested the rules harmonize with federal regulations and other frameworks to avoid gaps in management or conflicting mandates. Third, she raised concerns about including entire genera in the list of species identified for control or eradication which could inadvertently target widespread species (such as *Clidemia hirta* = *Miconia crenata*) or non-invasive species (certain species in the genus *Tibouchina*). She suggests removing entire genera (*Chaetogastra*, *Pleroma*, *Tibouchina*, *Miconia*, and others) and targeting specific species of

## EXHIBIT 4

concern, specifically *Chaetogastra herbacea* and *Miconia calvescens*. Finally, she raised questions about the balance of authority between different government entities with respect to the authority to order control or eradication activities on public lands. She supports modifying the proposed rules to address these areas of concern.

i. Response of HISC Program Support: HISC appreciates this testimony and in response provides the following:

1. **Section 326-2 “Requirements for control or eradication on private property”** sets out the requirements for a HISC department or county or an agent to control or eradicate an identified species on private property by submitting to the Council a detailed control plan which addresses the testifiers comment regarding additional clarification among stakeholders to avoid ambiguity that could undermine the objectives of the rules.
2. These rules do not apply to federal land therefore there is no concern regarding the application of the proposed rules on federal lands.
3. Removal of the genera *Chaetogastra*, *Pleroma*, and *Tibouchina* from the species list and replaced by the specific species; *Chaetogastra herbacea* and *Pleroma urvilleanum* which are known targets for control and eradication in Hawai‘i. Removal of the genus *Miconia* from the species list and replacing it with the single species *Miconia calvescens*.
4. **Section 325-3 “Relationship to other laws”** clarifies that the proposed rules may not be construed to limit existing authorities which addresses the concern regarding the balance of authority between different government entities with respect to the authority to order control or eradication activities on public lands.

f. Dexter Kishida - Provided oral testimony as the Deputy to the Chairperson of the Department of Agriculture. He expressed strong support for the proposed rules. He noted that since the initial approval of the proposed rules by HISC, Act 231 was signed into law. He stated that the any changes to law made by Act 231 should be taken into consideration in the next stages of rules development.

i. Response of HISC Program Support:

1. HISC appreciates this testimony from one of the HISC departments. HISC staff reviewed the changes made to law by Act 231 (2024) and does not find any inconsistencies between the statutory amendments made by Act 231 and the proposed administrative rules. All statutory changes made by Act 231 are to title 11 of the Hawaii Revised Statutes (HRS), which relates to Agriculture and Animals. There were no changes made to the HISC statutes (chapter 194 HRS).

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2. Act 231 added a new paragraph (4) to HRS § 141-3.5(d), which requires HDOA and any of its “contracted parties” to notify HDOA’s pesticides branch prior to using any pesticide while controlling pests. HRS § 141-3.5(d)(4). Under this new requirement, HDOA (and any agent it may utilize in carrying out the HISC rules, if that agent is determined to be a “contracted party”) will have to comply with the pesticide usage reporting requirement. As that requirement is clearly set out in HRS § 141-3.5(d), HISC staff finds that it does not need to be repeated in the proposed HISC administrative rules.
  3. HISC staff further notes that actions taken under chapter 194 HRS are not included as a part of HDOA’s biosecurity program created under part VI of chapter 150A HRS, the funding and administration of that program is separate from the funding and administration of the HISC, and the biosecurity program and HISC continue to work cooperatively and in a complementary fashion under their respective statutory authorities.
- g. Kimeona Kane – Provided oral testimony both on behalf of the Waimanalo Board and as an individual. He expressed support the proposed rules. He noted that there are challenges facing communities, especially with regard to decision-makers, and they need the best tools and opportunities to do the job well. He agreed that the proposed rules are a great start and recognizes that more works still needs to be done.
- i. Response of HISC Program Support: HISC appreciates this testimony in support. No response necessary.
- h. Carol Kwan – Provided oral testimony and identified herself as a certified arborist in the landscaping industry. She expressed support for the proposed rules and wishes they had been adopted long ago.
- i. Response of HISC Program Support: HISC appreciates this testimony in support. No response necessary.
- i. Christy Martin – Provided oral and written testimony as the Program Manager for the Coordinating Group on Alien Pest Species (CGAPS). She expressed strong support for the proposed rules. She noted the CGAPS was formed in 1995 following a congressional report that documented Hawaii had the worst invasive species problem of any State. She also noted that in the decades since HISC was created it has been unable to adopt any administrative rules, despite numerous attempts and legislators asking for them year after year. She states that the lack of any administrative rules has resulted in the HISC departments being unable to utilize the authorities granted to them in chapter 194 Hawaii Revised Statuts to control or eradicate serious pests, such as little fire ant. She stated the most



