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The People Down the Hill: Parks Equity in San Francisco's East Bay

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ARTICLE

THE PEOPLE DOWN THE HILL: PARKS EQUITY IN SAN FRANCISCO'S EAST BAY

*PAUL STANTON KIBEL**

I. INTRODUCTION: PARKLAND AS AN ENVIRONMENTAL JUSTICE CONCERN

The public parkland system managed by the East Bay Regional Park District (East Bay Parks) is impressive in its geographic scope. It covers nearly 100,000 acres of land in Alameda and Contra Costa counties east of San Francisco, with 55 separate units comprising 14 Regional Parks, 19 Regional Preserves, 9 Regional Recreation Areas and 13 Regional Shorelines. The acreage under East Bay Parks' jurisdiction constitutes the largest regional metropolitan regional park system in the United States.¹

The lands included in the system have been saved from the

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¹ East Bay Regional Park District (hereinafter "EBRPD"), <http://www.ebparks.org/news/current/03052007a> (last visited July 1, 2007).

commercial and residential development that has consumed so much of the open space in the San Francisco Bay Area. In saving those lands, East Bay Parks has brought nature, or at least some version of it, within closer proximity to many of the 2.5 million people who live in Alameda and Contra Costa counties. As the author of a 2004 article in the magazine *Bay Nature* commented in recalling her early childhood experiences at Tilden Park, one of the cornerstones of East Bay Parks' holdings: "If you grew up in the area around that time, Tilden was the center of the weekend universe. . . . [T]hat park . . . did much to develop my lifelong respect for nature, simply because it was there, a poor man's Yosemite just a gallon of gas away."²

The majority of lands managed by East Bay Parks are located in the hillsides where the surrounding communities are today generally more affluent. These hillside parks serve to a certain degree as the extended backyard of these adjacent neighborhoods. Yet the majority of residents in Alameda and Contra Costa counties live in the flatlands—particularly in the flatland areas of such cities as Oakland, Richmond, Berkeley, Hayward and Fremont. And it is in the flatland neighborhoods of these cities that we today generally find higher percentages of low-income and minority residents. Many households in these East Bay flatland communities do not own a car, and many of these communities' residents are too young to drive.³ For these households and residents, hillside parklands like Tilden Park may be just a gallon of gas away, but that may still be out of reach.

These circumstances give rise to complex questions of equity—between persons of different races and persons of different wealth. Analysis of these equity questions involves issues such as the history of how the East Bay Parks system evolved, the relationship of the East Bay Parks to other public park systems, and the emergence of park resources as an environmental justice issue. At the outset, some initial discussion is needed regarding how the terms "parks" and "environmental justice" are used in this article.

A. COMING TO TERMS: "PARKS," "MINORITIES" AND "ENVIRONMENTAL JUSTICE"

The term "park" refers to an outdoor space that is in public rather than private ownership. Beyond these basic elements, however, a park

² Chiori Santiago, *A Modest Majesty: 70 Years of East Bay Parks*, BAY NATURE, Oct./Dec. 2004, at 15, available at <http://www.baynature.com/2004octdec/ebparks.html>.

³ BROOKINGS INST. CTR. ON URBAN & METRO. POLICY, OAKLAND IN FOCUS: A PROFILE FROM CENSUS 2000, at 54 (2003).

could potentially encompass a broad range of sites—wilderness areas, recreational areas, grass ballfields, paved ballcourts, pools, reservoirs, golf courses, playgrounds or even schoolyards. For purposes of this article, the term “park” is used to refer more specifically to public outdoor space that contains a strong naturalist element. This does not mean that there cannot be any paved surfaces or ballfields on any portion of a designated area for that area to fall within this article’s definition of a park, so long as a strong naturalist element for the overall designated area is retained. As used here, the term “naturalist” does not refer solely to places where existing native vegetation and habitat are conserved, but also to places where landscape design is strategically employed to evoke nature and provide certain natural services (such as habitat for birds).

The inclusion of “created nature” as well as “preserved nature” in this article’s definition of parks is due to the fact that many of our country’s most beautiful and most used urban greenspaces were located on lands where native vegetation and habitats had already been cleared for other uses. This point was highlighted by authors Setha Low, Dana Taplin and Suzanne Scheld in their 2005 book *Rethinking Urban Parks: Public Space and Cultural Diversity*. In discussing the urban park legacy of late 19th-century landscaper Frederick Olmsted Sr., they note: “Rather than preserving existing landscapes of high scenic and ecological value, like so many later park projects, these early parks were designed and built often on degraded sites. Olmsted and others of the time wanted to create great social spaces out of the materials of nature. The lakes, streams, waterfalls, and pastures were created.”⁴ This is once again the case today, where urban greenspace is now frequently being developed on brownfields (former industrial sites).

The reclaiming of urban brownfields as parkland was noted in several of the essays contributed to Princeton Architectural Press’s 2007 book *Large Parks*. In his foreword, James Corner (Chair of the Department of Landscape Architecture and Regional Planning at the University of Pennsylvania School of Design) explains:

This demand for large parks is also stimulated by the huge transition around the world from industrial to service economies, creating a vast inventory of large abandoned sites. These sites—old factory and production properties, closed landfills, decommissioned ports and waterfronts, former airfields, and even neighborhoods and sectors of cities where labor has migrated and left empty tracts of towns—lend themselves to being transformed into radically new forms of public

⁴ SETHA LOW, DANA TAPLIN & SUZANNE SCHELD, *RETHINKING URBAN PARKS: PUBLIC SPACE AND CULTURAL DIVERSITY* 23 (2005).

parkland and amenity. . . . Parks after all are not simply natural or found places; they are constructed, built, and cultivated-*designed*.⁵

Similarly, in her essay for *Large Parks* titled *Uncertain Parks: Disturbed Sites, Citizens and Risk Society*, Elizabeth K. Meyer (Associate Professor at the University of Virginia's Department of Landscape Architecture) observes:

Two centuries ago, large parks were created out of former royal gardens and hunting grounds. A century ago, they were located on large rural parcels, on the periphery of expanding cities. . . . Today, they will often be located on the only lands available in metropolitan areas: abandoned or obsolete (and often polluted) industrial lands such as quarries, water-treatment facilities, power-generation plants, factories, steel mills, landfills, military bases and airports.⁶

The term "minorities" is employed in this article with recognition of the term's two definitional shortcomings. First, as discussed further in this article, there are now more non-whites than whites in Alameda County. As such, in one of the two counties that comprise the East Bay Regional Parks District, "minorities" are now in fact the majority. Second, the term "minorities" lacks precision. Although the term "minorities" is generally understood to include people of African, Latin/Central American and Asian/Pacific Islander descent, there are other ethnic/racial groups whose inclusion in the term is less clear. However, the alternative terms available for use in this article were "non-whites" and "people of color"—terms that seem equally if not more problematic and that similarly lack precision.

