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Media Contact Marti Townsend, Earthjustice
808-372-1314; mtownsend@earthjustice.org

Broad Coalition Challenges Governor Green's Controversial Emergency Proclamation on Housing

Honolulu, Hawai'i – A broad coalition of community advocates for affordable housing, iwi kupuna (Native Hawaiian burials), environmental justice, and good governance, represented by Earthjustice, [filed a lawsuit yesterday](#) challenging Governor Josh Green's Emergency Proclamation on Housing, an abuse of emergency powers that benefits real estate developers at the expense of the public interest. The plaintiffs are Nā 'Ohana o Lele Housing Committee, American Civil Liberties Union of Hawai'i, E Ola Kākou Hawai'i, Hawai'i Advocates for Truly Affordable Housing, Sierra Club, and Kū'ikeokalani Kamakea-'Ōhelo.

"You can't call a 100-year-old problem an emergency," said Kekai Keahi, a resident of Lahaina and a plaintiff in the lawsuit. "We want Lahaina to rebuild, but not in a rush and not behind closed doors. We want to rebuild our community the right way. That means all of us are involved, no backroom deals, no fast-tracks. And I believe that every community should have that same voice in deciding their future."

In the Emergency Proclamation on Housing, which was issued weeks before wildfires devastated Lahaina, Governor Green cited the fact that Hawai'i has struggled with affordable housing shortages since 1935, shortly after Hawai'i became a U.S. territory. The proclamation suspends numerous laws including:

- The Sunshine Law, which ensures the integrity of our democracy through public transparency and participation in government decision-making and ensures meaningful public participation,
- The Environmental Policy Act, which promotes prudent and well-informed planning by providing for public and expert input and requiring disclosure of natural, cultural, and socioeconomic impacts before the government approves a project,
- The Land Use Commission, which ensures public interests are reflected in the urbanization of rural and agricultural lands, including food security, climate resilience, Native Hawaiian rights, affordable housing and job creation; and

- The historic protection law, which includes processes to identify and prevent unnecessary harm to ancestral burials through archaeological surveys and cultural monitoring.

“The law gives Governor Green the authority to exercise emergency powers only in response to ‘emergencies’ and ‘disasters’ from ‘natural or man-made hazards,’ like fires, floods, and tsunamis,” said Earthjustice attorney David Henkin. “The governor cannot suspend laws he doesn’t like whenever he feels like it. That’s dictatorship, not democracy.”

“This proclamation doesn’t require construction of a single unit of affordable housing. Instead, it allows backroom deals with developers to greenlight construction of more luxury and market-priced housing. That does nothing to help working families and only makes corruption worse,” said Jonathan Silva, a member of Hawai’i Advocates for Truly Affordable Housing. Silva said he works as a school counselor and a waiter at three hotels in order to earn enough to own a home. “My family has lived on Maui for six generations, and we have struggled with the high cost of housing from day one.”

For Native Hawaiians, Green’s proclamation is particularly offensive because it relies heavily on the displacement of Native Hawaiians as a justification for new construction, but then suspends the laws designed to protect Native Hawaiian rights and cultural resources and sites, including the final resting places of their family members.

“Governor Green is salting the wounds Kānaka Maoli have suffered for generations since the overthrow and subsequent settler colonial impositions,” said Noelani Ahia, a kia’i for iwi kupuna from Maui Komohana (Native Hawaiian burial protector from West Maui), and a plaintiff in the lawsuit. “Our iwi kupuna are the strongest connection we have left to our ancestors’ way of life. Laws were established to protect our fundamental right to care for iwi kupuna and ensure our connection is not broken. This attempt to sidestep these laws should be seen as another attempt at genocide.”

“Iwi possesses the mana (divine power) of one’s ancestors,” said Roslyn Manaiwakea, President of E Ola Kākou Hawai’i, a group established to protect Native Hawaiian burials, as well as natural and cultural resources. “Caring for iwi kupuna is an important responsibility handed down from generation to generation. Hawai’i’s laws respect that connection. The Governor cannot just break it.”

Green’s proclamation establishes a new position called the Lead Housing Officer to work with developers and state agencies to pave the way for new housing, infrastructure, and commercial construction in Hawai’i. Nani Medeiros, the current official appointed to this position, is not on any existing state board or commission, and therefore is not required to report conflicts of interest or disclose financial reports. The LHO is responsible for convening the new agency formed in the proclamation called the Build Beyond Barriers Working Group, which is comprised of 37 agencies, companies, and non-profits related to housing. The LHO also has the power to single-handedly authorize a wide range of development projects to “proceed under

the proclamation.” Neither the LHO nor the Working Group are required to comply with the state’s Sunshine Law.

“This proclamation rips apart our constitution to impose the tired demands of developers and real estate speculators, whose decades of profiteering off of our lands and waters is the true culprit behind our housing crisis,” said Wayne Tanaka, Executive Director of the Sierra Club of Hawai‘i, an outspoken critic of the proclamation. “Hawai‘i’s unique natural and cultural resources, our way of life, our democracy should not be thrown out the window to build more non-affordable housing. Look at all the empty new condos and vacation rentals across the islands, look at all of the barriers that working class families and disenfranchised individuals face in securing housing – there are dozens of things we can do to actually provide housing relief for those who truly need it. This corporate giveaway is not it.”

The illegal proclamation also suspends the Land Use Commission’s role in guiding large-scale land use changes. This state agency reviews developers’ requests to change the designation of land from agricultural or rural use to urban use with the goal of protecting farmland from urban sprawl.

Kū‘ike Kamakea-‘Ōhelo is a Native Hawaiian farmer, cultural practitioner, and an appointed member of the Land Use Commission. “I am on the Land Use Commission to ensure that development decisions are well-informed, culturally appropriate, and considerate of community planning processes,” Kamakea-‘Ōhelo said.

“Unilaterally suspending land use, environmental, cultural, and good governance laws, including the state Sunshine law, designed to protect the public’s interest and enable public participation and transparency is anti-democratic and an affront to our system of government,” said Scott Greenwood, Executive Director of the American Civil Liberties Union of Hawai‘i.

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