## EXHIBIT 4

important part of the rules are the access provisions, which allows HISC departments and counties to have a process to contact landowners that have a pest, and then gain access to carry out a control or eradication program. She expressed that the proposed rules are a great start and urged the rules be moved along through the process.

- i. Response of HISC Program Support: HISC appreciates this testimony in support. No response necessary.
- j. Wayne Tanaka – Provided oral and written testimony and identified himself as the Director of the Sierra Club of Hawaii. He expressed strong support for the proposed rules. He stated biosecurity infrastructure in Hawaii has been neglected over past decades and the proposed rules are a critical step forward to address those gaps. He noted that invasive species, such as coconut rhinoceros beetle and little fire ant, have caused significant harm in Hawaii and that the authority to control and eradication these species on both public and private land will empower State and local agencies to prevent their further spread. He further noted that the procedures for notice and other requirements provide a balanced approach that respects property rights while safeguarding the State’s unique ecosystems.
  - i. Response of HISC Program Support: HISC appreciates this testimony in support. No response necessary.
- k. Selena Vanapruks – Provided written testimony in strong support of the proposed rules. She stated that the rules are common sense practices that must be enacted to protect Hawaii’s native ecosystem.
  - i. Response of HISC Program Support: HISC appreciates this testimony in support. No response necessary.
- l. Joe Watt – Provided written testimony in support of adoption of the proposed rules. He noted that ambiguities in the law have prevented accountability for action to control invasive species in Hawaii. He stated he hopes the clarification made by the proposed rules will lead to all HISC agencies contributing funds and staff toward managing invasive species. He highlighted the high cost of invasive species already present in the State and noted that while management for eradication is currently difficult, it will become more difficult in the future and impossible in a decade. He suggested that invasive species management become a requirement for leasing property from a HISC department.
  - i. Response of HISC Program Support: HISC appreciates this testimony in support. No response necessary.

EXHIBIT 5

DEPARTMENT OF LAND AND NATURAL RESOURCES

Adoption of Subtitle 14 of Title 13,  
Containing Chapters 13-325 and 13-326,  
Hawaii Administrative Rules

[DATE]

1. Chapter 13-325, Hawaii Administrative Rules, is adopted.
2. Chapter 13-326, Hawaii Administrative Rules, is adopted.
3. Subtitle 14 of Title 13, Hawaii Administrative Rules, is adopted to read as follows:

"HAWAII ADMINISTRATIVE RULES

TITLE 13

DEPARTMENT OF LAND AND NATURAL RESOURCES

SUBTITLE 14

HAWAII INVASIVE SPECIES COUNCIL

CHAPTER 13-325

GENERAL PROVISIONS

§13-325-1	Purpose
§13-325-2	Definitions
§13-325-3	Relationship to other laws

**§13-325-1 Purpose.** This chapter implements the authority of the Hawaii invasive species council in chapter

§13-325-1

194, Hawaii Revised Statutes, for the purpose of preventing, controlling, and eradicating harmful invasive species infestations throughout the State.