The term "environmental justice" is often used in conjunction with the terms "environmental racism" and "environmental inequity." Although there is some conceptual overlap among these three terms, there are also important distinctions. The term "environmental racism" involves allegations that current inequities concerning the quality of the environment are due to deliberate efforts (either historically or presently) by policymakers to disadvantage certain specified racial groups for the benefit of other specified racial groups. The term "environmental inequity" generally refers to data showing that (regardless of the cause) the quality of the environment for most low-income minority residents is

⁵ James Corner, *Foreword* to *LARGE PARKS* 12-13 (Julia Czerniak et al. eds., 2007) (italics in original).

⁶ Elizabeth K. Meyer, *Uncertain Parks: Disturbed Sites, Citizens, and Risk Society*, in *LARGE PARKS* 59 (Julia Czerniak et al. eds., 2007).

markedly lower than in neighborhoods with other income and racial demographics. The term “environmental justice” is shorthand for collective efforts to restore environmental equity by raising the quality of the environment in low-income, high-minority communities without necessarily making a determination that overt environmental racism is or was involved.

This article’s inquiry into whether there are inequities in access to the lands managed by East Bay Parks and into whether the goal of equity in access has been effectively pursued by East Bay Parks does not reflect the assumption or lead to the inevitable conclusion that any of East Bay Parks’ staff, officers, board or supporters have taken actions based on environmental racism. These clarifications are made at the outset because this article’s purpose is not to make insinuations against individuals, organizations or agencies of modern day bigotry. Rather, the purpose of this article is to facilitate a more frank and vigorous public dialogue about who can or cannot readily reach (and therefore readily use) parkland managed by East Bay Parks.

B. AN EVOLVING ENVIRONMENTAL JUSTICE FRAMEWORK FOR PARKS

In the United States, the environmental justice movement is largely known for efforts to ensure that low-income minority communities do not bear a disproportionate share of the health burdens of exposures to hazardous materials.⁷ These hazardous exposures traditionally originate from activities such as power plants, mining sites, transportation-related operations (i.e. freeways, truck depots, train yards, ports), landfills, agricultural pesticide application, and manufacturing facilities. For the most part, environmental justice activities have focused on either shutting down or preventing such hazardous-substance-producing activities in or near neighborhoods with high concentrations of low-income minority residents.

There were sound reasons for this initial focus of the environmental justice movement. In the late 1980s and early 1990s, a growing body of research confirmed a strong correlation between sites maintained and selected for hazardous facility operations and the surrounding racial and economic profile of such sites. In particular, the 1987 *Toxic Wastes and Race* report published by the United Church of Christ’s Commission for Racial Justice and the 1992 report *Environmental Equity: Reducing Risk for All Communities* (prepared by the Environmental Equity Working

⁷ Michael B. Gerard, *Preface* to ABA, *THE LAW OF ENVIRONMENTAL JUSTICE*, at xxix (1999).

Group of the United States Environmental Protection Agency) both found poor minority residents were subject to disproportionately high levels of toxic exposures as compared with other groups in the United States.

The early “burdens” focus of the environmental justice movement, however, has evolved and expanded. Increasingly, the notion of environmental justice is now invoked as a framework for analysis and advocacy for the rights of low-income minority residents to a fair share of environmental “benefits.”⁸ As several recent studies have highlighted, these environmental benefits include access to open space, parklands and wilderness.

For instance, a 2004 article in *Ecology Law Quarterly*, published by the University of California at Berkeley’s Boalt Hall Law School, noted:

The criticism of the Wilderness establishment as reserving beautiful areas for the few wealthy, well-educated users that have the time, resources, and inclination to appreciate them provides the basis for calling Wilderness designation an injustice. The concern is that the use of public land set-aside as Wilderness is not reflective of the composition of the United States, based on either race or class. Thus, the distribution of benefits is inequitable. . . . Wilderness preservationists are using their substantial resources to shape the national concept of “environment” as islands of pristine habitat. In the shadow of these “Gardens of Eden,” the urban environment and the types of problems that urban neighborhoods face are wholly separate; not sublime and worthy of protection, but mundane and less important. Because the majority of Wilderness advocates live relatively privileged lives, removed from the polluted communities where environmental justice has its roots, their focus on Wilderness stands in contrast to the everyday concerns of urban communities.⁹

A 2004 article in the American Planning Association’s *Planning* magazine highlighted:

Distance from a park is an important measure. It may be more

⁸ See JUSTICE AND NATURAL RESOURCES: CONCEPTS, STRATEGIES AND APPLICATIONS (Kathryn Mutz, Gray C. Bryner & Douglas S. Kenney eds., 2002). In her introduction to *Justice and Natural Resources*, Kathryn Mutz of the University of Colorado Law School’s Natural Resources Law Center explains: “[E]nvironmental inequity is not solely the result of the pollution burdens that first galvanized the environmental justice movement. Our natural environment also bestows many benefits on those able to use and enjoy it. . . . Failure to provide equitable access to the nation’s natural resources can also constitute injustice.”

⁹ Deborah Keeth, Book Note, *Wilderness as a Matter of Environmental Justice*, 31 ECOLOGY L.Q. 209, 217, 222 (2004).

significant even than counting up the absolute amount of parkland in a city. Los Angeles is a case in point. L.A. ranks fifth among big cities with more than 30,000 acres of parkland, but more than half of that land is located in the mountainous—and relatively inaccessible—central section of the city. Meanwhile, poorer neighborhoods often lack any significant parks at all. Large segments of L.A.'s 3.7 million residents are too far from a park to use it easily, conveniently, or frequently.¹⁰

A 2005 publication by the Trust for Public Land's City Parks Program observed:

While more affluent neighborhoods tend to have access to quality outdoor recreation, low-income neighborhoods typically lack even small neighborhood parks.¹¹

A 2005 article in the *Hastings West-Northwest Journal of Environmental Law & Policy*, titled *An Environmental Justice Perspective on African-American Visitation to Grand Canyon and Yosemite National Parks*, found:

While the environmental justice movement initially focused on the inequitable distribution of environmental burdens, the focus has recently been extended to include the inequitable distribution of environmental benefits, especially in the natural resources context. Low African-American visitation to the national parks qualifies as an environmental injustice within this broader focus. When considered from an environmental justice perspective, it is clear that there is more at stake than how one African-American family chooses to spend its vacation time. What is at stake is that a historically underprivileged group is not experiencing one of the most important communal environmental benefits in this country, a benefit that their tax dollars are helping to fund and that is supposed to be available to all.¹²

¹⁰ Peter Harnik & Jeff Simms, *Parks: How Far Is Too Far? How Far Is The Nearest Park From Your Home? Can You Walk There?*, PLANNING, Dec. 1, 2004, at 8.

¹¹ Trust for Pub. Lands, Bay Area Parks for People Program, http://www.tpl.org/tier3_print.cfm?folder_id=1565&content_item_id=5842&mod_type=1 (last visited Dec. 12, 2005).

¹² Andrea Waye, *An Environmental Justice Perspective on African-American Visitation to Grand Canyon and Yosemite National Parks*, 11 HASTINGS W.-N.W. J. ENVTL. L. & POL'Y 125, 126 (2005).

