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## Warren County's Legacy for Healthy Parks, Schools and Communities: From the Cornfield to El Congreso and Beyond

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## ARTICLE

# WARREN COUNTY'S LEGACY FOR HEALTHY PARKS, SCHOOLS AND COMMUNITIES: FROM THE CORNFIELD TO EL CONGRESO AND BEYOND

*ROBERT GARCÍA\* & AUBREY WHITE\*\**

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## I. INTRODUCTION

The environmental justice movement begun in Warren County twenty-five years ago has traditionally stopped bad things like toxic dumps from happening in communities of color and low-income communities. A recent report by the United Church of Christ documents that people of color disproportionately still live near hazardous waste facilities.<sup>1</sup> Advocates and activists are nevertheless extending the environmental justice movement in important ways to affirmatively create public goods, including parks, schools, and transit to trails.<sup>2</sup>

A community struggle stopped warehouses in the last vast open space in downtown Los Angeles in favor of what is now the Los Angeles State Historic Park at the Cornfield, drawing on and extending the environmental justice movement and leading to other related movements. The Urban Park Movement is drawing national and international attention, buoyed by the victories in creating new great urban parks at the Cornfield, El Rio de Los Angeles State Park at Taylor Yard along the Los Angeles River, the two-square mile Baldwin Hills Park in the historic African-American heart of Los Angeles, and Ascot Hills Park in Latino East L.A. A Latino-led environmental movement is framing progressive and working-class issues with traditional environmental

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<sup>1</sup> ROBERT D. BULLARD ET AL., UNITED CHURCH OF CHRIST JUSTICE AND WITNESS MINISTRIES, TOXIC WASTES AND RACE AT TWENTY 1987-2007 xi, 58, 74, 154 (2007), available at <http://www.ucc.org/assets/pdfs/toxic20.pdf>.

<sup>2</sup> Robert García and The City Project have worked and published extensively on equal access to parks, school fields, rivers, beaches, forests, transportation, and related issues at the intersection of equal justice, democracy, and livability. See generally ROBERT GARCÍA & AUBREY WHITE, HEALTHY PARKS, SCHOOLS, AND COUNTIES: MAPPING GREEN ACCESS AND EQUITY FOR CALIFORNIA (2007), available at <http://www.cityprojectca.org>; ROBERT GARCÍA & AUBREY WHITE, THE CITY PROJECT, HEALTHY PARKS, SCHOOLS, AND COMMUNITIES: GREEN ACCESS AND EQUITY FOR THE LOS ANGELES REGION (2007), available at <http://www.cityprojectca.org>; Robert García & Erica Flores, *Anatomy of the Urban Park Movement: Equal Justice, Democracy and Livability in Los Angeles*, in THE QUEST FOR ENVIRONMENTAL JUSTICE: HUMAN RIGHTS AND THE POLITICS OF POLLUTION 145 (Robert Bullard ed., 2005); Robert García et al., *We Shall Be Moved: Community Activism As a Tool for Reversing the Rollback*, in AWAKENING FROM THE DREAM: PURSUING CIVIL RIGHTS IN A CONSERVATIVE ERA 329 (Denise C. Morgan et al. eds., 2005); Robert García & Thomas A. Rubin, *Crossroad Blues: The MTA Consent Decree and Just Transportation*, in RUNNING ON EMPTY: TRANSPORT, SOCIAL EXCLUSION, AND ENVIRONMENTAL JUSTICE 221 (Karen Lucas ed., 2004); Robert García & Erica Flores Baltodano, *Free the Beach! Public Access Equal Justice, and the California Coast*, 2 STAN. J. CIV. RTS. & CIV. LIBERTIES 142 (2005); Robert García & Erica Flores Baltodano, *Healthy Children, Healthy Communities, and Legal Services*, published in a special issue on Environmental Justice for Children in the Journal of Poverty Law and Policy by the National Center on Poverty Law and the Clearinghouse Review (May-June 2005), <http://www.clipi.org/blog/wp-content/EJComplete.pdf>; Robert García, Erica S. Flores, & Sophia Mei-ling Chang, *Healthy Children, Healthy Communities: Schools, Parks, Recreation, and Sustainable Regional Planning*, 31 FORDHAM URB. L.J. 1267 (2004) (Symposium on Urban Equity).

concerns in a seamless narrative, as is a growing urban environmental movement. Traditional environmentalists are sitting up and listening now that people of color are responsible for passing multi-billion-dollar resource bonds for parks, clean water, and clean air, and using those funds to create parks in their neighborhoods. The struggle for the Cornfield led to the Latino Environmental Summit in November 2005 and the National Latino Congreso in 2006. The Congreso, the largest gathering of Latino leaders in over a generation, included a day-long session on Latinos and the Environment.

Much of Los Angeles is park-poor, and there are unfair park, school, and health disparities based on race, ethnicity, income, poverty, youth, and access to cars. Children of color disproportionately live in communities of concentrated poverty, without enough places to play in parks and schools, and with no cars or an adequate transit system to reach parks and school fields in other neighborhoods. The human-health implications of the lack of physical activity are profound. These children disproportionately suffer from obesity, diabetes, and other diseases related to inactivity. This is the first generation in the history of this country in which children will have a lower life expectancy than their parents, if present trends continue.

Los Angeles is facing a historic confluence of opportunities to address these concerns. Voters in November 2006 approved \$40 billion statewide in park and clean water, flood control, housing, and transportation bonds that can fund places for physical activity in parks and schools. Mayor Antonio Villaraigosa has vowed to make Los Angeles the greenest big city in America.<sup>3</sup> City Controller Laura Chick has published an audit and blueprint for reform of parks and recreation in Los Angeles.<sup>4</sup> The Los Angeles Unified School District is investing over \$20 billion to construct new public schools and modernize existing ones. Over 80 new parks are proposed along the Los Angeles River.<sup>5</sup>

Parks and other natural public places are not a luxury. Parks are a democratic commons that bring diverse people together as equals, in a space where they can encounter each other in an open and inviting atmosphere. Parks are important in themselves. They are also an important organizing tool to bring people together to create the kind of

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<sup>3</sup> Janet Stobart, *Mayor Touts "Green" L.A. in Britain*, L.A. TIMES, Sept. 28, 2006, at B4.

<sup>4</sup> LAURA CHICK, PERFORMANCE AUDIT OF RECREATION AND COMMUNITY SERVICES IN THE DEPARTMENT OF RECREATION AND PARKS (2006), available at [http://www.lacity.org/ctr/audits/ctraudits18034636\\_01052006.pdf](http://www.lacity.org/ctr/audits/ctraudits18034636_01052006.pdf).

<sup>5</sup> L.A., DEP'T OF PUB. WORKS, BUREAU OF ENG'G, LOS ANGELES RIVER REVITALIZATION MASTER PLAN (Apr. 2007).

community where they want to live and raise children.<sup>6</sup>

Unfair disparities in safe places to play go well beyond Los Angeles. While 87% of non-Hispanic respondents reported that “there are safe places for children to play” in their neighborhoods, only 68% of Hispanics, 71% of African Americans, and 81% of Asians agreed, according to the Census Bureau survey “A Child’s Day.”<sup>7</sup> Almost half (48%) of Hispanic children under eighteen in central cities were kept inside as much as possible, because their neighborhoods were perceived as dangerous.<sup>8</sup> The same was true for more than 39% of black children, 25% of non-Hispanic white children, and 24% of Asian children.<sup>9</sup> Non-Hispanic white children and youth were most likely to participate in sports, with Hispanic children and children in poverty least likely.<sup>10</sup> Children involved in sports and extracurricular activities tend to score

<sup>6</sup> SETHA LOW, DANA TAPLIN & SUZANNE SCHELD, *RETHINKING URBAN PARKS: PUBLIC SPACE AND CULTURAL DIVERSITY* 210 (2005).

<sup>7</sup> JANE LAWLER DYE & TALLESE JOHNSON, U.S. CENSUS BUREAU, *A CHILD’S DAY 2003: SELECTED INDICATORS OF CHILD WELL-BEING* Table D29 (Jan. 2007) (“A CHILD’S DAY”), available at <http://www.census.gov/population/www/socdemo/wellbeing.html> (follow “Detailed Tables: 2003” hyperlink).

