**MEMORANDUM**

**Environmental Destruction and Displacement:**

**What’s Wrong with Puerto Rico’s Public Policy?**

Date: June 3, 2022

From: Mariana Nogales Molinelli

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P.R. House of Representatives

To: Hon. Raúl Grijalva, Hon. Alexandria Ocasio Cortés, Hon. Nydia Velázquez

Representatives

U.S. House of Representatives

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Naomi Klein’s 2018 book, The Battle for Paradise: Puerto Rico Takes on the Disaster Capitalists can be read as an evil but accurate prophecy of what is happening in Puerto Rico today and what has been seen more blatantly after hurricane Maria hit the islands on September 20, 2017. During 2020 and 2021, the consequences of the Covid-19 pandemic only aggravated the problem. Work in public agencies was paralyzed and the lockdown kept us unaware of illegal actions, such as deforestation and construction without permits or with counterfeit permits that generated widespread environmental destruction, with a particular focus on coastal ecosystems.

***Tax havens and permit flexibilization: public policies that promote gentrification, the displacement of traditional communities and environmental destruction***

Act 60-2019 contains the body of legislation that enables the concession of tax incentives and privileges to a diverse array of industries and individuals with the objective of promoting economic development. But some dispositions within Act 60-2019, and more specifically those better known as Act 22-2009, dictate a public policy that is contrary to the wellbeing of the majority of Puerto Rico’s residents and that weakens our chances of being able to continue living here. In very concise terms, Act 22 gives huge tax credits and exemptions to investors, mostly from the United States, who are willing to relocate to Puerto Rico and have great purchasing power with the ability to buy many properties in cash. In 2021, a record number of foreigners (1,463) requested tax decrees while in 2020, this number amounted to 1,083.[[1]](#footnote-0) The loss of public revenue caused by these incentives is supposed to be justified by the investments these individuals will make in Puerto Rico, but the truth is that they have not generated better employment figures or projects with high economic and social value that excuse the wrongs they cause which include displacement, speculation with the land and the intent of privatizing our natural resources.

These wealthy investors, some of whom are completely exempted from paying taxes on their revenues and income, have bought a considerable number of properties, at very inflated prices if necessary, and have been displacing traditional communities both in urban and rural areas. The impact is widespread and growing. Housing is now unattainable in many areas, both urban and rural, due to the sharp increase in real estate prices. The long-term and affordable rental markets (including those homes that qualify for HUD’s Housing Choice Voucher Program – Section 8), which were already very limited and insufficient, have been severely dislocated. Tenants are being forced out and rental agreements are cancelled with a total disregard for the very real possibility of leaving families homeless due to the much diminished possibility of finding affordable housing within the 15 or 30 days given to move out. Many of these properties have been added to the short-term rental market, particularly through web platforms like Airbnb, reducing the inventory available for long term housing.

This is true in the metropolitan area of San Juan, the island municipality of Vieques, towns in the west like Cabo Rojo, Isabela, Aguadilla, and Rincón, as well as the southeastern part of the island. What started as gentrification and touristification in areas close to touristic interests has quickly dispersed and is now a phenomenon encompassing the whole island and affecting impoverished communities and individuals. Coastal towns like Arecibo, Isabela, Aguadilla, Cabo Rojo, Añasco, Aguada, Luquillo and Loiza, among others, have been deeply affected by this but the mountainous and interior regions are also facing challenges. Lately, too many real estate ads sell coastal properties with private beaches or vast parcels of protected land as if they had permits for intensive development, both of which are false claims that attract buyers who are either misguided or willfully trying to bypass environmental regulations.

At the same time, the number of empty and vacant properties, both residential and commercial, is astounding. These properties are abandoned for different reasons, which include the displacement of the Puerto Rican people due to catastrophic events such as hurricane Maria and the 2020 earthquakes, the absence of quality education and health services, the lack of dignified work opportunities and generalized insecurity. There is no intelligent planning that proposes the rehabilitation and adaptation of this existing infrastructure according to the needs of the population.

The chaotic and disruptive entrance of these investors combines with the effects of PROMESA and the policies of flexibilization and deregulation promoted by the Fiscal Control Board (FOMB), particularly in the processes related to permit regulations. These policies are explained in the Fiscal Plan for the Commonwealth of Puerto Rico, which was last amended and certified by the FOMB on January 27, 2022. Chapter 9 – Ease of Doing Business Reform, as well as a section on Construction Permits, proposes the reengineering of the permit system and process. Right now, the permit process is driven by proponents of projects that supply and self-certify information to the permits web platform, including Environmental Assessments, without appropriate government oversight. One of the results of this (undeserved) trust based system has been the destruction of wetlands and of critical habitat for endemic and/or endangered species, also affecting the natural buffer zones that protect communities from flooding, hurricanes and sea tides.

***Corruption and lack of supervision in the DNER and the PMO promote environmental destruction***

We have had exemplary cases like that of Condominio Sol y Playa, located in the western municipality of Rincon. The building’s board of residents obtained a permit to build a pool in the terrestrial maritime zone, which according to law belongs to the people of Puerto Rico. Moreover, the space where the pool was to be built consisted of critical habitat for endangered species, like Hawksbill and Leatherback sea turtles. The permit was obtained through a hired consultant and proponent (also known as an Authorized Professional) and inappropriate liaisons with an employee of the Department of Natural and Environmental Resources (DNER), who was assigned to the Permits Management Office (PMO) and was at the same time the consultant’s partner in a private corporation, an inadmissible conflict of interest. Protests against the construction developed during the summer of 2021. In September 2021, a legislative investigation by the Commission of Natural Resources of the Puerto Rico House of Representatives ended with referrals to the Department of Justice, the Governmental Ethics Office and the Professional Engineers Association of hydrologist Angel Román Más (the hired proponent) and the removal of Idelfonso Ruiz, the DNER employee referred to above.[[2]](#footnote-1) In May 2022, the Supreme Court of Puerto Rico ruled in favor of the Planning Board’s decision that the permit was illegal and null, and therefore the location had to be restored to the previous state before the construction of a fence and the excavation where the pool was to be built. See Appendix 1.