A 2006 report by the California-based City Project, subtitled *Mapping Green Access and Equity for the Los Angeles Region*, explained:

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.¹³

In 2006, Portland State University's Population Research Center and the Coalition for a Livable Future (both based in Portland, Oregon) co-published the results of their *Regional Equity Atlas Project*, in which they reported:

Based on our analysis of the three-county [Portland] region, 48% of neighborhoods with below average public park access have above average poverty. . . . If public parks access was distributed equitably in the region, then all neighborhoods would have comparable access regardless of their poverty levels.

. . . .
Inequities in access to nature also correspond to . . . percentages of people of color. For example, 66% of neighborhoods with the worst access to nature have more than average percentage of people of color. Only 8% of neighborhoods with the best access to nature have above average percentage of people of color.¹⁴

In his 2007 book *The Country in the City: The Greening of the San Francisco Bay Area*, Professor Richard A. Walker of the University of California at Berkeley commented:

Limited access to open-space reserves may be justified by wildlife ecology, but it can also smack of elitism. It is not surprising that the chief proponents of open-space districts have been in the West Bay, with their more upper-class constituencies. . . . Moreover, the open space reserves are far away from the poor and people of color.¹⁵

¹³ ROBERT GARCÍA & AUBREY WHITE, THE CITY PROJECT, HEALTHY PARKS, SCHOOLS AND COMMUNITIES: MAPPING GREEN ACCESS AND EQUITY FOR THE LOS ANGELES REGION 8 (2006).

¹⁴ COAL. FOR A LIVABLE FUTURE, REGIONAL EQUITY ATLAS PROJECT, ACCESS TO NATURE & REGIONAL EQUITY 6 (Mar. 2006), available at <http://www.urbanfauna.org/files/EquityAtlasInsert.pdf>.

¹⁵ RICHARD A. WALKER, THE COUNTRY IN THE CITY: THE GREENING OF THE SAN FRANCISCO BAY AREA 167 (2007).

Interest in the equity aspects of park resources is not limited to academics and activists. Increasingly, it is also beginning to resonate politically, as candidates and elected officials make access to urban greenspace part of their platforms. For instance, in 2006 Antonio Villaraigosa made equitable park siting a key component of his successful campaign for mayor of Los Angeles. The Villaraigosa park plan was titled *Building Parks for Everyone* and declared: “Our city needs many more large and small parks. Ideally we should have small parks and open space areas no more than a mile walk away for anyone in the city.”¹⁶

Similarly, in June 2005 mayors from around the world—including those from Berkeley and Oakland—convened in San Francisco for a United Nations *Green Cities* conference that resulted in the adoption of seven new Urban Environmental Accords. In the Urban Environmental Accord on Urban Nature, the mayors pledged to “[e]nsure that there is an accessible public park or recreational open space within half-a-kilometer of every city resident by 2015.”¹⁷

As notions of environmental justice have expanded to include parkland access, this has in turn prompted a reevaluation of environmental justice advocacy strategies. When environmental justice focused almost exclusively on reducing toxic exposures, the advocacy approach was adversarial and often reactive in nature. When new activities were proposed that would contribute additional hazardous substances to low-income minority communities, the primary objective of such communities was understandably to oppose the proposal and prevent its approval. Similarly, in the case of ongoing activities that were contributing hazardous substances to low-income minority communities, the primary objective was understandably to shut these activities down. In short, communities reacted to anticipated or current threats to their health and sought to stop these threats.

The model of environmental justice advocacy that developed to confront toxic exposures, however, was often not well-suited to park issues. This was true for at least two reasons. First, although part of urban park equity advocates’ role was to prevent current or potential parkland from being converted to non-parkland uses (and thus reacting to and opposing such proposed conversions), a perhaps more critical role was to obtain approval for additional parks and park resources benefiting

¹⁶ South Central Farmers, Mayor Villaraigosa’s Plan For a Greener LA, <http://www.southcentralfarmers.com/politicianform.php> (last visited July 1, 2007).

¹⁷ Urban Environmental Accords, Urban Nature - Action 10 (signed on the occasion of the United Nations Environment Programme World Environment Day, June 5, 2005, in S.F., Cal.).

low-income minority residents. This called for effectively influencing the discretionary land-use and budgetary decisions of the agencies and agency officials that manage parks. Second, urban parks equity advocates did not generally call for the closure of existing parks located in or near more affluent communities with smaller percentages of minority residents as a means to achieve a more equitable distribution of park resources. The objective was to achieve urban parks equity by increasing rather than decreasing the amount of total urban parkland.

The environmental advocacy challenges presented by the urban parks issue can be understood as part of the larger effort of the environmental justice movement to impact the land-use planning process, which differs in many respects from the project approval process. As law professor Tony Arnold observed in his 2000 law review article titled *Land Use and Environmental Justice*:

Land use planning and regulation offer an alternative, or perhaps more accurately, an additional way of thinking about environmental justice . . . [P]lanning and regulation are, by their nature, primarily prospective, rather than remedial. Neighborhood residents that engage in land-use planning and develop proposed land use regulations for their neighborhood are proactively seeking to prevent LULUs [locally undesirable land uses] before the siting process ever begins. Furthermore, they are defining not only what they do not want in their neighborhood but also what they do want. . . . The opposition model [of environmental justice] is largely reactive, retrospective and remedial, although perhaps necessarily so. In the planning model, local residents develop land use plans and regulations that either address broader problems than a single LULU or reflect goals for future land use patterns in the neighborhood.¹⁸

Tony Arnold's analysis helps to identify some of the ways in which environmental justice advocacy strategies may need to be adapted in the urban parks context. The roots of inequities in park resources, however, may not differ much from the roots of inequities in toxic exposures. Namely, low-income minority residents have traditionally not been as effective as other groups in influencing the decisions of agencies and politicians to ensure equitable allocation of resources. This common underlying legacy and problem appear to remain regardless of whether environmental burdens or environmental benefits are involved.

In considering the efforts of the environmental justice movement to

¹⁸ Craig Anthony (Tony) Arnold, *Land Use Regulation and Environmental Justice*, 30 ENVTL. L. REP. 10395, 10404, 10406-07 (2000).

impact the land-use planning process, it is also important to note the particular role that race-based government policies have historically played in residential development. As Robert Self (Professor of History and Urban Studies at the University of Wisconsin) notes in his 2003 book *American Babylon: Race and the Struggle for Postwar Oakland*:

[P]ostwar homeownership developed with the assistance of massive state subsidies. The federal government dramatically democratized the housing market for whites while simultaneously enforcing a racial segregation that resembled apartheid. State intervention in the housing market made financing single-family homes more profitable to lenders, more accessible to white buyers, and virtually unobtainable for African-Americans. Beginning in the 1930s, New Deal federal housing policies defined black and mixed-race communities as high risk, and the government refused to extend its generous mortgage guarantee programs into such neighborhoods well into the 1960s. Thus, for more than thirty years, the Federal Housing Administration and the Veterans Administration, the principal agencies in charge of implementing the federal state's housing policy, underwrote segregation.¹⁹

The legacy of explicit race-based criteria in federal housing policies helps explain, in part, why the concentration of African-American and other minorities in the East Bay flatlands increased during the period from the early 1930s through the 1960s. This legacy also helps to explain, in part, the deteriorating condition of many properties and buildings in the East Bay flatlands. Current efforts to now enlist the land-use planning process (as Tony Arnold suggests) in support of environmental justice objectives are taking place against this historical backdrop.