<sup>8</sup> *Id.*

<sup>9</sup> Thirty-three percent of Hispanic children in suburban areas were kept inside because of perceived dangers, followed by 25% of blacks and 15% of non-Hispanic whites. The number of Asian respondents in metropolitan areas outside central cities was not statistically significant. *A CHILD’S DAY*, *supra* note 7, at 19-20, available at <http://www.census.gov/population/www/socdemo/wellbeing.html> (follow “Report” hyperlink under “Children’s Well-Being, 1. SIPP, 2001 Panel (Data collected in 2003)”).

	Safe Place to Play	Kept Inside/Cities Under 18	Kept Inside/Suburbs Under 18
Non-Hispanic White	87%	25%	15%
Hispanic	68%	48%	33%
African American	71%	39%	25%
Asian	81%	24%	N/A

<sup>10</sup> Non-Hispanic white children were most likely to participate in sports – 45% of both 6-to-11- and 12-to-17-year-old children, compared to 26% and 42% of Asians; 24% and 35% of blacks; and 21% and 35% of Hispanics. Only 26% of 6-to-17-year-old children in poverty participated in after-school sports, compared with 46% living at twice the federal poverty level or higher. *Id.* at 13-14.

	Sports ages 6-11	Sports ages 12-17
Non-Hispanic White	45%	45%
Hispanic	21%	35%
African American	24%	35%
Asian	26%	42%
Poverty	26%	26%
2X poverty level	46%	46%

higher on standardized tests and are less likely to engage in antisocial behavior.<sup>11</sup>

The struggle to maximize public access to public lands while ensuring the fair treatment of people of all colors, cultures, and incomes can transform the Los Angeles region into a more livable, democratic, and just community, and it provides a replicable advocacy model for community redevelopment. The values at stake include providing children the simple joys of playing in parks and schools, human health, youth development and academic performance, equal justice and democracy, environmental values, economic vitality, spiritual values in protecting people and the earth, and sustainable regional planning.

The struggle for the Cornfield led to the formation of the Alianza de los Pueblos del Rio. The Alianza is working to ensure that the Los Angeles River Revitalization Master Plan promotes democratic participation and equitable results in greening the River with healthy parks, schools, and communities. The Alianza seeks economic, environmental, equitable, and healthy development for all communities for generations to come. The Alianza formed when its leaders decided that the development of the River was a symbolic and literal convergence of a myriad of issues confronting L.A.'s Latino population and other communities of color and low-income communities. To be left out of the discussion was to be left high and dry as the river shifts directions into the future. The Alianza agenda is growing into a comprehensive new platform of urban and Latino environmentalism, or the "browning of the green movement."<sup>12</sup> Part legal strategy, part organizing principle, this "urban greening *con salsa* movement" has put people—immigrants and poor people, mostly (and many Latinos)—at the center of an issue that traditionally had focused on flora and fauna.<sup>13</sup>

This Article traces the impact of the struggle for the Cornfield on the creation of other great urban parks, resource bonds, the greening of the Los Angeles River, and evolving efforts to achieve equity in the distribution of public resources. Part II presents a vision for a comprehensive and coherent web of public spaces, including parks, school fields, rivers, beaches, mountains, and forests, that will enhance

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<sup>11</sup> *Id.* at 13 (citing Joseph Mahoney, *School Extracurricular Activity Participation as a Moderator in the Development of Antisocial Patterns*, 71 CHILD DEV. 502-16 (2000) and Nat'l Inst. of Child Health & Human Dev. Early Child Care & Youth Dev. Research Network, *Are Child Developmental Outcomes Related to Before- and After-School Care Arrangements? Results from the NICHD Study of Early Child Care*, 75 CHILD DEV. 284-95 (2004)).

<sup>12</sup> Evan George, *Browning the Green Movement*, L.A. ALTERNATIVE, Sept. 15, 2006, available at <http://www.cityprojectca.org> and <http://www.laalternative.com/index.php/2006/09/15/browning-the-green-movement>.

<sup>13</sup> *Id.*

human health and economic vitality for all the people of the Southern California region, with lessons for regions across the country. Part III describes lessons learned from raising funds for parks through resource bonds. Part IV describes great urban park victories in Los Angeles and struggles to keep public lands public for all in beaches, mountains, and forests. Part V presents original demographic research and analyses of park, school, and health disparities and related equal access issues. Part VII explores the history and pattern of discriminatory land use, housing patterns, and access to parks, beaches, and forests. Part VIII presents policy and legal justifications for equal access to public lands. Part IX presents principles and recommendations for equitable infrastructure investments in natural public places.

Early in the environmental justice movement, courts did not provide an adequate forum for achieving social change. Community organizing was a necessary complement to litigation. The same is true today, as demonstrated by the urban park and public land victories described below. Early in the environmental justice movement, there was little or no information about the impact of environmental policies and practices on communities of color and low-income communities. This is true today. That is one of the reasons for compiling the demographic analyses discussed below, to create a body of research to support advocacy efforts.

## II. A COLLECTIVE VISION

People are greening Los Angeles, driven by a collective vision for a comprehensive and coherent web of parks, schools, rivers, beaches, mountains, forests, and transit to trails that promotes human health, a better environment, and economic vitality for all, and reflects the cultural diversity of Los Angeles.

This vision is inspired in part by the Olmsted Report of 1930. The firm started by the sons of Frederick Law Olmsted—the man who designed Central Park in New York City, and is often credited with inventing the field of landscape architecture, and who was passionately committed to equal justice through the abolition of slavery—proposed a vision for a green, prosperous, and culturally rich Los Angeles that has yet to be realized. According to the Olmsted Report in words that remain true today:

Continued prosperity will depend on providing needed parks, because, with the growth of a great metropolis here, the absence of parks will make living conditions less and less attractive, less and less

wholesome. . . . In so far, therefore, as the people fail to show the understanding, courage, and organizing ability necessary at this crisis, the growth of the Region will tend to strangle itself.<sup>14</sup>

The City Project has published a digital edition of the Olmsted plan to inspire and guide reform.<sup>15</sup> The Olmsted Report proposed the shared use of parks and schools to make optimal use of land and public resources. The Report recommended the greening of the Los Angeles and San Gabriel Rivers,<sup>16</sup> doubling public beaches, and integrating forests and mountains within the park system.<sup>17</sup> The Report advocated multiuse projects for park and flood control purposes.<sup>18</sup> The Report envisioned a transportation system for people to reach parks, school fields, rivers, beaches, mountains, and forests.<sup>19</sup> The Report recommended creating a regional park authority with power to raise funds to acquire and develop parks and other natural places.<sup>20</sup>

Implementing the Olmsted vision would have made Los Angeles one of the most beautiful and livable regions in the world. Powerful private interests and civic leaders demonstrated a tragic lack of vision and judgment when they killed the Olmsted Report. Politics, bureaucracy, and greed overwhelmed the Report in a triumph of private power over public space and social democracy.<sup>21</sup> A diverse alliance of civil-rights, community, environmental, civic, and political leaders is coming together to restore the lost beauty of Los Angeles and a part of the Olmsted vision.

### III. PARK BONDS: DIVERSIFYING SUPPORT FOR PARKS AND RECREATION

Park and resource bonds illustrate how people of color and low-income people can make a difference in securing funds for parks, clean

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<sup>14</sup> OLMSTED BROTHERS & BARTHOLOMEW & ASSOCS., PARKS, PLAYGROUNDS AND BEACHES FOR THE LOS ANGELES REGION I (1930), *reprinted in* GREG HISE & WILLIAM DEVERELL, EDEN BY DESIGN (2000). The City Project's digital edition of the Olmsted vision is available at <http://www.clipi.org/images/g-olmstedlarge.jpg>.

<sup>15</sup> The plan is available at <http://www.cityprojectca.org>.

<sup>16</sup> *See, e.g.*, Olmsted Report, *supra* note 14, at 129.

<sup>17</sup> The Report recognized the need to incorporate the Angeles National Forest, the San Gabriel and San Bernardino Mountains, and other outlying areas, including Catalina Island, to serve the recreation and open-space needs of Los Angeles County. *Id.* at 85-88, 92-93.

<sup>18</sup> *Id.* at 14-16.

<sup>19</sup> *Id.* at 13-14, 35-43.

<sup>20</sup> *Id.* at 16.