Another very well-known case is that of the Jobos Bay National Estuarine Research Reserve, located in the towns of Salinas and Guayama. This unique ecosystem which consists of wetlands, saline lands and endangered species, also neighbors Las Mareas, a historic community of agricultural and fishing workers, as well as of the descendants of workers of salt mining industries. Invasions of land and destruction of wetlands by outsiders have been recorded since the 1970s. The Reserve was established in 1981 when the DNER used funds provided by NOAA to acquire the land known as Finca Lugo-Viña and other nearby properties. Throughout the years, NOAA has performed periodic evaluations of the Reserve, as mandated by Section 312 of the Coastal Zone Management Act (CZMA), and has repeatedly found that the DNER is not adhering to the requirements of the CZMA and has ordered the agency to take action to remove illegal structures within Las Mareas and Camino del Indio (buildings, docks, piers, wharves, fences, utilities and pavement). You can see the latest report, published on October 2018, in Appendix 2.

However, the illegal construction and deforestation continued and the destruction increased horribly by the year 2021. See in Appendix 3, satellite pictures from April 2014 and February 2022, as well an aerial picture of the zone in March 2022. In March 21, 2022, after several unsuccessful attempts to discreetly request action from the concerned agencies, including the presentation of a complaint before the PMO, I publicly denounced what was happening in the Reserve and a full blown legislative investigation opened and is still going on. Preliminary findings include counterfeit permits, the illegal installation of public services such as water and electricity, as well as widespread knowledge of the crimes but no action by the PMO, the DNER, the water works and electrical corporations, and the Department of Justice. For example, the PMO did not supervise the issuance of permits to install utilities (water and electricity), and the DNER did not provide the Reserve Manager with enough personnel to prevent the proliferation of illegal construction and destruction of the wetlands by burning, chopping and filling the mangroves. As a result of my complaint before the PMO, the Planning Board is now investigating a private proponent (another Authorized Professional) and people who illegally sold and bought unsegregated parcels overlapping the land of the Jobos Reserve.

***Permit regulations are made to order through the intervention of private interests in rule-making processes***

Since 2019, different administrations have been trying to introduce a wish list of changes, requested by developers and corporate interests, to the compilation of rules and regulations that guide the issuance of permits for many types of activities, known as Joint Regulation (Reglamento Conjunto). Both the Joint Regulation of 2019 and the Joint Regulation of 2020 were declared null and void by Puerto Rican courts because the government did not comply with public participation requirements. Nevertheless, the current administration insists on using the 2020 version while it develops its successor, Joint Regulation of 2022. All three of these versions tamper with the categories established in the Land Use Plan (Plan de Uso de Terrenos), issued by Puerto Rico’s Planning Board, and have caused a great conflict between existing policies based on intelligent and sustainable planning and chaotic, destructive and money driven planning that endangers our water reserves for human consumption and agriculture, critical habitat for endangered species, invaluable ecosystems and the natural buffer zones that protect us from climate change, sea level rise, coastal erosion, flooding, landslides and other risks. The removal of vegetation and soil and excessive building in untouched areas has affected preexisting communities and is contrary to the process of reconstruction. The impunity that surrounds these crimes only promotes more similar actions, which is why my office is flooded with complaints, which I recently decided to present formally before the concerned agencies as they arrive. You can see a list and some examples in Appendix 4.

It seems as if all public policy is driven to benefit government officials, their friends and family as well as political campaign donors. A shameful example is seen in the governor’s daughter in law, a real estate broker for Corcoran, who has greatly benefited from Act 60-2019 investors or millionaire residents buying luxury or overpriced real estate property. The Super Pac scandal now being prosecuted in the U.S. District Court for the District of Puerto Rico includes campaign donors for Governor Pedro Pierluisi. One of them is Federico Stubbe, spokesman for wealthy developers, beneficiary of 90% tax credits and millions in incentives, and executive of PRISA Group., the proponent of the construction of a hotel in the municipality of Luquillo, that has already destroyed wetlands and will cause flooding to pre-existing communities nearby.

***Conclusion and request***

The government of Puerto Rico has abandoned its people and the great majorities, working instead for private and their own individual interests. The flexibilization of permit regulations, under the guise of an ease of doing business reform, as well as the dismantling of agencies with regulatory functions, only favors those who plan to exploit our land regardless of the consequences to the environment and the people.

Sadly, even though several federal agencies hold responsibility on many of these topics, they have been mostly silent or unwilling to take action beyond reports. Similarly, funds assigned to Puerto Rico for public works, planning and recovery receive little or no fiscalization as to their appropriate and sustainable use. Since this falls under your purview, it is my request that you promote an ample investigation regarding the compliance of federal and state agencies with their responsibilities in upholding environmental protections, as well as about the fiscal haven generated by tax credits and exemptions in Puerto Rico.

1. El Nuevo Día (2021). Alza en precios de vivienda coincide con aumento en decretos por Ley 22. https://www.elnuevodia.com/negocios/economia/notas/alza-en-precios-de-vivienda-coincide-con-aumento-en-decretos-por-ley-22/ [↑](#footnote-ref-0)
2. Puerto Rico House of Representatives (2022), Partial Report on R.C. 150. https://sutra.oslpr.org/osl/SUTRA/anejos/137308/RC0150-ip.docx [↑](#footnote-ref-1)