C. EAST BAY REGIONAL PARK DISTRICT AS A FOCUS OF INQUIRY

In selecting East Bay Parks as an initial focus of environmental justice inquiry, this article is mindful that East Bay Parks is only one among many public agencies that own and manage public parkland in the East Bay. Other parkland agencies operating in this region include the federal National Park Service, the California Department of Parks and Recreation, and the City of Oakland Office of Parks and Recreation. Thus, it may be appropriate to consider East Bay Parks in the context of

¹⁹ ROBERT O. SELF, *AMERICAN BABYLON: RACE AND THE STRUGGLE FOR POSTWAR OAKLAND* 97 (2003).

these other regional park systems. For instance, to the extent these other regional park systems (such as city park systems) were in fact already providing low-income minority residents with ready and safe access to extensive parklands with strong naturalist elements, the existence of such access via these other park systems might affect environmental justice evaluations of East Bay Parks. An environmental justice review of these other park systems operating in the East Bay is beyond the scope of this article, but readers are encouraged to keep this broader context in mind in considering the analysis that follows.

This article is not intended as the final word on environmental justice at East Bay Parks. Rather, it is designed to start the conversation—to identify the broader historical and demographic setting of the agency's park holdings, to consider how other park agencies have addressed the issue of enhancing parkland availability to urban low-income minority residents, and to look back on how the agency has responded in the past to concerns about equitable access. Some initial conclusions and recommendations are offered, but more as suggestions for carrying the discussion forward than as definitive answers. The ultimate solutions to the questions raised in this article will need to come from the people affected by their ability, or inability, to use the network of lands managed by East Bay Parks.

II. EQUITY ISSUES AT PARK AGENCIES: EAST BAY PARKS IS NOT ALONE

Before turning specifically to East Bay Parks, it is important to recognize that other park agencies have also struggled with issues of equity in access. A review of the responses of these other park agencies is useful in at least two respects. First, it provides a comparative basis by which to evaluate environmental justice issues at East Bay Parks. Second, the successes and failures of these other park agencies may provide lessons that can help East Bay Parks identify ways to expand access for low-income minority residents.

A. NATIONAL PARK SERVICE

The park system operated by the National Park Service (a subagency of the United States Department of the Interior) began with, and its holdings are still largely composed of, a series of wilderness parks geographically remote from most metropolitan centers. These federal wilderness parks include Badlands National Park (in South Dakota), Bryce National Park (in Utah), Crater Lake National Park (in

Oregon), Denali National Park (in Alaska), Glacier National Park (in Montana), Grand Canyon National Park (in Arizona), Grand Teton National Park (in Wyoming), Great Smoky Mountains National Park (in North Carolina and Tennessee), Olympic National Park (in Washington) and Joshua Tree and Yosemite National Parks (in California).

In 1964, George Hartzog Jr. was named director of the National Park Service and created a new category of lands within the National Park System—"recreational areas."²⁰ The idea for this new designation of federal parkland had come from the recommendation of the Recreation Advisory Council, a cabinet-level panel created by President John F. Kennedy. This council had proposed a system of national parks of at least 20,000 acres of land and water within 250 miles of urban centers.²¹ While the newly designated "recreational areas" were not expected to possess the unique ecological, scenic and historical qualities of traditional National Parks, they were expected to "afford a quality of recreational experience which transcends that normally associated with areas provided by state and local governments."²²

George Hartzog's proposal was eventually taken up by Walter Hickel, Secretary of the Interior Department under President Richard M. Nixon. As Hickel explained in 1970:

We are moving with a coordinated program to establish large parks and recreation areas where most of our people live—in the metropolitan areas of our country. In past years there has not been sufficient federal emphasis on providing funds for recreation and open space preservation in and around our large cities where we believe the

²⁰ LISA M. BENTON, *THE PRESIDIO: FROM ARMY POST TO NATIONAL PARK* 56-57 (1998); BARRY MACKINTOSH, *THE NATIONAL PARKS: SHAPING THE SYSTEM* 68 (2005), available at http://www.nps.gov/history/history/online_books/shaping/index.htm. See generally ALFRED RUNTE, *AMERICA'S NATIONAL PARK SYSTEM: THE CRITICAL DOCUMENT* (Lary M. Dilsaver ed., 1997) (citing Policy on the Establishment and Administration of Recreation Area, Federal Executive Branch Policy Governing the Selection, Establishment and Administration of National Recreation Area by the Recreation Advisory Council).

²¹ LISA M. BENTON, *THE PRESIDIO: FROM ARMY POST TO NATIONAL PARK* 56-57 (1998); BARRY MACKINTOSH, *THE NATIONAL PARKS: SHAPING THE SYSTEM* 72 (2005). See generally ALFRED RUNTE, *AMERICA'S NATIONAL PARK SYSTEM: THE CRITICAL DOCUMENT* (Lary M. Dilsaver ed., 1997) (citing Policy on the Establishment and Administration of Recreation Area, Federal Executive Branch Policy Governing the Selection, Establishment and Administration of National Recreation Area by the Recreation Advisory Council).

²² LISA M. BENTON, *THE PRESIDIO: FROM ARMY POST TO NATIONAL PARK* 56-57 (1998); BARRY MACKINTOSH, *THE NATIONAL PARKS: SHAPING THE SYSTEM* 68 (2005). See generally ALFRED RUNTE, *AMERICA'S NATIONAL PARK SYSTEM: THE CRITICAL DOCUMENT* (Lary M. Dilsaver ed., 1997) (citing Policy on the Establishment and Administration of Recreation Area, Federal Executive Branch Policy Governing the Selection, Establishment and Administration of National Recreation Area by the Recreation Advisory Council).

needs are greatest.²³

President Nixon lent his support to this effort, and announced the launch of a new “Parks to the People” federal program in his 1971 State of the Union address.²⁴ The first two national recreation areas created by the National Park Service were the Golden Gate National Recreation Area in the San Francisco Bay Area (which includes the Presidio and Marin Headlands) and the Gateway National Recreation Area in New Jersey and New York (which includes the Jamaica Bay and Sand Hook units), both of which were established in 1972.

