



## PUERTO RICO BUILDERS ASSOCIATION

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September 26, 2019

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Fiscal Oversight and Management Board for Puerto Rico  
San Juan, Puerto Rico

Dear Members of the Fiscal Oversight and Management Board for Puerto Rico,

Thank you and the rest of the Fiscal Oversight and Management Board for Puerto Rico ("FOMBPR") for the opportunity to present our views regarding Puerto Rico's economic development. Since its establishment, the Puerto Rico Builders Association (ACPR) has represented a wide array of professionals in the real estate development and construction industries. From developers, contractors, builders, remodelers, architects, engineers, lawyers, bankers and realtors, we work towards a business and investment healthy ecosystem, driven by the private sector, to achieve safe and sustainable communities in Puerto Rico.

Our vision for Puerto Rico must be clear: to facilitate a business environment so that it becomes a top 10 in the competitiveness & ease of doing business indexes. Without a true and sustainable economic development, our society will not come out of a decade's long depression. This has to be of utmost importance. Adopting actions and reforms that towards that goal is the best way to secure getting our government out of bankruptcy and ending PROMESA's application in our island. Having a strong, vibrant and sustainable economy is also key to environmental protections and mitigation due to climate change. In general, stronger economies have greater environmental protections in place also.

September is a month to meditate on lessons learned, the reconstruction after a natural disaster and resilience. In recent days we commemorated 30 years since that hurricane Hugo, 21 years since hurricane Georges and two years since hurricane María, natural phenomena that rattled the island with an incredible precision. The impact in these past 30 years have been very similar, as well our inability of having the necessary will to implement recommendations and the lessons learned. However, this time, the delay in the beginning of the reconstruction of our infrastructure have represented our biggest challenge.

In terms of reconstruction, the delay in the process of accessing federal funds is a challenge we need to overcome. It is important to ensure compliance with the requirements of the Robert T. Stafford Federal Act, by accepting the submission of project cost estimates prepared by licensed professional engineers for government agencies and municipalities. FEMA, on its part, would validate that these estimates comply with the guidelines and that the costs are reasonable in addition to being eligible. Puerto Rico is the only jurisdiction in





which FEMA does not take these estimates into consideration as required under Section 428 of the Stafford Act. Accepting them will allow the process to be a more collaborative and expedited as it is the spirit of the program. All the above will allow us to move to new hiring models, which in turn, will allow projects to be more agile.

The reconstruction of our infrastructure is so necessary and of such scale that it is necessary to implement creative solutions that result in the achievement of the established goals while optimizing processes and costs. Let us dare to use our will and a different mentality from what has caused us our historical problems by implementing the lessons learned from the past 30 years.

Prompt payment and contract compliance is another challenge expressed in the ease of doing business study. We need to make sure the local government does its part in a compliant, transparent, prompt and agile payment process to its contractors.

Besides implementing strategies that will ease the way Puerto Rico access reconstruction funds and conduct businesses, it is important for our government system to address corruption charges and the lack of transparency. Although construction bidding processes are highly regulated, it is important to establish a platform in which the transparency of the process is ensured. Lobbyist intervention should be banned at the time of seeking tender opportunities. Preventing corruption is as important as to fight it, this is why companies (and the government) that are involved in the reconstruction process should have managerial systems implemented in way to prevent bribery and extortion situations. We suggest the implementation of ISO 37001 for its proven success in several countries, although there are alternatives that can be evaluated. The important thing is that, in the same way there are plans establish to guarantee quality control and security among other things, it is required to have a system to prevent these situations.

In this context, it is worth mentioning that ten years ago, Puerto Rico was placed in the 144<sup>th</sup> position in the World's Bank ease of doing business index in terms of the building permit obtention. At that time, there was an environment of great uncertainty in the process of obtaining permits. In response to this problem, which created an environment of uncertainty in the investment, Puerto Rico passed the Puerto Rico Permit Process Reform Law (Law 161-2009). This law specifies that permits already granted are considered correct unless it is evidenced that they were issued with false or fraudulent information. In addition, certain professionals from the private sector were empowered to issue some specific permits that do not require state discretion. Among other reasons, and although the World Bank acknowledges that many advances have been made on this matter, Puerto Rico still places itself in the 141 position in terms of handling the construction permits application. It remains to be seen how the adoption of the new Joint Regulation to implement Law 17 of 2019 will alter this qualification. Also, we are worried about the finality of decisions as some groups now have looked to the legislative branch to oppose projects contrary to following what Act 161 requires.

We are quite concerned about the cost of energy. The PRBA has fully supported private sector calls to implement measures that minimize the cost of energy. We feel the target cost should be around 17 cents per KW\*hr. It is imperative that we substitute a public and inefficient public monopoly with an efficient market solution.