[Eff ] (Auth: HRS §194-7) (Imp: HRS §§194-2, 194-4)

**§13-325-2 Definitions.** As used in this chapter:

"Agent" means a person authorized by law to carry out a provision of this chapter.

"Control" means, with respect to an invasive species, containing, suppressing, or reducing the invasive species.

"Council" or "Hawaii invasive species council" means the invasive species council established under section 194-2, Hawaii Revised Statutes.

"County" means the city and county of Honolulu, county of Hawaii, county of Kauai, and county of Maui; provided that the county of Maui shall include the county of Kalawao for the purposes of this chapter.

"Department" means each of the following:

- (1) The department of agriculture;
- (2) The department of business, economic development, and tourism;
- (3) The department of health;
- (4) The department of land and natural resources;
- (5) The department of transportation; and
- (6) The University of Hawaii.

"Eradicate" means, with respect to an invasive species, to remove or destroy an entire population of the invasive species.

"Eradication" means, with respect to an invasive species, actions to eradicate the invasive species.

"Invasive species" means, with regard to a particular ecosystem, a non-native species, genera, or other taxon that causes or is likely to cause economic or environmental harm, or harm to human, animal, or plant health.

"Non-native species" means, with respect to a particular ecosystem, an organism, including its seeds, eggs, spores, or other biological material capable of propagating that species, that occurs outside of its natural range.

"Person" means an individual, corporation, firm, association, partnership, or other public, private, or not-for-profit entity, or any governmental unit.

"Public property" means any property owned or controlled by the State or a county.

[Eff \_\_\_\_\_] (Auth: HRS §194-7) (Imp: HRS §§194-1, 194-2)

**§13-325-3 Relationship to other laws.** Nothing in this chapter may be construed to limit an authority provided to a department or a county under any provision of law or any other rule to regulate, control, or eradicate any invasive species. [Eff \_\_\_\_\_] (Auth: HRS §194-7) (Imp: HRS §194-4)

HAWAII ADMINISTRATIVE RULES

TITLE 13

DEPARTMENT OF LAND AND NATURAL RESOURCES

SUBTITLE 14

HAWAII INVASIVE SPECIES COUNCIL

CHAPTER 13-326

CONTROL AND ERADICATION OF INVASIVE SPECIES

- §13-326-1 Invasive species identified by the council  
for control or eradication
- §13-326-2 Requirements for control or eradication on  
private property
- §13-326-3 Notice
- §13-326-4 Requirement for control or eradication by  
private property owner
- §13-326-5 Requirements for control or eradication on  
public property
- §13-326-6 Warrants

**§13-326-1 Invasive species identified by the council for control or eradication.** (a) The invasive species identified by the council for control or eradication for purposes of sections 194-4 and 194-5, Hawaii Revised Statutes, are those invasive species that have a record of causing economic or environmental harm, or harm to human, animal, or plant health in the scientific literature or in environmental conditions found in Hawaii.

(b) The invasive species identified by the council for control or eradication for purposes of sections 194-4 and 194-5, Hawaii Revised Statutes, are the following:

Scientific name	Common name
(1) Plants:	
(A) <i>Cenchrus longisetus</i> (formerly <i>Pennisetum villosum</i> )	feather-topped fountain grass, longstyle feather grass
(B) <i>Cenchrus setaceus</i> (formerly <i>Pennisetum setaceum</i> )	fountain grass
(C) <i>Chaetogastra herbacea</i>	cane tibouchina
(D) <i>Chromolaena odorata</i>	devil weed, Siam weed
(E) <i>Cortaderia jubata</i>	pampas grass
(F) <i>Cortaderia selloana</i>	pampas grass
(G) <i>Miconia calvescens</i>	miconia
(H) <i>Pleroma urvilleanum</i>	glory bush, lasiandra, princess flower
(I) <i>Senecio madagascariensis</i>	fireweed
(2) Invertebrates:	
(A) <i>Aedes aegypti</i>	mosquito
(B) <i>Aedes scutellaris</i>	mosquito
(C) <i>Apis mellifera scutellata</i>	Africanized honeybee
(D) <i>Anopheles</i> - all species in genus	western malaria mosquito
(E) <i>Oryctes rhinoceros</i>	coconut rhinoceros beetle, CRB
(F) <i>Popillia japonica</i>	Japanese beetle
(G) <i>Prosapia bicincta</i>	two-lined spittlebug
(H) <i>Solenopsis invicta</i>	red imported fire ant, RIFA
(I) <i>Wasmannia auropunctata</i>	little fire ant, LFA
(3) Vertebrates:	
(A) <i>Eleutherodactylus coqui</i>	coqui frog