<sup>21</sup> *See* HISE & DEVERELL, *supra* note 14, at 7-56; Mike Davis, *How Eden Lost Its Garden*, in ECOLOGY OF FEAR 59-91 (1998).



water, and clean air, and the need to ensure that the benefits and burdens of these infrastructure investments are distributed fairly.

In 2002, California voters passed Proposition 40, until then the largest resource bond in United States history, which provided \$2.6 billion for parks, clean water and clean air. Prop 40 passed with the support of 77% of Black voters, 74% of Latino voters, 60% of Asian voters, and 56% of non-Hispanic white voters. 75% of voters with an annual family income below \$20,000, and 61% with a high school diploma or less, supported Prop 40 – the highest among any income or education levels.<sup>22</sup> Prop 40 demolished the myth that a healthy environment is a luxury that communities of color and low-income communities cannot afford or are not willing to pay for. The diverse support for Prop 40 was no accident.

In November 2006, California's Proposition 84, a \$5.4 billion park and water bond, was successful because of massive Latino support. Latino voters provided 85% support for Prop 84, or a margin of 770,000 votes. Prop 84 lost the non-Latino vote by 48% to 52%.<sup>23</sup>

There are important lessons to be learned from park and resource bonds. Prop 84 demonstrates that communities of color can propel properly framed environmental initiatives to success even when the white vote is opposed. An equally important lesson is that advocates and activists must ensure that the benefits and burdens of park bonds and other public-works investments are distributed fairly. A 2002 study of a local park bond found that the way the funding was distributed exacerbated rather than alleviated unfair disparities in access to parks and recreation in Los Angeles.<sup>24</sup>

Despite their support for environmental public good, communities of color and low-income communities are disproportionately denied environmental benefits such as access to parks and recreation. Surveys in California and Los Angeles County echo the disparities reported in the national survey discussed above.

Most California residents believe there are environmental inequities between more and less-affluent communities, according to a survey by the Public Policy Institute of California. Sixty-four percent of Californians say that poorer communities have less than their fair share of well-maintained parks and recreational facilities. Latinos are far more

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<sup>22</sup> *How Propositions 40 and 45 Fared Among Voters*, L.A. TIMES, Mar. 7, 2002.

<sup>23</sup> Exit poll and turnout study by the William C. Velazquez Institute (WCVI), [http://www.wcvi.org/press\\_room/press\\_releases/2006/exitpoll\\_caProp842006.htm](http://www.wcvi.org/press_room/press_releases/2006/exitpoll_caProp842006.htm) (last visited Aug. 1, 2007).

<sup>24</sup> JENNIFER WOLCH, JOHN P. WILSON & JED FEHRENBACH, *PARKS AND PARK FUNDING IN LOS ANGELES: AN EQUITY-MAPPING ANALYSIS 3* (2002).

likely than non-Hispanic whites (72% to 60%) to say that poorer communities do not receive their fair share of parks and recreational facilities. A majority of residents (58%) agree that compared to wealthier neighborhoods, lower-income and minority neighborhoods have more than their fair share of toxic waste and polluting facilities.<sup>25</sup>

According to the 2006 *Children's ScoreCard* for Los Angeles County, residents in all parts of the county cited the importance of parks and recreation in helping their children grow and thrive.<sup>26</sup> Only 73% and 72% of parents in Central and South Los Angeles reported easy access to safe places to play, compared with 83% and higher in other parts of the county.<sup>27</sup>

The recent national study *Toxics Waste and Race at Twenty 1987-2007* documents that California has the nation's highest concentration of people of color living near hazardous waste facilities. Statewide, 81% are people of color.<sup>28</sup> Greater Los Angeles is the worst in the nation, with 1.2 million people living less than two miles from 17 hazardous waste facilities. Ninety-one percent, or 1.1 million, are people of color.<sup>29</sup> The study, conducted by researchers at four universities for the United Church of Christ, examined census data for neighborhoods adjacent to 413 facilities nationwide that process or store hazardous chemical waste produced by refineries, metal-plating shops, drycleaners, and battery recyclers, among others. Although about one third of United States residents are nonwhite, more than half of the people living near such facilities were Latino, African American or Asian American, according to the report.<sup>30</sup> The report follows up on the 1987 study *Toxic Waste and Race in the United States*, which is widely considered to have resulted in the growth of the environmental justice movement by linking race and income to elevated levels of environmental and industrial risk.

#### IV. GREAT URBAN PARK VICTORIES

Advocates and activists have created four great urban parks in Los Angeles and are fighting to keep public lands public for all. The

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<sup>25</sup> MARK BALDASARE, PUBLIC POLICY INSTITUTE OF CALIFORNIA STATEWIDE SURVEY: SPECIAL SURVEY ON CALIFORNIANS AND THE ENVIRONMENT vi (June 2002).

<sup>26</sup> L.A. COUNTY CHILDREN'S PLANNING COUNCIL, 2006 CHILDREN'S SCORECARD 19 (2006), available at <http://www.childrensplanningcouncil.org> (citing the L.A. COUNTY CHILDREN'S PLANNING COUNCIL, LOS ANGELES COUNTY CHIEF ADMINISTRATIVE OFFICE AND INTER-AGENCY OPERATIONS GROUP, LOS ANGELES COUNTY FORUM FINDINGS (Aug. 2005)).

<sup>27</sup> *Id.* at 20.

<sup>28</sup> Bullard, *supra* note 1, at xi, 58, 74, 154.

<sup>29</sup> *Id.* at 61, 62, 154.

<sup>30</sup> *Id.* at x, 52, 152.

Chinatown Yard Alliance helped stop a proposal for warehouses by the City of Los Angeles and wealthy developers in favor of the thirty-two-acre Los Angeles State Historic Park in the heart of Los Angeles. The *Los Angeles Times* called the victory “a heroic monument” and “a symbol of hope.”<sup>31</sup> “Nothing like this has ever happened in Chinatown before,” the late Chinatown activist Chi Mui said. “We’ve never had such a victory. And now, every time people walk with their children down to that park, they’ll see that great things can happen when folks come together and speak up. We can renew our community one dream at a time.”<sup>32</sup>

Advocates and activists helped stop a commercial development in favor of the forty-acre Río de Los Angeles State Park at Taylor Yard along the Los Angeles River in Northeast L.A. State park officials initially opposed active recreation there, but relented in favor of a balanced park in light of community needs. “I am all for preserving rocks and trees and those things, but to me, it seems more important to help the children first,” said Raul Macias, a businessman and founder of the Anahuak Youth Association.<sup>33</sup> The balanced park will provide active recreation, with soccer fields, courts, a running track, and a bike path, as well as passive recreation, natural parkland, and picnic areas.

A community alliance helped save the Baldwin Hills Park, a two-square-mile park in the historic heart of African-American Los Angeles that is the largest urban park designed in the U.S. in over a century. The community stopped a power plant there in 2001, stopped a garbage dump in 2003, and saved the Baldwin Hills Conservancy and its budget in 2005 after a governor’s commission threatened to eliminate both. “People sometimes think they can do things like this, believing that this community won’t have people to speak up for them, but they’re wrong,” Robert García told the *Los Angeles Times*. “This is a human rights issue and fundamentally an issue of equal justice.”<sup>34</sup>

The community celebrated the groundbreaking of the next great urban park at Ascot Hills in East L.A. in November 2005. The largest green space in East L.A. until then was Evergreen Cemetery, which sent

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<sup>31</sup> James Ricci, *A Park with No Name (Yet), but Plenty of History*, L.A. TIMES MAGAZINE, July 15, 2001; Jesus Sanchez, *L.A.’s Cornfield Row: How Activists Prevailed*, L.A. TIMES, Apr. 20, 2001, at A1.

<sup>32</sup> Chi Mui, *Civil Rights Hero*, <http://www.cityprojectca.org/blog/archives/276> (last visited July 8, 2007).

<sup>33</sup> Miguel Bustillo, *State, Youth Sports Advocates Clash Over Best Use of Parks*, L.A. TIMES, Dec. 22, 2002, at 1.