We must work so that the procedures established for the permits obtention do not become an obstacle for the projects to be executed. Under Law 19 of 2017, infrastructure reconstruction projects must be classified as strategic so that evaluations have an expedited process. Infrastructure agencies need to be agile in issuing authorizations for interconnections. These processes can take years sometimes. Also, permits under the Department of Environmental and Natural Resources need to be integrated to OGPe's system as Act 19-2017 requires. Processes under DNER jurisdiction also take years to complete.



Finally, we need to professionalize our workforce by having a strong workforce development and certification process. Under WIOA, significant federal resources are available for employers. This is important in order to secure manpower for economic drivers needed to achieve a sustainable environment. It is important to focus incentives on affordable workforce housing, knowledge economy, agriculture and tourism in order to grant access to our workers to better living possibilities. For this, HUD needs to review its income limits so that it makes sense to much of our population to transition into the formal economy. It is important to achieve that these limits are above the National Poverty Line as it is in the States.

Thank you very much Mr Chairman for the opportunity to present. A copy of our letter sent last December 4<sup>th</sup> 2017 on the time of the other economic development hearing the Board held in New York City is enclosed as it is still current. We are more than available to answer any questions or concerns you may have.

Respectfully submitted,

Emilio Colón-Zavala, PE, MLAI  
Chairman of the Board



December 4, 2017

Mr. José B Carrión III  
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Mr. Carlos J. García  
Arthur J. González  
Mr. José R. González  
Ms. Ana J. Matosantos  
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Mr. Christian Sobrino  
Fiscal Oversight and Management Board for Puerto Rico  
San Juan, Puerto Rico

Dear Members of the Fiscal Oversight and Management Board for Puerto Rico,

Thank you and the rest of the Fiscal Oversight and Management Board for Puerto Rico (“FOMBPR”) for the opportunity to present our views regarding Puerto Rico’s economic development. Since its establishment, the Puerto Rico Builders Association (ACPR) has represented a wide array of professionals in the real estate development and construction industries. From developers, contractors, builders, remodelers, architects, engineers, lawyers, bankers and realtors, we work towards a business and investment healthy ecosystem, driven by the private sector, to achieve safe and sustainable communities in Puerto Rico.

Our vision for Puerto Rico must be clear: to facilitate a business environment so that it becomes a top 10 in the competitiveness & ease of doing business indexes. Without a true and sustainable economic development, our society will not come out of a decades long depression.

#### Background

Nowadays it seems impossible to talk about economic development in Puerto Rico without the talking about the momentous task of rebuilding after Hurricane María’s impact to our islands. On September 20 2017 our vulnerabilities were exposed in a manner we never thought would happen. This has been the biggest disaster on US territory. Approximately 60,000 families lost their homes while our infrastructure was destroyed. Still today we’re struggling to provide basic necessities to our people. The saddest thing of all is that we were warned almost twenty years ago.

In 1999, in the aftermath of Hurricane Georges’ impact on Puerto Rico, the Federal Emergency Management Agency (“FEMA”) issued its assessment and recommendations to mitigate risks of another disaster. In Chapter 9, it is stated that,

“Mitigating future losses, however, will not be accomplished by simply reading this report; mitigation is achieved when a community actively seeks and applies methods and approaches that will lessen the degree of damage sustained from natural hazards.”

General recommendations were as follows:

- a. Buildings designed to the new building regulations that provide greater protection against hurricanes and earthquakes.
- b. New buildings permitted, built, and inspected to meet the new building regulations.
- c. An upgraded electric power system so that power is quickly restored and critical services such as water and sewage treatment can continue to be provided.
- d. A retrofit of existing buildings so their envelopes are not breached during a hurricane and do not collapse in an earthquake.



- e. Special building precautions in areas with known hazards (such as floods, landslides, and tsunamis) or avoiding these areas altogether.

It's a shame that we did not take the necessary steps to prevent today's predicament. With the exception of adopting a new building code, we're still facing the same challenges in 2017. Nevertheless, Hurricane María represents the best chance we have to rethink and rebuild PR the right way; the canvas was left essentially blank. We need to start over.

A preliminary study commissioned by the ACPR to evaluate Hurricane María's economic impact and estimate how long it would take for Puerto Rico to reach 2006 economic activity levels. After accounting for federal aid programs, insurance companies disbursements, and the reinstatement of the approved fiscal plan in 2019, it projects "a contraction in economic activity that should average 3.2% between 2020 and 2023. Between 2023 and 2027 1.9% growth is assumed, 2.4% between 2028 and 2032, and finally 3.0% growth from 2033 onward." This means that 2006 levels of economic activity would be reached by 2032 or 17 years from now. This is unacceptable. We need to take affirmative actions to speed up the process.