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(4) Pathogens:

- (A) *Ceratocystis lukuohia* rapid ohia death
- (B) *Ceratocystis huliohia* rapid ohia death

(c) If the scientific name or common name of a taxon referred to in this section is changed to a new scientific name or common name accepted by the International Code of Zoological Nomenclature (ICZN), the International Plant Names Index (IPNI), or other appropriate authority, the reference in this section shall be construed to refer to the new scientific name or common name, as appropriate. [Eff ] (Auth: HRS §194-7) (Imp: HRS §194-4)

**§13-326-2 Requirements for control or eradication on private property.** (a) A department or county seeking to conduct control or eradication actions on private property pursuant to this chapter for an invasive species listed in section 13-326-1(b) shall:

- (1) Prior to conducting any such action, develop and submit to the council a detailed control or eradication program that:
  - (A) Is narrowly tailored to include only the needed control or eradication of the target invasive species, recognizing that general vegetation removal, other removal or modification of non-target species, and other habitat modification may be needed for access to or control or eradication of the target invasive species;
  - (B) Identifies the specific geographic areas where control or eradication actions will be carried out and the reasons each area is selected, including that the target invasive species is known or reasonably suspected to be in each area, based on the results of systematic surveys or reports or proximity to known infestations of the invasive species;

- (C) Includes a proposed schedule for the actions;
  - (D) Describes the control or eradication methods proposed to be used; and
  - (E) Includes an assessment of the reasonableness of the methods proposed; and
- (2) Provide regular updates, not less than annually, to the council on the control or eradication actions carried out by the department or county.
- (b) If two or more departments or counties intend to carry out control or eradication actions pursuant to this chapter for the same invasive species, those departments and counties shall ensure that all control or eradication actions are carried out efficiently and in a manner that does not result in unnecessary impacts to land owners, or tenants or occupants, if applicable.
- (c) A department or county may enter into a memorandum of understanding with an agent of the department or county that has appropriate expertise and experience to carry out actions under this section, section 13-326-3, or section 13-326-4. [Eff \_\_\_\_\_ ] (Auth: HRS §194-7) (Imp: HRS §§194-4, 194-5)

**§13-326-3 Notice.** (a) The time period for reasonable notice to the owner, and tenant or occupant if applicable, of private property that a department or county intends to enter to control or eradicate an invasive species pursuant to section 194-5, Hawaii Revised Statutes, is the earlier of:

- (1) Thirty days after notice is given to the owner, and the tenant or occupant if applicable; or
  - (2) The date that the owner, and the tenant or occupant if applicable, consents to the entry.
- (b) If the owner, or the tenant or occupant if applicable, of the private property does not consent to the entry by a department or a county within thirty days after notice is given under subsection (a), the department or county may seek a warrant under section 13-326-6 that authorizes the entry for control or eradication actions.



