

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)

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§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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APPROVED AS TO FORM:

/s/Danica L. Swenson
Deputy Attorney General