The question must be how do we take the necessary steps so that we don't find ourselves in this same predicament. How do we finally solve our vulnerabilities. These are true for the reconstruction after the hurricane as well as our eleven year old economic depression. The opportunity is here to rebuild a resilient Puerto Rico.

#### General Recommendations

As an initial general recommendation, we need to own our past mistakes, own them and learn from them. Although not exclusive to Puerto Rico, past disasters have revealed corruption cases which stain our efforts. As a proactive action, we propose that every participant of reconstruction programs to be appropriated complete a corruption prevention certification. Also, participating organizations should be required to implement enterprise level corruption prevention plans in order to access federal funds.

Another initiative regarding reconstruction efforts is which entity should receive and manage reconstruction and mitigation programs' funds. We believe that the most transparent way to manage them is through a separate entity in which all sectors are represented. This entity should be kept in arms length from usual public sectors and include equal representation from the private and third sectors. A Puerto Rico Reconstruction Authority to manage mitigation funds elevated to the same level of hierarchy as this Oversight Board. The magnitude of the damage inflicted by Hurricane María should mandate a federal entity to manage all efforts and funds required to the reconstruction while the government provide essential services to our people and the Oversight Board deals with the fiscal crisis and fulfill its duties under PROMESA.

In terms of the Reconstruction Authority and the funds it will receive from the federal government, the following must be obtained for a period of no less than ten (10) years:

- a. Priority access to unused appropriated federal funds from other jurisdictions destined to infrastructure or housing rebuilding programs.
- b. Priority access to housing bonds and awarding tax credits (i.e. LITEC, NMTC and others)
- c. Waiver from matching funds requirements to local sponsors
- d. Declaration of all PR Municipalities as disadvantaged under SBA's HUBZone program
- e. Declaration of all PR owned businesses as disadvantaged under DOT's DBE Program
- f. Establishment of an educational program on accessing and managing federally funded programs
- g. Allow housing sector reconstruction projects to be permitted under the process set forth in PROMESA's Title V
- h. Permitting to be processed through PROMESA's Title V.

It has been widely reported of the billions of dollars some corporations have accumulated overseas to avoid paying federal income taxes. We propose that, for a period of ten (10) years, a preferential repatriation tax rate of 5% be established for US entities that move capital from foreign jurisdictions to Puerto Rico. This capital is to be invested in infrastructure.

For reconstruction efforts, an inherent defects insurance program requirement needs to be established so that risks are certified. This model has been successfully used throughout Europe and Asia for infrastructure capital



projects. It is required by law in France. In the US, it has been used for the housing industry. Such a program reduces litigation between owners and contractors due to construction defects as their risk is transferred to insurance agencies.

Protection of our environment is equally important as economic development. Sophisticated economies understand this and have strong environmental protection measures. Mitigation banks can be established so that project sponsors can invest in establishment, conservation and preservation of ecologically sensitive areas as a way to mitigate project impacts on the environment.

#### Right Sizing Our Government

It's no secret that Puerto Rico's government is too big. Too many agencies and entities with multiplicity of efforts have resulted in inefficient services to our people. This results in an inefficient use of public resources. Right sizing our government can reduce administrative costs that can be used for essential services and debt repayment.

As we look at other successful jurisdictions, government can be right sized by eliminating those multiple layers of bureaucracy. The consolidation of agencies into three main umbrellas is proposed:

1. Economic Development and Commerce
2. Environmental Protection
3. Health, Human and Security Services

We suggest that a comprehensive consolidation of responsibilities be performed in order to streamline evaluation and decision processes of construction permit applications. Two general umbrella agencies with clear mandates and responsibilities as well as interaction with the process.

Agencies with actual or potential significant economic development promotional or support roles should be merged under a restructured Department of Economic Development and Planning. These would include:

1. Dept. of Economic Development, with current offices.
2. PR Planning Board
3. OGPe
4. Dept of Agriculture
5. Statistics Institute
6. PREPA
7. PRASA
8. Housing Department
9. Telecommunications Board
10. National Parks Corporation
11. Regulated Professions Examination Boards

Agencies with actual or potential significant environmental quality roles should be merged under a restructured Dept of Environmental Quality and Water Resources. These would include:

1. Puerto Rico Environmental Quality Board
2. Dept of Natural Resources & Environment
3. Solid Waste Management Authority
4. Environmental Health and all activities related to the licensing of food, restaurants, funeral parlors under the Health Dept.
5. Fisheries and regulation of fishing