Speaking in support of the legislation creating the Golden Gate National Recreation Area, California Senator Alan Cranston spoke in language that foreshadowed the environmental justice movement that emerged a little over a decade later. Senator Cranston noted:

[O]nly a relatively small number of Americans have the opportunity to enjoy the wide range of natural wonders [the National Parks System] protect and preserves. Those fortunate enough to visit distant units of the National Park System are most likely white, educated, relatively well-off economically, young and suburban. . . . I believe we have a responsibility to bring the parks to the people, especially to the residents of the inner-city who have had virtually no opportunity to enjoy the marvelous and varied recreational benefits of our national parks.²⁵

The 2005 book *Rethinking Urban Parks: Public Space and Cultural Diversity* characterized National Recreation Areas in a similar manner, noting that they represent

²³ LISA M. BENTON, *THE PRESIDIO: FROM ARMY POST TO NATIONAL PARK* 56-57 (1998); BARRY MACKINTOSH, *THE NATIONAL PARKS: SHAPING THE SYSTEM* 68 (2005). *See generally* ALFRED RUNTE, *AMERICA’S NATIONAL PARK SYSTEM: THE CRITICAL DOCUMENT* (Lary M. Dilsaver ed., 1997) (citing Policy on the Establishment and Administration of Recreation Area, Federal Executive Branch Policy Governing the Selection, Establishment and Administration of National Recreation Area by the Recreation Advisory Council).

²⁴ LISA M. BENTON, *THE PRESIDIO: FROM ARMY POST TO NATIONAL PARK* 56-57 (1998); BARRY MACKINTOSH, *THE NATIONAL PARKS: SHAPING THE SYSTEM* 68 (2005). *See generally* ALFRED RUNTE, *AMERICA’S NATIONAL PARK SYSTEM: THE CRITICAL DOCUMENT* (Lary M. Dilsaver ed., 1997) (citing Policy on the Establishment and Administration of Recreation Area, Federal Executive Branch Policy Governing the Selection, Establishment and Administration of National Recreation Area by the Recreation Advisory Council).

²⁵ ALFRED RUNTE, *AMERICA’S NATIONAL PARK SYSTEM: THE CRITICAL DOCUMENT* 233 (Lary M. Dilsaver ed., 1997) (quoting Policy on the Establishment and Administration of Recreation Area, Federal Executive Branch Policy Governing the Selection, Establishment and Administration of National Recreation Area by the Recreation Advisory Council); LISA M. BENTON, *THE PRESIDIO: FROM ARMY POST TO NATIONAL PARK* 56-57 (1998); BARRY MACKINTOSH, *THE NATIONAL PARKS: SHAPING THE SYSTEM* 68 (2005).

a kind of hybrid of national and local park. NRAs preserve significant environmental resources, but they resemble municipal parks in emphasizing recreation. These parks bring the resources of the National Park System to urban populations who, it is thought, would not otherwise have national park experiences.²⁶

Despite the compelling reasons that led to the creation of the Golden Gate National Recreation and Gateway National Recreation Areas, there has been little success in building on these efforts within the National Park System. Only three urban national recreational areas have been added to the National Park System since these initial two: Cleveland's Cuyahoga Valley National Recreation Area (established in 1974, and renamed Cuyahoga Valley National Park in 2000), Atlanta's Chattahoochee River National Recreation Area (established in 1978) and the Santa Monica Mountains National Recreation Area (established in 1978).²⁷

B. CALIFORNIA STATE PARKS

California's state park system began in 1901 and developed in tandem with the federal National Park System. While national parks were usually created by reserving land already owned by the national government, most of the lands for California's state park system were purchased by the state from private landowners. There are currently over 200 parkland units within the state park system, and the agency responsible for managing these units is the California Department of Parks and Recreation (California State Parks).

Similar to the National Park Service, California State Parks has also developed subdesignations for its lands. There are traditional State Parks that tend to be more expansive wildlands in remote locations, and then there are State Recreation Beaches and State Beaches that are often located in closer proximity to urban areas. The vast majority of the acreage in the California Park System is found in the State Parks – in places such as Anza-Borrego Desert (600,000-acre State Park in San Diego County),²⁸ Big Basin Redwoods (18,000-acre State Park in Santa

²⁶ SETHA LOW, DANA TAPLIN & SUZANNE SCHELD, *RETHINKING URBAN PARKS: PUBLIC SPACE AND CULTURAL DIVERSITY* 31 (2005).

²⁷ SETHA LOW, DANA TAPLIN & SUZANNE SCHELD, *RETHINKING URBAN PARKS: PUBLIC SPACE AND CULTURAL DIVERSITY* 31 (2005); *see also* Nat'l Park Serv., Cuyahoga Valley Frequently Asked Questions, <http://www.nps.gov/cuva/faqs.htm> (last visited Oct. 23, 2007).

²⁸ Cal. State Parks, Anza-Borrego Desert SP, http://www.parks.ca.gov/default.asp?page_id=638 (last visited Oct. 23, 2007) (providing information about location, acreage and establishment dates for all parklands within California State

Cruz County),²⁹ Humboldt Redwoods (53,000-acre State Park in Humboldt County),³⁰ Mount San Jacinto (13,500-acre State Park in Riverside County),³¹ Red Rock Canyon (27,000-acre State Park in Kern County)³² and Sinkyone Wilderness (20 miles of coastal hiking trails in Humboldt County).³³

Moreover, the majority of urban parklands in the California State Parks system are located in or immediately adjacent to more affluent communities with relatively low minority populations. Examples of such urban units managed by California State Parks include: Bolsa Chica State Beach (adjacent to the City of Huntington Beach in Orange County), Mount Tamalpais (adjacent to the City of Mill Valley in Marin County), Santa Monica State Beach (adjacent to the City of Santa Monica in Los Angeles County), Verdugo Mountains State Park (near the cities of Burbank and Glendale in Los Angeles County) and Will Rogers State Historic Park (located in the Pacific Palisades neighborhood in the City of Los Angeles).³⁴

This is not to say that there are no urban lands within the California State Parks system located in or adjacent to low-income minority communities. Candlestick Point State Recreation Reserve, created in 1977, is located near the City of South San Francisco and the Bayshore/Hunters Point neighborhood in the City of San Francisco.³⁵ Eastshore State Park, created in 2002 in close collaboration with East Bay Parks, established open space along 8.5 miles of the San Francisco Bay shoreline extending from the City of Richmond to the City of Oakland.³⁶ Within the current California State Parks system, however, Candlestick Point State Recreation Reserve and the Eastshore State Park are rare exceptions.

In 2002 California State Parks also added two new urban holdings

Parks system).

²⁹ Cal. State Parks, Big Basin Redwoods SP, http://www.parks.ca.gov/default.asp?page_id=540 (last visited Oct. 31, 2007).

³⁰ Cal. State Parks, Humboldt Redwoods SP, http://www.parks.ca.gov/default.asp?page_id=425 (last visited Oct. 31, 2007).

³¹ Cal. State Parks, Mount San Jacinto SP, http://www.parks.ca.gov/default.asp?page_id=636 (last visited Oct. 31, 2007).

³² Cal. State Parks, Red Rock Canyon SP, http://www.parks.ca.gov/default.asp?page_id=631 (last visited Oct. 31, 2007).

³³ Cal. State Parks, Sinkyone Wilderness SP, http://www.parks.ca.gov/default.asp?page_id=429 (last visited Oct. 31, 2007).

³⁴ Cal. State Parks, <http://www.parks.ca.gov> (last visited Oct. 31, 2007).