<sup>34</sup> Lisa Richardson, *Fighting This Conservancy Won’t Be a Walk in the Park*, L.A. TIMES, Oct. 22, 2004, at B1.

a message to children that if they wanted open space, they had to die first. The 140-acre park will provide passive recreation and green space in one of the most park-poor areas in the City.<sup>35</sup>

The Heritage Parkscape will link the Los Angeles River, the Los Angeles State Historic Park at the Cornfield, El Río de Los Angeles State Park at Taylor Yard, and El Pueblo Historic District, along with many other rich cultural, historical, recreational, educational, and environmental resources in the heart of Los Angeles. "They should not be treated as isolated, separate parks but as one continuous parkway system," Robert García told the Daily Breeze. "This is a wonderful opportunity. Los Angeles is hungry for its history."<sup>36</sup> The Heritage Parkscape is inspired in part by the Olmsted plan, by the Cornfield Advisory Committee Report calling for linked parks and resources, and by plans for a continuous greenway along the Los Angeles River.<sup>37</sup>

It is necessary not only to create public parks, but to keep public lands public for all. Developers and wealthy property owners sought to block access to public trails in the Santa Monica Mountains, one of the most precious natural resources in Southern California. "This is part of an overall trend by which wealthy enclaves think they can simply take over public parks, public beaches, public trails," Robert García told the Los Angeles Times. "We're not going to allow it."<sup>38</sup> Litigation settled in 2006 keeps the roads and trails open for all.<sup>39</sup>

A wealthy gated enclave is seeking to cut off public access to trails that have been public for thousands of years in historic Millard Canyon, which begins in the Angeles National Forest and ends at the Arroyo Seco in Altadena, with stream water flowing to the Los Angeles River. Property owners have posted "No Trespassing" signs and harass hikers and equestrians.<sup>40</sup> The county approved development of the gated enclave on the condition that the trails remain public. A Pasadena Star

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<sup>35</sup> Miguel Bustillo, *Former Foes Unite Behind a Proposal to Turn Old Reservoir Site into Park*, L.A. TIMES, Jan. 15, 2004, at B3.

<sup>36</sup> Gordon Smith, *Refurbishing L.A.'s Soul*, DAILY BREEZE, Dec. 6, 2006, at A1.

<sup>37</sup> ROBERT GARCÍA, ERICA FLORES & JULIE EHRLICH, POLICY REPORT, THE CORNFIELD AND THE FLOW OF HISTORY (2004), available at <http://www.cityprojectca.org/publications/index.html>; CORNFIELD STATE PARK ADVISORY COMM., RECOMMENDATIONS REPORT: A UNIFIED VISION FOR CORNFIELD STATE PARK, APPENDIX I: CULTURAL, HISTORICAL, AND RECREATIONAL LINKS (2003), available at <http://www.parks.ca.gov/pages/21299/files/recommendationsreport.pdf>.

<sup>38</sup> Jessica Garrison, *Hikers, Homeowners Are at Odds Over Trails*, L.A. TIMES, May 10, 2006, at B2.

<sup>39</sup> Jessica Garrison, *Developers and Hikers Settle Access Dispute*, L.A. TIMES, July 26, 2006, at B6.

<sup>40</sup> Louis Sahagun, *Canyon Neighborhoods Gird for Another Legal Battle*, L.A. TIMES, B1, Jan. 18, 2005.

News editorial has urged the property owners to “live up to the original agreement” and keep public access open to the trails: “The situation is akin to those who live on the beach, public property, who want to fence it off from that very public owner. That’s just not right.”<sup>41</sup> Pending litigation seeks to keep the trails open and to preserve the rich historical and cultural legacy of Millard Canyon and the beauty of the site for everyone, whether or not one can afford to live in a secluded gated enclave.

Beachfront property owners up and down the California coast—from Newport Beach to Malibu to Hollister Ranch to Santa Barbara to tiny Trinidad in Northern California—are trying to cut off public access to public beaches and privatize public places.<sup>42</sup> Malibu residents have been particularly aggressive in restricting access to the beaches alongside multimillion dollar mansions. In June 2005, private property owners on Broad Beach in Malibu took the utterly astonishing step of bulldozing away the public beach.<sup>43</sup> The beach bulldozing reduced public access, caused significant environmental and habitat destruction, and destroyed the beauty of the beach.<sup>44</sup> The California Attorney General filed suit against the Trancas Property Owners Association, which represents property owners along Broad Beach, for violation of the Coastal Act, interference with legal public access to the beach, and conversion (theft) of beach minerals.<sup>45</sup>

Private property owners for years posted phony “private beach/no trespassing” signs on Malibu beaches that deterred innocent beachgoers, and harassed beachgoers with security thugs on illegal all-terrain vehicles and calls to the county sheriff.<sup>46</sup> The California Coastal Commission in August 2005 ordered an end to the phony signs and illegal vehicles.<sup>47</sup> Media mogul David Geffen, joined by the City of

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<sup>41</sup> Editorial, *Settle La Vina Access Issue*, PASADENA STAR NEWS, Nov. 21, 2005; see Louis Sahagun, *Canyon Neighbors Gird for Another Legal Battle*, L.A. TIMES, Jan. 18, 2005, at B1.

<sup>42</sup> See generally Robert García & Erica Flores Baltodano, *Free the Beach! Public Access Equal Justice, and the California Coast*, *supra* note 3.

<sup>43</sup> The beach bulldozing drew international attention. See generally Kenneth R. Weiss & Amanda Covarrubias, *Battle over Broad Beach Takes New Turn, With Earthmoving Equipment*, L.A. TIMES, June 9, 2005, at B3; Jamie Wilson, *Bulldozer Tactics by Malibu’s Super-Rich*, THE GUARDIAN, June 10, 2005, at 17.

<sup>44</sup> *Id.*

<sup>45</sup> Cal. Coastal Comm’n v. Trancas Prop. Owners Ass’n, No. SC 086150 (Cal. Super. Ct., L.A. County, filed July 6, 2005) (as of August 3, 2007, after two settlement conferences and two mandatory mediations, a settlement was reached — the details of which are still being worked out).

<sup>46</sup> Sara Lin, *Public’s Use of Beach Is Affirmed: Malibu homeowners group must forgo signs and security guards, coastal panel says*, L.A. TIMES, Aug. 15, 2005, at B1.

<sup>47</sup> See Letter from Robert García, et al., to California Coastal Commission (Aug. 8, 2005) (on file with The City Project); Sara Lin, *supra* note 46, at B1.

Malibu, filed suit to cut off public access to the public beach. His suit was dismissed six times before he finally gave up and opened a nine-foot-wide path from the highway to the beach alongside his beachfront mansion.<sup>48</sup> Not content to cut off public access to the beach, Malibu residents have also tried to cut off public access to public parks and trails in the Santa Monica Mountains along the coast.<sup>49</sup>

A property owner in Malibu's Lechuza Beach recently complained to a state official that she opposes inner-city youth coming to Lechuza Beach, after a hearing on improving public access there at which a nonprofit representative spoke eloquently about teaching children of color life skills through outdoor activities.<sup>50</sup>

Today, the overwhelmingly white and wealthy enclave of Malibu is 89% non-Hispanic white. Nearly 25% of Malibu households have an annual income over \$200,000. The median household annual income is \$102,031. In contrast, Los Angeles County is only 31% non-Hispanic white. Only 4% of households have an annual income of \$200,000 or more.<sup>51</sup> The median household income is \$42,189.

## V. PARK, SCHOOLS, AND HEALTH DISPARITIES

In contrast to the positive vision for a regional web of natural public places discussed above, this Part presents the reality of unfair disparities in parks, school, and health.

### A. PARKS, SCHOOLS, AND OBESITY

*Children of Color.* Children of color living in poverty with no access to cars suffer from the worst access to parks, school fields, beaches, forests, and other natural public places, and suffer from the highest levels of child obesity. These children and their families and friends do not have access to cars or a decent transit system to take them to parks, schools, and other natural public places. Disproportionately white and wealthy people with fewer children than the county average enjoy the best access to parks, school fields, beaches, trails, mountains, forests, and transportation. In a cruel irony, the people who need the

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<sup>48</sup> The City of Malibu dropped out of the suit before Geffen. Kenneth R. Weiss, *Mogul Yields Beach Access to Public*, L.A. TIMES, Apr. 15, 2005; Kenneth R. Weiss, *Geffen to Reimburse \$300,000*, L.A. TIMES, Apr. 16, 2005.

<sup>49</sup> Daryl Kelley, *Visitors to Park Are Told Not to Take a Hike*, L.A. TIMES, Aug. 19, 2005 at B1.

<sup>50</sup> Telephone conversation with agency official, June 16, 2005.

<sup>51</sup> U.S. Census 2000, available at <http://www.factfinder.census.gov>, and compiled by Greeninfo Network for The City Project.

most have the least, while those who need less have the most.