There would still be Federal/State Agency Overlaps, in which Federal Government Agencies with joint jurisdiction with PR Agencies would consider certain actions and levels of complexity. These federal entities include, are not limited to:

1. US Army Corps of Engineers
2. US Environmental Protection Agency
3. US Fish and Wildlife Service



4. NOAA's National Marine Fisheries Service
5. Federal Highway Administration
6. Department of Homeland Security
7. Federal Aviation Administration

### Infrastructure

The scale of Hurricane María's impact in Puerto Rico is markedly bigger than was Hurricane Georges'. Also, its impact is augmented by the economic depression and our government's fiscal crisis. A postponement in infrastructure maintenance spending is not really a saving. It results in larger costs that must be incurred at a later date. For infrastructure sectors, other than energy, our specific recommendations are:

1. Compliance improvement program for non-PRASA water supply systems so that those communities can have access to safe drinking water in the wake of the next disaster.
2. Community water storage & distribution system by collecting rain water through mitigation bond / grant / loan / guarantees (depending on communities' financial possibilities) for rural areas. Require 0% local sponsor matching for 5 years. This collection could be used for non-human consumption such as toilets, irrigation, etc.
3. Compliance program for individuals and communities' wastewater systems through mitigation bond / grant / loan / guarantees (depending on communities' financial possibilities) for rural areas. Require 0% local sponsor matching for 5 years
4. Access of drainage districts to flood mitigation measures (structural or non-structural) & storm sewer improvements through mitigation bond / grant / loan / guarantees (depending on communities' financial possibilities) for rural areas. Require 0% local sponsor matching for 10 years
  - a. This would allow for, for example, improvements and /or redesign of three Metropolitan Area Flood Control Pump Stations (Baldorioty de Castro, De Diego and Stop 18/Figueroa Ward) and implementation of Green Infrastructure measures to Reduce Combined Sewer Overflows (CSO's) In San Juan Metropolitan Área
5. Communications must have enough redundancy not to collapse under an extended blackout period after a disaster.
6. Programs' permitting to be expedited under Title V of PROMESA

### Energy Sector

While Hurricane María destroyed our island's transmission grid, this only accentuated the fragility of our power system. We have to remember that an accident at Aguirre Power Center in 2016 caused a total blackout in Puerto Rico. Also did Hurricane Irma though sustained winds in our island barely made it to hurricane force.

Current energy grid concentrates most of the generation in the South region of Puerto Rico while most of its consumption is located in the North. An evenly distributed generation / transmission grid will result in greater resiliency and lower risks of a total blackout in the aftermath of a disaster.

A study by the PR Manufacturers Association has estimated that electricity prices can be \$0.16 perKw-hr by generating efficiencies, diversifying power sources and generation concessions. We fully support efforts that result in the least energy costs and most resilient system. Some specific suggestion are:

1. Reduce reliance on fossil fuels for power generation.
2. Reduce reliance on sole source energy provider.
3. Increase the use of Distributed Energy Resources (DERs) grid and non-grid connected, with both renewable and non-renewable energy sources and Micro-grids.
4. Community micro-grids through a mitigation bond / grant / loan / guarantees (depending on communities' financial possibilities). Require 0% local sponsor matching for 5 years.
5. Enough redundancy for essential infrastructure services like,
  - i. Generate power in treatment plants
  - ii. Alternate power generation for telecommunications facilities
6. Advances in turbine design, specifically for low water head waters, like those prevalent in Puerto Rico, merit a reexamination of increased hydropower generation as a way of reducing reliance on petroleum based fossil fuels for electric power generation.





- i. Pilot Hydropower Projects, under USGS, and DOE/NREL & Mayaguez Engineering College control and involvement for expanding hydropower generation in the Arecibo/Utuado Region.
7. Although solar PVs have been deployed at diverse institutional manufacturing, residential and commercial sectors the absence of related storage capability has limited their contribution to energy availability during outages. Reductions in battery cost have eliminated the remaining barrier to deployment of energy storage devices in conjunction with PV systems.

### Industrial Sector

In order to achieve economic stability, we need to establish an inversion ecosystem that would generate drivers for jobs and economic capabilities to maintain our infrastructure and society. There is an appetite for foreign capital to be invested in Puerto Rico. Nevertheless, immigration issues could hinder such efforts. There is a proposed legislative language that would allow immigrant investors to qualify for a special immigrant status if investment is made to federally designated major disaster or emergency areas. Such a status would be exempt from immigration quotas in an proposed amendment to §101(a)(27) of the Immigration and Nationality Act by adding a subsection (N) reading like this:

(N) an immigrant who meets of the requirements of section 203(b)(5) and who invests in a qualifying new commercial enterprise which is located in a geographical area that is the subject of a currently effective Presidential major disaster or emergency declaration pursuant to 42 U.S.C. § 5121 et seq.”