³⁵ Cal. State Parks, Candlestick Point SRA, http://www.parks.ca.gov/default.asp?page_id=519 (last visited Dec. 1, 2006).

³⁶ See Cal. A.B. 754, 1991-1992 Reg. Sess. (Cal. 1992) (delineating respective roles of California State Parks and East Bay Parks in regard to Eastshore State Park).

to its system—at the Cornfield site and at Taylor Yard. Both of these new locations are adjacent to the Los Angeles River, in areas with a high percentage of low-income minority residents. The establishment of new State Parks at the Cornfield site and at Taylor Yard was due in large part to the efforts of local community and environmental groups, who sued the City of Los Angeles to challenge proposed developments at these locations.³⁷ But for these legal challenges, the opportunity to create these two urban State Parks would have been lost. Thus, although California State Parks can be credited with supporting proposals to create State Parks at the Cornfield and Taylor Yard once the opportunities presented themselves, in these instances the agency acted in more of a reactive than proactive capacity.

In recent policy statements, California State Parks has begun to recognize the need to expand the state park system to better serve inner-city residents. In the agency's 2004 Performance Management Report, California State Parks adopted the following new strategic initiative: to "Create an Urban Connection—Become more relevant to the major population centers of the state."³⁸ The language did not specifically address park-access equity considerations for low-income and minority populations, but does suggest that such considerations may be starting to make their way onto the agency's agenda.

C. SANTA MONICA MOUNTAINS CONSERVANCY

The Santa Monica Mountains Conservancy—a unit of the California state government that is separate from California State Parks—was established in 1980. It was created in the context of the Santa Monica Mountains National Recreation Area, which was created to help preserve the mountain range that runs from downtown Los Angeles to Point Magu in Malibu.

The Santa Monica Mountains National Recreation area covers 62,000 acres and is managed cooperatively by the National Park Service, California State Parks and the Santa Monica Mountains Conservancy.³⁹ In this cooperative management scheme, the primary role of the Santa Monica Mountains Conservancy was and remains to facilitate hillside

³⁷ Paul Stanton Kibel, *Los Angeles' Cornfield: An Old Blueprint for New Greenspace*, 23 STAN. ENVTL. L.J. 275, 318-323, 341-343 (2004).

³⁸ CAL. STATE PARKS, PERFORMANCE MANAGEMENT REPORT 4 (2004), available at http://www.parks.ca.gov/?page_id=23456 (scroll to "Performance Management Report").

³⁹ Ted Trzyna, *A Conservation Agency Creates Inner-City "Natural Parks" in Los Angeles*, in THE URBAN IMPERATIVE: URBAN OUTREACH STRATEGIES FOR PROTECTED AREA AGENCIES 107-10 (Ted Trzyna ed., 2005), available at <http://www.interenvironment.org/pa/trzyna-smmc.htm>.

conservation through financing agreements with other agencies, private landowners and environmental nonprofit organizations.⁴⁰ The communities surrounding the area of the Santa Monica Mountains that has been preserved through the efforts of the Santa Monica Mountains Conservancy are by-and-large suburban and affluent, with relatively small minority populations.

In recent years, however, the agency has expanded its focus to include the more urbanized areas in the Los Angeles Basin below the Santa Monica Mountains. Acting through the Mountains Recreation and Conservation Authority (a joint powers authority created with two local park districts, discussed in more detail in Section V(E) of this article), the Santa Monica Mountains Conservancy has begun to play a more active role in establishing new parkland in low-income minority communities. One example is 8.5-acre Augustus Hawkins Natural Park, established in 2001 in a predominantly African-American neighborhood in South Central Los Angeles. Named in honor of the first African-American elected to the United States Congress from California, and located on a former municipal site used to store discarded water pipes, it is quite unlike most other urban parks. As Ted Trzyna, Director of the Sacramento-based California Institute of Public Affairs, reported in an essay in the book *The Urban Imperative: Urban Outreach Strategies for Protected Area Agencies* (published in 2005 by the International Union for the Conservation of Nature):

[T]he park was designed in consultation with the people who live in the area, rather than imposed on them. . . . [T]he Natural Park is not a restoration, but rather a “reflection” of the natural resource ecosystems of the region. In many other places, creating a “natural park” would be seen as an opportunity to restore the original vegetation. In this case, however, the original landscape was an alluvial plain thinly covered with shrubs and grasses. At such a small scale, this plant life would be uninteresting. . . . For example, because the plant species are native to the region, they have created habitat for native birds rarely seen in an urban setting.⁴¹

The initial concept for the park came from Los Angeles City Councilmember Rita Walters, who represented a council district that included low-income areas of South Central Los Angeles. As Trzyna noted, although many of Walters’ South Los Angeles constituents could look up at the Santa Monica Mountains, few of them were ever able to

⁴⁰ *Id.*

⁴¹ *Id.* at 109.

get there.⁴²

Among its strategic objectives, the Santa Monica Mountains Conservancy now includes “Expand efforts to integrate nature in the urban environment” and “Acquire or create parkland in urban areas that lack open space.”⁴³ The urban portfolio of the agency is presently only a small fraction of its total parkland holdings, but the experience with Augustus Hawkins Natural Park and the adoption of these new strategic objectives suggests an increasing willingness on the part of the Santa Monica Mountains Conservancy to look down the hill to the parkland needs of low-income minority residents.

D. NEW YORK CITY COMMUNITY GARDENS

Under the direction of New York City Parks Commissioner Robert Moses, the 1930s saw a tremendous expansion of the city park system. During this decade, approximately 255 new neighborhood parks were constructed.⁴⁴ However, of these 255, only two of these neighborhood parks were located in African-American communities.⁴⁵ This is the legacy that set the historical stage for the New York City Community Gardens movement.

During the 1960s and early 1970s, the City of New York took possession of many dilapidated properties located in low-income minority neighborhoods. The long-term plan was to redevelop these properties for residential or commercial projects, but reduced municipal budgets and a lack of interest by private investors meant that many such sites often ended up as vacant lots. Responding to requests by local residents to use these vacant lots as community gardens, the City of New York launched its GreenThumb Program in 1978.⁴⁶ Under the GreenThumb Program, vacant lots were leased to community garden organizations. However, to preserve the City of New York’s option to redevelop properties for residential or commercial projects in the future should market conditions change, the leases were renewable from growing season to growing season.

As a 2005 article in the *New York University Environmental Law Journal* observed: “New York City’s urban gardens represent a

⁴² *Id.*

⁴³ *Id.*

⁴⁴ Michael Gelobter, *The Meaning of Urban Environmental Justice*, 21 FORDHAM URB. L.J. 841, 853 (1994).