The communities with the worst access to parks lie in Central and South Los Angeles, which have the lowest income levels and the highest concentrations of people of color. Fully 93% of households with children in Central Los Angeles and 85% in South Los Angeles fall below 300% of the federal poverty level.<sup>52</sup> The annual income needed for a family of four to provide for its basic needs was slightly more than \$63,000 in 2005, more than three times the federal poverty level.<sup>53</sup> Income disparities are most notable for Latino families, with 89% below three times the federal poverty level, compared with 34% for non-Hispanic white families.<sup>54</sup>

*Acres of Parks per Thousand Residents.* There are unfair disparities in access to parks and recreation measured by acres of parks per thousand residents in every political subdivision.<sup>55</sup> Thus, for example, State Assembly District 10 (Nuñez) in Central Los Angeles has only .51 net acres of urban parks per thousand residents, compared with 282.79 net acres in District 37 (Strickland) in the north part of the county.<sup>56</sup> District 37 has as an astonishing 555 times more net acres of urban parks than District 10. The disparities are even more dramatic if total acres of parks, including forests and other large natural public places, are included.<sup>57</sup> For example, there are .51 acres of total parks per thousand residents in District 10, and over 3,348 acres in District 27 – 6,566 times more total acres of park space.<sup>58</sup> Districts 37 and 27 in the North County are disproportionately white and wealthy, compared to inner-city District 10.<sup>59</sup>

*Child Obesity.* The levels of child obesity are intolerably high even for children in the best neighborhoods—ranging from 23% to 40%—but children of color suffer first and worst. Children of color disproportionately live in the areas with the highest levels of child obesity and the worst access to parks and school fields.<sup>60</sup>

The health implications of the lack of places to play in parks and schools are profound. In California, 73% of fifth, seventh, and ninth

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<sup>52</sup> See 2006 CHILDREN'S SCORECARD, *supra* note 26, at 8.

<sup>53</sup> *Id.* at 8.

<sup>54</sup> *Id.* at 8.

<sup>55</sup> See HEALTHY PARKS, SCHOOLS, AND COMMUNITIES, *supra* note 2, Maps, Charts, and Graphs 401-903.

<sup>56</sup> *Id.* at 401, 402; Chart 401C, and Graph 401N.

<sup>57</sup> *Id.*

<sup>58</sup> *Id.*

<sup>59</sup> *Id.*

<sup>60</sup> *Id.* at Map 403.

graders did not achieve minimum physical fitness standards in 2004. In the Los Angeles Unified School District (LAUSD), 87% of students were not physically fit.<sup>61</sup> At South Gate High School, 1,600 children took the state Fitnessgram test and not one passed. Forty schools did not have a single physically fit student. Less than 10% of students were physically fit in nearly one-third of the 605 schools in LAUSD. Only eight schools had student populations that are more than 50% physically fit.<sup>62</sup>

In 2006, 51% of school districts in California, including LAUSD, did not enforce statutory physical education requirements.<sup>63</sup>

*Shared Use of Parks and Schools.* The shared use of parks and schools can alleviate the lack of places to play and recreate, while making optimal use of scarce land and public resources. Unfortunately, only 103 out of 605 LAUSD schools have five acres or more of playing fields, and those tend to be located in areas that are disproportionately white and wealthy and have greater access to parks.<sup>64</sup> LAUSD provides 71% more play acres for non-Hispanic white students than for Latino students in elementary schools.<sup>65</sup> There were only 30 joint-use agreements between LAUSD and the Los Angeles Recreation and Parks Department as of April 2006.<sup>66</sup> The Olmsted Report and the Controller's audit of recreation and parks both call for the shared use of parks and schools.

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<sup>61</sup> Cal. Dep't. of Educ. Website, <http://www.cde.ca.gov/ta/tg/pf/index.asp> (last visited Aug. 2, 2007); Cara Mia DiMassa, *Here's the Skinny: Most Students Aren't*, L.A. TIMES, Nov. 25, 2004.

<sup>62</sup> Thomas Rubin, Study on Environmental Justice and Children (on file with The City Project).

<sup>63</sup> CAL. CTR. FOR PUB. HEALTHY ADVOCACY, DROPPING THE BALL: DISTRICT COMPLIANCE SUMMARY IN CALIFORNIA ELEMENTARY SCHOOLS P.E. REQUIREMENTS 2004/05 AND 2005/06 (2006).

<sup>64</sup> HEALTHY PARKS, SCHOOLS, AND COMMUNITIES, *supra* note 2, Map 901. Obtaining information about which schools have five acres or more of field space is difficult. It took years for LAUSD to produce the information to The City Project, and LAUSD does not guarantee its accuracy. USC students researching other school districts in Los Angeles County (there are eighty) were not readily able to obtain such information from the districts, and were forced to locate and measure school fields using web satellite images and field checks. They found that school districts with five acres or more of school fields are in disproportionately white and wealthy areas, except for Compton, but those schoolyards were generally in worse condition and had less green space. AMELIA CANRIGHT, TYLER CLAXTON, YUKAI HONG, & CHRISTINA JACKSON, DISPARITY IN RECREATIONAL SPACE THROUGHOUT SCHOOL DISTRICTS OF LOS ANGELES COUNTY (Apr. 11, 2006) (unpublished research paper, USC) (on file with The City Project).

<sup>65</sup> Michael Strumwasser, Attorney for LAUSD, Testimony and Presentation Before the LAUSD School Construction Bond Citizens' Oversight Committee (Nov. 17, 2004).

<sup>66</sup> JULIET HOWLAND, FRANCINE YOUNG, JON ERDTSIECK, & BUNNY TUCKER, ACCESS TO RECREATIONAL SPACE: JOINT USE AGREEMENTS IN THE LOS ANGELES UNIFIED SCHOOL DISTRICT (Apr. 11, 2006) (unpublished research paper, USC) (on file with The City Project).



## B. RIVER REVITALIZATION

The Los Angeles River stretches fifty-two miles and crosses thirteen cities, flowing through diverse communities from Canoga Park in the San Fernando Valley, through downtown Los Angeles, to the ocean in Long Beach. The City of Los Angeles has launched the Los Angeles River Revitalization Master Plan process to influence the greening of the river for the next twenty to forty years, focusing on the thirty-two miles of the river that flow through the City.<sup>67</sup> Children of color living in poverty without access to cars, and with the worst access to parks and to school fields of five acres or more, tend to live along the twenty miles of the river that lie within the county, but not within the city.<sup>68</sup> The county, city, and other municipalities and agencies need to work together on a regional solution to ensure equitable distribution of the benefits and burdens of revitalizing the River. Planning for the full length of the Los Angeles River, the San Gabriel River, and the Integrated Regional Water Management Program for Greater Los Angeles County (IRWMP) should be coordinated to achieve compliance with clean-water and civil-rights laws and social-justice concerns.<sup>69</sup> The Olmsted Report also called for the greening of the Los Angeles and San Gabriel Rivers and multiuse projects for parks, schools, and flood control.

Clean-water compliance and flood control should be combined with healthy parks, schools, and communities through multipurpose projects. Green spaces in parks and schools can help clean water through natural filtration, which can mitigate polluted storm-water runoff to the rivers and the ocean. Flood-control basins can provide green space for parks and playing fields, as the Sepulveda flood-control basin and recreation area along the Los Angeles River does now. Recent statewide resource bonds provide funding for clean-water and flood-control projects that can also be used as parks and school fields.

Latino support for community revitalization along the Los Angeles River is growing and strong, based on recent polling and anecdotal

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<sup>67</sup> CITY OF LOS ANGELES, DEPARTMENT OF PUBLIC WORKS, BUREAU OF ENGINEERING. LOS ANGELES RIVER REVITALIZATION MASTER PLAN (draft 2007); HEALTHY PARKS, SCHOOLS, AND COMMUNITIES, *supra* note 2, Maps 1001 and Chart 1001C.

<sup>68</sup> See HEALTHY PARKS, SCHOOLS, AND COMMUNITIES, *supra* note 2, Maps 1002-1010.