Such an amendment could allow for new capital to enter Puerto Rico and spur economic development in strategic drivers.

Also, we can develop economic driver poles through concessions of:

- a. Roosevelt Roads:
  - i. air cargo hub
  - ii. aerospace
- b. Port of Ponce
  - i. maritime cargo
  - ii. value added industrial areas to complement the port

These properties, if managed adequately, could provide the potential economic drivers for Puerto Rico's recovery.

### Housing Sector

The biggest impact of Hurricane María to our infrastructure has been to housing. Estimated housing damages exceed all other infrastructure sectors combined. It is estimated that total cost of reconstruction will be between \$20.72bn and \$25.97bn as estimated by Estudios Técnicos Inc. Sources of funds will be primarily two sources; FEMA and insurance disbursements.

For recovery and reconstruction efforts, some phases and actions will need to take place under different federal programs. It is necessary to understand that people in high risk areas (flood, earthquake, landslides) would need to be relocated as exemplified in FEMA's 1999 recommendations. Because of this, the number of housing units to be built or acquired will exceed the 60,000 units that were destroyed. Access to safe housing for our people should be our main priority. We propose a voucher program in which the following things are accomplished:

1. People would not live in high risk areas
2. Access to formal and safe housing is made available in areas of disaster low risk by:
  - a. Acquiring existing units that comply with the building code and planning regulations
  - b. Acquiring new homes in formally conceived and built communities

Specifics for this marketplace are:

1. Where feasible, relocate flood prone communities through Stafford Act programs or others
  - a. Exchange high flood risk housing units for a voucher in the housing market with \$120,000 limit and additional \$15,000 for renewable energy generation & storage measures.
  - b. Create loan guarantee programs for mortgage to cover gaps up to FHA limits.





- c. Allow for survivor to participate in both federal programs (FEMA and HUD)
- d. Grant a waiver so that survivors that are not titleholders of their damaged home are eligible to participate in these programs.
- e. To access Stafford Act funds, housing units' Sellers must certify that the units was built in compliance with the PR Building Code (as amended), FIRMs & PR Planning Board Regulations

On the other hand, certain actions are necessary in order to help developers access capital for reconstruction projects. We propose the establishment of interim construction loan guarantee programs for the construction of communities under Stafford Act (408 and 403B) through the private banking sector and HUD Programs:

1. Appoint permanent staff in San Juan or allow for private third party to perform NEPA Implementation and Environmental Review. (HRAP Section 1.7)
2. Waiver on the requisite that Condominium Declaration Deed be recorded for the HRAP Proposals. Nevertheless, no loan can be insured in the project until the recorded documents are received and the applicable approval data updated. (HRAP Section 2.1.11.B)
3. Waiver on the submittal of bank statement as a requisite for the approval for approved or under construction condominiums, instead provide a Proposed Current Year Projected Budget as the only requirement. (HRAP Section 2.1.6)
4. Clarify that the insurance requirements in this section are not applicable until the first unit within the project is sold. (HRAP Section 2.1.9)
5. Specified that Certificates of Occupancy for proposed or under construction condominium are required only if issued. (HRAP Section 3.8)

For repairs, rehabilitation and reconstruction, fund under FEMA's mitigation program an initiative where where disadvantaged individuals and communities can access architects and engineers free of charge.

For Affordable Housing Rental Programs, the following actions are needed in order to facilitate sector growth:

1. Fair Market Rents should be equal to the US market. o Taxcredit Fed Purchase under the LIHTC program:
  - i. Have the issued tax credits for shovel ready projects, and those to be issued that have no commitment by syndicators, be purchased by the US government at a 100%.
  - ii. Increase the credits to \$8/ capita
3. Eliminate existing limitations to the CRA programs
4. Increase the 9% tax credit threefold
5. Provide Section 8 project based rental assistance to newly built projects, upon fulfillment with all programmatic requirements.
6. Allow municipalities to increase the percentage of individual based vouchers that can be assigned to a project
7. Increase the availability of Home Funds to fill in development Gaps.
8. Allow area Median Income Tenants rule, to be able to reach 80% of Area Median Income.

The actions and measures suggested here are presented with the intention of spurring the real estate development industry in order to achieve economic prosperity.

We are available to meet and go over our views and proposal with the Board, its Executive Director and the Rentalization Coordinator.

Respectfully submitted,

Emilio Colon Zavala, PE  
Vice President and President-Elect