⁴⁵ *Id.*

⁴⁶ Robert Fox Elder, *Protecting New York City’s Community Gardens*, 13 N.Y.U. ENVTL. L.J. 769, 776 (2005).

counterpoint to superblock planning, emerging from community action rather than as part of a state-sponsored plan. Many of the gardens scattered around New York were formed through the reaction of local tenants to the perceived degeneration of the quality of their neighborhoods.”⁴⁷

Beginning in 1994, however, the City of New York ceased approving new requests for GreenThumb gardens, and in 1998 it began a policy of non-renewal of existing community gardens leases. Then, in 1999, Mayor Rudolph Giuliani announced his intention to auction off several hundred community gardens in the Williamsburg neighborhood in Brooklyn. When political efforts to alter Mayor Rudolph Giuliani’s plans failed, community gardeners filed suit.

In the federal-court case of *New York City Environmental Justice Alliance v. Giuliani*, the plaintiffs argued that the proposed widescale non-renewal and closure of GreenThumb Program gardens constituted a violation of Title VI of the federal Civil Rights Act of 1964. The core of the plaintiffs’ claim in this regard was that the gardens to be auctioned off were predominantly in minority neighborhoods and destroying the gardens would disproportionately disadvantage those neighborhoods. The district court ruled against the plaintiffs, finding that the neighborhood’s disadvantage in losing local gardens was offset by the potential benefits to the neighborhood of expanded affordable housing (since some of the projects proposed on the garden sites were for affordable housing units).⁴⁸ On appeal, the United States Court of Appeals for the Second Circuit affirmed the district court’s conclusion that a violation of Title VI could not be established given these competing and interrelated policy objectives.⁴⁹ Commenting on the outcome of this litigation, Mayor Giuliani declared: “The era of communism is over.”⁵⁰

Mayor Giuliani’s declaration, however, turned out to be premature. On May 10, 1999, New York State Attorney General Eliot Spitzer filed his own state-court suit against the City of New York. Spitzer did not look to Title VI but instead argued that several of the community gardens had been in existence long enough to qualify as parkland under state law and as such could not be sold to private developers despite their year-to-year leases. Less than two days after this second lawsuit was filed, a Brooklyn Supreme Court judge issued a temporary restraining order

⁴⁷ *Id.* at 774.

⁴⁸ *N.Y. City Envtl. Justice Alliance v. Giuliani*, 50 F. Supp. 2d 250 (S.D.N.Y. 1999).

⁴⁹ *N.Y. City Envtl. Justice Alliance v. Giuliani*, 214 F.3d 65 (2d Cir. 2000).

⁵⁰ Robert Fox Elder, *Protecting New York City's Community Gardens*, 13 N.Y.U. ENVTL. L.J. 769, 784 (2005).

barring the sale of the gardens.⁵¹ Following this ruling, the New York Restoration Project (a group founded and financed in part by actress Bette Midler) offered \$1.2 million for the purchase of 51 of the gardens up for auction.⁵² The New York Restoration Project and The Trust for Public Land then made a joint offer of \$4 million to purchase an additional 112 gardens.⁵³

With the adverse preliminary ruling in the case filed by Spitzer, and public sentiment shifting as a result of the organizing efforts of community garden activists and the offers made by the New York Restoration Project and The Trust for Public Land, Mayor Giuliani was put on the defensive. When Michael Bloomberg replaced Giuliani as mayor in 2001, the City of New York approached Spitzer about a possible settlement.⁵⁴ In September 2002, a Memorandum of Agreement was reached between the City of New York and the State of New York.⁵⁵ As a 2005 article in the *New York University Environmental Law Journal* explained:

The [Memorandum of Agreement] represents a compromise between advocates of affordable housing and proponents of urban green space. The agreement provides a workable framework to allow both sides some of the benefits for which they had fought. . . . The agreement is primarily a political compromise, representing a balancing of interests. The agreement advocates neither the ecological goals of the community garden activists nor the developmental goals of the city. Instead, it allows proponents of both of those interests to proceed out of deadlock.⁵⁶

Whether the framework established by the Memorandum of Agreement will prove adequate remains to be seen, but the emergence and interim resolution of the New York City community gardens controversy further evidences the growing perception of urban greenspace as an environmental justice issue. It also reveals some of the difficulties in adapting environmental justice advocacy strategies to suit the dynamics of parkland access disputes that tend to deal with long-term land-use planning questions.

⁵¹ *Id.* at 784-85.

⁵² *Id.* at 785.

⁵³ *Id.* at 785-86.

⁵⁴ *Id.*

⁵⁵ *Id.*

⁵⁶ Robert Fox Elder, *Protecting New York City's Community Gardens*, 13 N.Y.U. ENVTL. L.J. 769, 785, 786 (2005).

III. EVOLUTION AND HOLDINGS OF EAST BAY PARKS

A. ORIGINS AND ACQUISITIONS

In undertaking an environmental justice assessment of East Bay Parks, it is important to appreciate the context in which the agency was founded. As explained below, East Bay Parks was not an agency that was created and then began to look for opportunities to acquire public open-space lands. Rather, a specific opportunity to acquire certain public open-space lands presented itself and East Bay Parks was created as a governmental vehicle to take advantage of that opportunity.

In this regard, East Bay Parks is not dissimilar from many other park agencies. For instance, the National Park System and the National Park Service were established pursuant to the National Park Service Organic Act of 1916.⁵⁷ However, several national parks—such as Yellowstone and Yosemite—predate 1916, and therefore to a certain extent the National Park System and the National Park Service were created to manage national parks already in existence. With East Bay Parks, just as with the National Park Service, the agency was initially a response to rather than a catalyst for existing parkland opportunities.

Although these historical circumstances do not excuse East Bay Parks from addressing concerns over current inequities in access, they do help to explain the location and character of the agency's present-day parkland holdings.

The origins of East Bay Parks is closely linked to another regional governmental agency—the East Bay Municipal Utility District (EBMUD). EBMUD is now the primary water service provider for Alameda and Contra Costa counties and presently obtains much of its water from aqueducts that divert the flow of the Mokelumne River in the western Sierras.⁵⁸ EBMUD's Mokelumne River Project broke ground in 1926, and in June of 1929 the first Mokelumne River water reached the East Bay.⁵⁹

Prior to the Mokelumne River Project, EBMUD (and its private-sector predecessor, the East Bay Water Company) had supplied water through a series of small-scale dams and reservoirs located on creeks and streams running through undeveloped lands in the hills of Alameda

⁵⁷ 16 U.S.C.A. §§ 1-7010 (Westlaw 2007).

⁵⁸ MIMI STEIN, A VISION ACHIEVED: FIFTY YEARS OF EAST BAY REGIONAL PARK DISTRICT 4 (1984); Chiori Santiago, *A Modest Majesty: 70 Years of East Bay Parks*, BAY NATURE, Oct./Dec. 2004, at 13-15, available at <http://www.baynature.com/2004octdec/ebparks.html>.

⁵⁹ ARTHUR L. LITTLEWORTH & ERIC GARNER, CALIFORNIA WATER 9 (1995).