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(c) Notwithstanding subsections (a) and (b), if a department or county determines that control or eradication of an invasive species listed in section 13-326-1(b) requires an urgent response on private property and the consent of the owner, or tenant or occupant if applicable, cannot be obtained immediately, the department or county may seek a warrant under section 13-326-6 that authorizes the entry onto the private property for emergency control or eradication actions. [Eff ] (Auth: HRS §194-7) (Imp: HRS §194-5)

**§13-326-4 Requirement for control or eradication by private property owner.** (a) If a department or county determines that an invasive species listed in section 13-326-1(b) was intentionally and knowingly established on private property by the property owner, the department or county may order the property owner to control or eradicate the invasive species to the satisfaction of the department or county.

(b) The time limit set by a department or county to require an owner of private property to control or eradicate an invasive species pursuant to section 194-5(c), Hawaii Revised Statutes, shall be not less than thirty days and shall provide a reasonable amount of time for the owner to obtain the necessary equipment, supplies, and personnel to control or eradicate the invasive species.

(c) If the owner fails to comply with an order issued under subsection (a), the applicable department or county may after notice required by section 13-326-3 carry out the actions required by the order:

- (1) If the owner consents to the department or county carrying out the actions; or
- (2) Pursuant to a warrant sought under section 13-326-6.

(d) A department or county that carries out control or eradication actions under subsection (c) may recover the expenses incurred to carry out those actions by appropriate proceeding. [Eff ] (Auth: HRS §194-7) (Imp: HRS §194-5)

**§13-326-5 Requirements for control or eradication on public property.** (a) If a department determines that an invasive species listed in section 13-326-1(b) is found on public property that is within a geographic area in which the department or its agent is carrying out monitoring or control or eradication actions for the invasive species, the department may, after notice required by subsection (b), order the government entity in charge of the public property to control or eradicate the invasive species to the satisfaction of the department.

(b) The notice required by this subsection shall be not less than thirty days and shall provide a reasonable amount of time for the government entity in charge of the public property to obtain the necessary equipment, supplies, and personnel to control or eradicate the invasive species.

(c) If the government entity in charge of the public property fails to comply with an order issued under subsection (a), the applicable department may carry out the control or eradication actions required by the order:

- (1) If the government entity in charge of the public property consents to the department carrying out the actions; or
- (2) Pursuant to a warrant sought under section 13-326-6.

(d) A department that carries out control or eradication actions under subsection (c) may recover the expenses incurred to carry out those actions by appropriate proceeding.

(e) Notwithstanding subsections (a) and (b), if a department determines that control or eradication of an invasive species listed in section 13-326-1(b) requires an urgent response on public property and the consent of the government entity in charge of the public property cannot be obtained immediately, the department may seek a warrant under section 13-326-6 that authorizes the entry onto the public property for emergency control or eradication actions.

(f) A department may enter into a memorandum of understanding with an agent of the department that has appropriate expertise and experience to carry out actions under this section. [Eff \_\_\_\_\_] (Auth: HRS §194-7) (Imp: HRS §194-6)

§13-326-6

**§13-326-6 Warrants.** A department or county seeking a warrant to control or eradicate an invasive species pursuant to this chapter on private or public property shall submit to the district court of the circuit in which the property is situated an affidavit that:

- (1) Is made by an individual having knowledge of the facts alleged; and
- (2) Establishes grounds for issuing the warrant."

[Eff ] (Auth: HRS §194-7) (Imp: HRS §§194-5, 194-6)

4. The adoption of subtitle 14 of title 13, containing chapters 13-325 and 13-326, Hawaii Administrative Rules, shall take effect ten days after filing with the Office of the Lieutenant Governor.

I certify that the foregoing are copies of the rules drafted in the Ramseyer format, pursuant to the requirements of section 91-4.1, Hawaii Revised Statutes, where were adopted on [DATE], and filed with the Office of the Lieutenant Governor.

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Dawn S. Chang  
Co-Chairperson  
Hawaii Invasive Species Council

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Sharon Hurd  
Co-Chairperson  
Hawaii Invasive Species Council

APPROVED AS TO FORM:

/s/Danica L. Swenson  
Deputy Attorney General