<sup>69</sup> State and federal clean-water laws CEQA and NEPA provide the framework for environmental restoration, revitalization and development along the Los Angeles and San Gabriel Rivers. See, e.g., Federal Water Pollution Control Act, 33 U.S.C.A. § 1313(a) *et seq.* (Westlaw 2007); Porter-Cologne Act, Cal. Water Code § 13000 *et seq.* (Westlaw 2007); National Environmental Policy Act, 42 U.S.C.A. § 4321 (Westlaw 2007); California Environmental Quality Act, Cal. Pub. Res. Code § 21000 *et seq.* (Westlaw 2007)). Civil-rights laws are discussed *infra* in Part VII.

evidence gathered by the Alianza de los Pueblos del Rio. When surveyed about what they would like to see on the river and its banks, Latinos showed significant support for parks and recreation. Forty-eight percent said parks, 32% schools, 27% open green space, 21% California style trees and plants, and 20% said soccer and baseball fields. Latinos showed little support for “gentrification-oriented development,” with 25% supporting affordable housing and only 2% market-rate housing, only 3% tourism-related development, and only 3% condominiums and penthouses.<sup>70</sup>

Latinos viewed revitalization priorities significantly differently than non-Hispanic whites, favoring parks, schools, affordable housing, soccer and baseball fields, and businesses that create jobs by ten percentage points more than whites, on average. Conversely, whites favored open green space, California style trees and plants, and community gardens by twelve points more than Latinos, on average. Latinos and non-Hispanic whites were united in their opposition to gentrification, however.<sup>71</sup>

### C. INEQUITIES IN URBAN PARKS, PROGRAMS, AND FUNDING

The audit of recreation and parks by the Los Angeles City Controller documents systemic management failures, echoes the disparities cited in this Article, and provides a blueprint for reform. For example, parks provide better programs in wealthy communities, and funding policies exacerbate rather than alleviate inequities. The audit highlights the need for the following: a strategic plan to improve parks and recreation programs in every neighborhood, and to eliminate unfair disparities; standards to measure equity and progress in achieving reform; a community needs assessment now and every five years; a fair system of park financing and fees; shared use of parks and schools; and improved park safety.<sup>72</sup> One of the audit’s major recommendations is that the city “needs to strategically address issues of inequity regarding levels of service provided at parks citywide.”<sup>73</sup>

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<sup>70</sup> The William C. Velazquez Inst., Phone Survey, September 2006, available at [http://www.wcvi.org/latino\\_voter\\_research/polls/ca/2006/lariverpoll\\_91106.html](http://www.wcvi.org/latino_voter_research/polls/ca/2006/lariverpoll_91106.html).

<sup>71</sup> *Id.*

<sup>72</sup> The audit of Recreation and Parks is available in three parts at [http://www.cityprojectca.org/blog/wp-content/fiscalmanagementCityParks11102005\\_01.pdf](http://www.cityprojectca.org/blog/wp-content/fiscalmanagementCityParks11102005_01.pdf); <http://www.cityprojectca.org/blog/wp-content/RecreationandCommunityServicesAudit.pdf>; and <http://www.cityprojectca.org/blog/wp-content/MaintanceAudit01092006.pdf>.

<sup>73</sup> *Id.* at 10 (Recreation and Community Services Audit, <http://www.cityprojectca.org/blog/wp-content/RecreationandCommunityServicesAudit.pdf>).

## D. FORESTS AND MOUNTAINS

Los Angeles County has 2,637,286 acres of land, and 807,731 total acres of parks.<sup>74</sup> The total acres of parks includes large public spaces totaling 84,535 acres in the Angeles National Forest, Santa Monica Mountains National Recreation Area, Griffith Park, Elysian Park, and Baldwin Hills Parks.<sup>75</sup> Fully 25% of all land and 78% of all park space in Los Angeles County are in the Angeles National Forest. The Santa Monica Mountains National Recreation Area has 6% of all park space in the county.<sup>76</sup> The county has 84.93 total acres of parks per thousand residents. Excluding those large public spaces, the county has 8.89 net acres of parks per thousand residents.<sup>77</sup> The stated averages mask the vast park, school, and health disparities based on race, ethnicity, income, poverty, and access to cars discussed above.

The Angeles National Forest provides far and away the most natural public space in the Los Angeles region and lies within an hour's drive of most of Los Angeles, but few people of color go there. Recreation is the predominant use of the forests in Southern California.<sup>78</sup> Yet only 1% of the visitors to the forest are black, and only 11% are Hispanic. Zero percent of the visitors to the wilderness areas of the Angeles National Forest are black.<sup>79</sup>

Angeles National Forest Visitors<sup>80</sup>

Race/Ethnicity	% of Visitors
Non-Hispanic White	79%
Latino	11%
Asian/Pacific Islander	7%
American Indian	1%

<sup>74</sup> HEALTHY PARKS, SCHOOLS, AND COMMUNITIES, *supra* note 2, Map 701, Chart 701C, and Graph 701N.

<sup>75</sup> *Id.*, Chart 701C.

<sup>76</sup> *Id.*

<sup>77</sup> *Id.*, Chart 701C. Six to ten acres has been the National Recreation and Park Association standard. See GEORGE FOGG, PARK, RECREATION AND LEISURE FACILITIES SITE PLANNING GUIDELINES (National Recreation and Park Association, Alexandria, Va., 2005); JAMES D. MERTES & JAMES R. HALL, PARK, RECREATION, OPEN SPACE AND GREENWAY GUIDELINES (Alexandria, VA National Recreation and Park Association, 1995).

<sup>78</sup> U.S. Forest Service Pacific Southwest Region, Final Environmental Impact Statement, Land Management Plans R5-MB-074-A at 127 (2005), available at <http://www.fs.fed.us/r5/scfpr/projects/lmp/docs/feis-v1.pdf> Draft Environmental Impact Statement at 3-58.

<sup>79</sup> U.S. Forest Service, Race/Ethnicity of Visitors to the Angeles National Forest (2000), available at <http://www.losangelesalmanac.com/topics/Parks/pa07.htm>.

<sup>80</sup> *Id.*

Black	1%
Other	1%

The reasons for the low visitation rates by people of color include a history and pattern of employment discrimination by the Forest Service against people of color and women in the region, cultural differences in recreation, lack of transit, the privatization of public space, and a history of discriminatory land-use and housing policies.

#### E. TRANSIT TO TRAILS

Southern California should develop and implement a strategic plan for a “Transit to Trails” program to take people to parks, beaches, forests, lakes, and other public natural spaces. A Transit to Trails program would serve all the people of the region, but it would be particularly useful to the working poor with limited or no access to cars, who are disproportionately people of color and low income.<sup>81</sup> Transit to Trails would reduce traffic congestion and parking problems, improve air quality, and reduce runoff of polluted water into rivers and the ocean. It would also reduce dependency on the automobile and fossil fuels. Today, there is virtually no good way to reach the four Southern California forests using public transportation.<sup>82</sup> Transit to beaches is limited and time-consuming.<sup>83</sup>

#### F. CULTURAL DIVERSITY IN PARKS AND RECREATION

People from different racial and ethnic groups use parks differently, constructing meanings for natural space based on their own values, cultures, histories, and traditions, according to a UCLA study of cultural differences in the use of urban parks.<sup>84</sup> According to one study, for example, parks are primarily social gathering places for Hispanics.

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<sup>81</sup> See generally Robert García & Thomas A. Rubin, *Cross Road Blues: Transportation Justice and the MTA Consent Decree*, in KAREN LUCAS, ED., *RUNNING ON EMPTY: TRANSPORT, SOCIAL EXCLUSION AND ENVIRONMENTAL JUSTICE* 221-56 (2004).

<sup>82</sup> Ron Frescas, Chris Martin, & Christine Steenken, *Public Transportation to Local National Forests*, (Apr. 15, 2004) (unpublished research paper, USC) available at <http://www.cityprojectca.org/pdf/uscgeogstudy.pdf>.

<sup>83</sup> Mike Agrimis et al., *Equity and Beach Access in Los Angeles* (2003) (research paper, USC) (on file with The City Project). The USC study identified departure points in heavily Latino, African-American, and low-income communities.

<sup>84</sup> Anastasia Loukaitou-Sederis, *Urban Form and Social Context: Cultural Differentiation in the Uses of Urban Parks*, 14 *J. PLANNING & ED. & RESEARCH* 89, 100-02 (1995); see also Anastasia Loukaitou-Sederis & Orit Stieglitz, *Children in Los Angeles Parks: A Study of Equity, Quality, and Children Satisfaction with Neighborhood Parks*, 73 (4) *TOWN PLANNING REV.* 1-6 (2002).

African Americans, more than any other racial group, tend to engage in sports in parks. Non-Hispanic whites tend to value a park solely for its passive qualities—its greenness, landscaping, and natural elements. They tend, as a result, to engage in solitary, self-oriented uses. Asian-American (specifically, Chinese) families were rare in parks studied. This may reflect the failure of the parks to meet the needs of the Asian-American community. Most studies on leisure and urban recreation have focused on non-Hispanic whites.<sup>85</sup> Studies have reached similar conclusions about how Hispanics use forests and other natural public places differently.<sup>86</sup>

Research suggests two potential explanations for differences in ethnic and racial recreation patterns. The *ethnicity hypothesis* posits that participation patterns result from culturally based differences in value systems and leisure socialization.<sup>87</sup> Even when variables such as income, gender, area of residence, and household size are statistically controlled, ethnic and racial differences in participation patterns persist. The *marginality hypothesis* suggests that under-participation of ethnic and racial groups results primarily from limited economic resources and historical and ongoing patterns of discrimination.<sup>88</sup> Because people of color often occupy a subordinate position and hold a low station in the status hierarchy, they are less desired as leisure companions, leading to the creation of leisure spaces that are identified as non-Hispanic white or otherwise.<sup>89</sup>

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<sup>85</sup> Anastasia Loukaitou-Sederis, *Urban Form and Social Context: Cultural Differentiation in the Uses of Urban Parks*, 14 J. PLANNING & ED. & RESEARCH 89, 92-96 (1995).

<sup>86</sup> See generally LOW ET AL., *supra* note 6, at 40-43; Deborah J. Chavez, Proceedings Paper, Hawaii International Conference on Social Sciences, *Mexican-American Outdoor Recreation: Home, Community & Natural Environment*, 5, 41-43 (2003); Deborah J. Chavez, *Adaptive Management in Outdoor Recreation: Serving Hispanics in Southern California*, 17 (3) WEST. J. APPLIED FORESTRY 132 (July 2002); Deborah Carr & Deborah Chavez, *A Qualitative Approach to Understanding Recreation Experiences: Central American Recreation in the National Forests of Southern California* in CULTURE, CONFLICT, AND COMMUNICATION IN THE WILDLAND-URBAN INTERFACE 181, 184-94 (A. Ewert, D. Chavez, W. Magill eds., 1993); PATRICK T. TIERNEY ET AL., USDA, FOREST SERVICE, PACIFIC SOUTHWEST RESEARCH STATION, CULTURAL DIVERSITY OF LOS ANGELES COUNTY RESIDENTS USING UNDEVELOPED NATURAL AREAS 5 (1998).

<sup>87</sup> See generally LOW ET AL., *supra* note 6; Chavez, Proceedings Paper, *supra* note 86, at 2.

<sup>88</sup> See generally LOW ET AL., *supra* note 6; Chavez, Proceedings Paper, *supra* note 86, at 2.

<sup>89</sup> See Regina Austin, *Not Just for the Fun of It: Governmental Restraints on Black Leisure, Social Inequality, and the Privatization of Public Space*, 71 S. CAL. L. REV. 667, 694, 711-12 (1998).

## VI. THE HISTORY OF DISCRIMINATORY ACCESS TO PARKS AND RECREATION

The fact that low-income people of color are disproportionately denied full access to parks, school fields, beaches, and forests is not an accident of unplanned growth, and not the result of an efficient free-market distribution of land, but the result of a history and pattern of discriminatory land-use and economic policies and practices. This history is relevant to understand how the Los Angeles region came to be the way it is, and how it could be better.

Much of the Los Angeles region was off limits to blacks and other people of color throughout much of the twentieth century. Despite the prominent role of blacks in early Los Angeles,<sup>90</sup> black residential and business patterns were restricted in response to discriminatory housing and land-use patterns. “Whites only” deed restrictions, housing covenants, mortgage policies subsidized by the federal government, and other racially discriminatory measures dramatically limited access by blacks and other people of color to housing, parks, schools, playgrounds, swimming pools, beaches, transportation, and other public accommodations.<sup>91</sup>

Racial inequities were aggravated by economic policies dating back to the Great Depression that had the impact of excluding blacks and increasing income, wealth, and class disparities. A continuing legacy of the past half century of these discriminatory economic policies is that the average black family in the United States holds just ten percent of the

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<sup>90</sup> The original settlers in 1781 of El Pueblo de Los Angeles, Los Pobladores, included blacks and mulattos. A black man, Francisco Reyes, served as alcalde (mayor) of El Pueblo in 1793, almost two hundred years before Tom Bradley, the first black man elected mayor under statehood. JEAN BRUCE POOLE & TEVY BALL, *EL PUEBLO: THE HISTORIC HEART OF LOS ANGELES* 11 (2002). The last Mexican governor of California before statehood, Pío Pico, was born of African, Native American, and European ancestry under a Spanish flag. *Id.* at 30-31. Bidy Mason, one of the most prominent citizens and philanthropists of early Los Angeles, was born a slave in Mississippi. She gained her freedom in Los Angeles through a federal court order in 1856, just before the United States Supreme Court held in the *Dred Scott* case that slaves were chattels entitled to no constitutional protections because blacks had “no rights which the white man was bound to respect.” *Scott v. Sandford*, 60 U.S. 393, 407 (1857). She helped found the First African Methodist Episcopal Church, one of the major African American churches in Los Angeles today. DOLORES HAYDEN, *THE POWER OF PLACE: URBAN LANDSCAPES AS PUBLIC HISTORY* 168-87 (1997).

<sup>91</sup> See generally DOUGLAS FLAMMING, *BOUND FOR FREEDOM: BLACKS IN LOS ANGELES IN JIM CROW AMERICA* 271-75, 303, 414 n.38 (2005); MIKE DAVIS, *CITY OF QUARTZ* 160-64 (1990); Davis, *supra* note 21, at 59-91; CAL. DEPT OF PARKS & RECREATION, *FIVE VIEWS: AN ETHNIC SITES SURVEY FOR CALIFORNIA* 68-69 (1988). Professor Lawrence Culver has written a detailed analysis of the history of race and recreation in *THE GARDEN AND THE GRID: A HISTORY OF RACE, RECREATION, AND PARKS IN THE CITY AND COUNTY OF LOS ANGELES* (forthcoming 2007).

assets of the average white family.<sup>92</sup> In the past, when beachfront prices were lower, for example, people of color were forbidden from buying, renting or even using beachfront property. Today, when beachfront property has skyrocketed in value, people of color often cannot afford to buy or rent beachfront property.

## VII. LEGAL JUSTIFICATIONS FOR EQUAL ACCESS TO PARKS AND RECREATION

Advocates have creatively combined a variety of legal theories to create the new great urban parks and to protect public access to public lands in Los Angeles, including state and federal civil-rights and environmental laws and First Amendment rights to freedom of association and expression in parks and beaches.<sup>93</sup>

Federal and state laws prohibit both intentional discrimination and unjustified discriminatory impacts for which there are less-discriminatory alternatives in the provision of public resources, including access to parks and other public lands. An important purpose of the statutory civil-rights framework is to ensure that recipients of public funds not maintain policies or practices that result in racial discrimination.<sup>94</sup>

Title VI of the Civil Rights of 1964 and its implementing regulations prohibit both (1) intentional discrimination based on race, color or national origin, and (2) unjustified discriminatory impacts for which there are less-discriminatory alternatives, by applicants for or recipients of federal funds, including municipalities such as the City of Los Angeles.<sup>95</sup>

California law also prohibits intentional discrimination and unjustified discriminatory impacts by recipients of state funds under Government Code section 11135, which is analogous to Title VI and its regulations.<sup>96</sup> In addition, California law defines environmental justice as “the fair treatment of people of all races, cultures, and incomes with

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<sup>92</sup> See generally IRA KATZNELSON, *WHEN AFFIRMATIVE ACTION WAS WHITE* (2005).

<sup>93</sup> See, e.g., *Leydon v. Town of Greenwich*, 777 A.2d 552 (Conn. 2001).

<sup>94</sup> *Guardians Ass'n v. Civil Serv. Comm'n*, 463 U.S. 582, 629 (1983) (Marshall, J., concurring in part and dissenting in part).

<sup>95</sup> 42 U.S.C.A. § 2000d (Westlaw 2007); cf. 43 C.F.R. § 17.1 (nondiscrimination statement for recipients of federal funds from the Department of Interior, which has jurisdiction over National Parks and other public lands); see also Exec. Order No. 12,898, 59 Fed. Reg. 7629 (Feb. 11, 1994). The Equal Protection Clause of the Fourteenth Amendment to the United States Constitution also prohibits intentional discrimination. See also section 1 of the Civil Rights Act of 1871, 42 U.S.C.A. § 1983 (Westlaw 2007).

<sup>96</sup> See CAL. GOV'T CODE § 11135 *et seq.*; CAL. CODE REGS. tit. 22, § 98010.

respect to the development, adoption, implementation, and enforcement of environmental laws, regulations, and policies."<sup>97</sup>

The California Coastal Commission adopted a local coastal plan requiring Malibu to maximize public access to the beach while ensuring the fair treatment of people of all races, cultures, and incomes in 2002.<sup>98</sup> This was the first time an agency implemented the statutory definition of environmental justice under California law. Commissioner Pedro Nava told the *Los Angeles Times* he hoped to set a precedent for other communities, ensuring that visitors are not excluded because of their income or race.<sup>99</sup> The commission adopted the provision in response to the advocacy of The City Project on behalf of a diverse alliance.<sup>100</sup>

Despite cutbacks in enforcement of civil-rights protections in federal courts, it is important to keep in mind that both intentional discrimination and unjustified discriminatory impacts remain unlawful under federal and state law as a matter of simple justice: it is unfair to use public tax dollars to subsidize discriminatory intent and discriminatory impacts.<sup>101</sup> Recipients of federal and state funds like the City of Los Angeles remain obligated to prohibit both.

The planning and administrative processes are available to achieve compliance with civil-rights laws and overcome discriminatory impacts, as the California Coastal Commission did in requiring Malibu to maximize public access to the beach while ensuring the fair treatment of people of all races, cultures, and incomes.<sup>102</sup> State civil-rights and environmental justice protections can be enforced and strengthened, such as California's Government Code section 11135 and the statutory environmental justice definition. The same kinds of evidence can be as persuasive in the planning process, administrative arena, and court of public opinion, as in a court of law. Similar evidence is relevant to prove

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<sup>97</sup> CAL. GOV'T CODE § 65040.12.

<sup>98</sup> CITY OF MALIBU LOCAL COASTAL PROGRAM LAND USE PLAN 9 (2002), <http://www.coastal.ca.gov/ventura/malibu-lup-final.pdf>.

<sup>99</sup> Seema Mehta, *Land-Use Plan OK'd for Malibu*, L.A. TIMES, Sept. 14, 2002.

<sup>100</sup> See Letter from Robert García et al. to California Coastal Commission (Sept. 12, 2002) (on file with author).

<sup>101</sup> See, e.g., *Gonzaga Univ. v. Doe*, 536 U.S. 273 (2002); *Alexander v. Sandoval*, 532 U.S. 275 (2001).

<sup>102</sup> California Coastal Commission Program Overview, <http://www.coastal.ca.gov/whoware.html> (last visited July 27, 2007) ("Coastal Act includes specific policies . . . that address issues such as shoreline public access and recreation, lower cost visitor accommodations. . . . The policies of the Coastal Act constitute the statutory standards applied to planning and regulatory decisions made by the Commission and by local governments, pursuant to the Coastal Act."); see CAL. PUB. RES. CODE § 30210 (Westlaw 2007) (Access; recreational opportunities; posting); CAL. PUB. RES. CODE § 30213 (Westlaw 2007) (Lower cost visitor and recreational facilities; encouragement and provision, overnight room rentals).



both discriminatory intent and discriminatory impact. Known discriminatory impact—whether known in advance or after the fact—continues to be among the most important kinds of evidence to establish discriminatory intent. Civil-rights and environmental impacts can be considered together to alleviate unfair disparities in access to parks and recreation and achieve compliance with both bodies of laws.

Elected officials should be increasingly sensitive to, and held accountable for, the impact of their actions on communities of color, especially now that people of color are in the majority in forty-eight of the hundred largest cities in the country.<sup>103</sup>

### VIII. PRINCIPLES AND RECOMMENDATIONS

Natural public places, including parks, schools, rivers, beaches, forests, and mountains, are a necessary part of any urban infrastructure for healthy, livable communities. The environmental justice movement should continue to expand to include the fair distribution of the burdens and benefits of parks, school fields, beaches, rivers, forests, mountains, and transit to trails.

We recommend the following principles to ensure that all people—especially people of color and others in low-income communities—benefit equally from infrastructure investments in natural public places.<sup>104</sup>

*Principle 1.* Infrastructure decisions involving natural public places have widespread impacts on health, housing, development, investment patterns, and quality of life. The process by which those decisions are reached, and the outcomes of those decisions, must be fair and beneficial to all.

*Principle 2.* Infrastructure investments should be guided by a regional vision for a comprehensive web of communities, parks, schools, beaches, forests, rivers, mountains, and transit to trails to achieve results that are equitable; should promote human health, the environment, and economic vitality; and should serve diverse community needs.

*Principle 3.* Infrastructure areas should be planned together in complementary rather than conflicting ways to serve health, education, and human service needs; to fulfill critical governmental and societal responsibilities; and to produce equitable results. For example, green parks can be used as flood-control basins and can clean water and

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<sup>103</sup> BROOKINGS INST., RACIAL CHANGE IN THE NATION'S LARGEST CITIES: EVIDENCE FROM THE 2000 CENSUS (2001).

<sup>104</sup> These principles are adapted from the work on equitable strategies for infrastructure investment by PolicyLink and others.

mitigate polluted storm-water runoff. Shared use of schools and parks can provide places and policies for physical activity and healthy eating to improve health. Transit can provide access to trails.

*Principle 4.* Budget priorities within infrastructure areas should be thoroughly assessed through an equity lens. For example, there is a need for both active and passive recreation in natural places. Urban and wilderness park advocates should work together rather than at cross purposes. Schools must develop the body and mind of the child through physical education as well as academics.

*Principle 5.* Employment and economic benefits associated with building and maintaining infrastructure, including parks, schools, and other natural places, should be distributed fairly among all communities. Local jobs with livable wages should go first to local residents. Job training should be provided for those who need it to qualify for jobs. There should be a level playing field for small business enterprises and those owned by women and minorities. Affordable housing should be provided near parks and schools that are revitalizing neighborhoods, in order to prevent gentrification.

*Principle 6.* Revenues to support infrastructure improvements, including parks, schools, and other natural public places, should be collected and allocated fairly to distribute the benefits and burdens of these projects.

*Principle 7.* Infrastructure decisionmaking should be transparent and include mechanisms for everyone to contribute to the planning and policymaking process. For example, citizenship, voter registration, and get-out-the-vote drives can engage new voters—young people, immigrants, and others—in electing officials and deciding ballot measures. Full environmental review and health-impact assessments should be required to provide full and fair information necessary for effective public participation. Community oversight bodies should review infrastructure investments. Public audits can illuminate inequities and provide blueprints for reform. Litigation is a profoundly democratic means of providing access to justice and the fair distribution of public resources, particularly for traditionally disempowered communities. Public officials and foundations should recognize this and support and fund such litigation when it becomes necessary.

*Principle 8.* Standards for measuring equity and progress should be articulated and implemented to hold agencies accountable for building healthy, livable communities for all.

*Principle 9.* In making infrastructure investments and decisions involving natural public places, recipients of federal and state funds should proactively comply with federal and state laws designed to

achieve equal access to public resources, including Title VI of the Civil Rights Act of 1964 and its implementing regulations, California Government Code section 11135, and the California statutory definition of environmental justice.

*Principle 10.* Government agencies working with the philanthropic community must dedicate resources to enable community-based organizations to serve their communities and actively participate in infrastructure planning and investments.

## IX. CONCLUSION

Four important lessons of the environmental justice movement are that communities of color and low-income communities disproportionately are denied full access to public goods such as parks and recreation, disproportionately suffer from environmental degradation, lack information necessary to understand the impact of public policy decisions on their lives, and are systematically denied full and fair participation in deciding the future of their communities. The struggle for equal justice in Warren County lives on in the struggle for the Cornfield, to the Latino National Congreso, and beyond. The struggle never ends.