County and (to a lesser extent) Contra Costa County.⁶⁰ When the Mokelumne River Project came on line, however, EBMUD no longer had a need for most of these local watershed lands because it no longer needed the water from the creeks, streams and reservoirs located on these lands.⁶¹ In 1928, EBMUD therefore announced its attention to auction off 10,000 acres of what it deemed “watershed surplus.”⁶² Given the emerging demand for suburban Bay Area ridgeline homes, the anticipated purchasers of these hillside surplus lands were residential developers.⁶³

There were others, however, who envisioned a different future for EBMUD’s watershed surplus lands. At that time, the total combined amount of public parkland for the cities of Alameda, Albany, Berkeley, El Cerrito, Emeryville, Oakland, Piedmont, Richmond and San Leandro was 900 acres.⁶⁴ The acquisition of the EBMUD surplus lands therefore offered the prospect of increasing East Bay public parkland holdings by more than 1,000%. To act on this opportunity, in 1928 the Sierra Club, Oakland Park League and Oakland Recreation Commission (along with hiker Robert Sibley and Berkeley City Manager Hollis Thompson) helped create the East Bay Regional Park Association.⁶⁵ The immediate initial goal of the new group was to persuade EBMUD to “donate” the 10,000 acres for public parkland to existing local park agencies, although its more long-term objective was to create a contiguous 22-mile ridgeline park extending from Wildcat Canyon in the north to Lake Chabot in the south.⁶⁶

The specifics of the East Bay Regional Park Association’s parkland acquisition aspirations were set forth in a 1930 report titled *Proposed*

⁶⁰ MIMI STEIN, A VISION ACHIEVED. FIFTY YEARS OF EAST BAY REGIONAL PARK DISTRICT 3-4 (1984); Chiori Santiago, *A Modest Majesty: 70 Years of East Bay Parks*, BAY NATURE, Oct./Dec. 2004, at 13-15, available at <http://www.baynature.com/2004octdec/ebparks.html>.

⁶¹ MIMI STEIN, A VISION ACHIEVED: FIFTY YEARS OF EAST BAY REGIONAL PARK DISTRICT 3-4 (1984); Chiori Santiago, *A Modest Majesty: 70 Years of East Bay Parks*, BAY NATURE, Oct./Dec. 2004, at 13-15, available at <http://www.baynature.com/2004octdec/ebparks.html>.

⁶² MIMI STEIN, A VISION ACHIEVED: FIFTY YEARS OF EAST BAY REGIONAL PARK DISTRICT 3-4 (1984), Chiori Santiago, *A Modest Majesty: 70 Years of East Bay Parks*, BAY NATURE, Oct./Dec. 2004, at 13-15, available at <http://www.baynature.com/2004octdec/ebparks.html>.

⁶³ RICHARD A. WALKER, *THE COUNTRY IN THE CITY: THE GREENING OF THE SAN FRANCISCO BAY AREA* 73 (2007).

⁶⁴ Chiori Santiago, *A Modest Majesty: 70 Years of East Bay Parks*, BAY NATURE, Oct./Dec. 2004, at 14, available at <http://www.baynature.com/2004octdec/ebparks.html>.

⁶⁵ MIMI STEIN, A VISION ACHIEVED: FIFTY YEARS OF EAST BAY REGIONAL PARK DISTRICT 4-6 (1984); Chiori Santiago, *A Modest Majesty: 70 Years of East Bay Parks*, BAY NATURE, Oct./Dec. 2004, at 14, available at <http://www.baynature.com/2004octdec/ebparks.html>.

⁶⁶ Chiori Santiago, *A Modest Majesty: 70 Years of East Bay Parks*, BAY NATURE, Oct./Dec. 2004, at 14, available at <http://www.baynature.com/2004octdec/ebparks.html>.

Park Reservations for East Bay Cities (1930 Park Reservations Report), co-authored by Frederick Olmsted Jr. of the Olmsted Brothers landscape architecture firm and Ansel Hall of the National Park Service. Frederick Olmsted Jr.'s father, Frederick Olmsted Sr., had designed many of the landmark urban parks in North America, including Central Park in Manhattan, Prospect Park in Brooklyn and Mont Royal Park in Montreal. As noted in its section labeled "The Automobile as a Factor," the *1930 Park Reservations Report's* notions of access to the proposed new parklands were premised on the mobility provided by private car ownership rather than public transit systems:

Not until recently has it been possible for a large portion of the population to spend many leisure hours in the country surrounding the residential region. The general use of the automobile as a family convenience and a necessity rather than a luxury has enormously increased the range of possible travel, formerly closely limited to the line of public conveyances.⁶⁷

As noted above, the East Bay Regional Park Association's initial hope was to persuade EBMUD to donate the lands in question for public parkland purposes. When EBMUD indicated that it was not interested in donating its watershed surplus holdings, but was prepared to discuss a fair market sale to parkland proponents, the East Bay Regional Park Association determined that a new regional, multi-county park authority was needed to effectively pursue these negotiations with EBMUD.⁶⁸ In 1933, California Assembly Bill 114 was passed and signed into state law, creating the East Bay Regional Park District—an agency that was modeled in part on EBMUD.⁶⁹ The passage of AB 114 in 1933 was followed in 1934 by East Bay voters' approval of a new property tax assessment—a nickel for every \$100 of assessed real property valuation—to pay for the new agency's operation.⁷⁰

The EBMUD-East Bay Parks negotiations over the surplus watershed lands now began in earnest. EBMUD initially demanded \$6

⁶⁷ ANSEL HALL ET AL., *Proposed Park Reservations for East Bay Cities* 13 (1930, reprint 1984).

⁶⁸ MIMI STEIN, A VISION ACHIEVED: FIFTY YEARS OF EAST BAY REGIONAL PARK DISTRICT 8-14 (1984); Chiori Santiago, *A Modest Majesty: 70 Years of East Bay Parks*, BAY NATURE, Oct./Dec. 2004, at 14, available at <http://www.baynature.com/2004octdec/ebparks.html>.

⁶⁹ RICHARD A. WALKER, THE COUNTRY IN THE CITY: THE GREENING OF THE SAN FRANCISCO BAY AREA 73 (2007).

⁷⁰ MIMI STEIN, A VISION ACHIEVED: FIFTY YEARS OF EAST BAY REGIONAL PARK DISTRICT 8-14 (1984); Chiori Santiago, *A Modest Majesty: 70 Years of East Bay Parks*, BAY NATURE, Oct./Dec. 2004, at 14, available at <http://www.baynature.com/2004octdec/ebparks.html>.

million for the 10,000 acres, but the new agency had less than a million dollars to spend.⁷¹ It was therefore agreed that East Bay Parks would purchase 2,163 acres for the sum of \$656,544, and obtain certain option rights for the remainder.⁷² This inaugural acquisition of 2,163 acres resulted in the preservation of Lake Temescal, Tilden Regional Park (named for first head of the new agency, Charles Lee Tilden) and Sibley Volcanic Regional Preserve.⁷³ Over the next 30 years, East Bay Parks was able to raise the funds to acquire the remainder of the EBMUD watershed surplus lands, creating a sizeable network of hillside parklands.

A 2004 article in the magazine *Bay Nature* on the 70th anniversary of the agency noted: “The people who established the East Bay Regional Park District in 1934 knew open space wasn’t just a good idea for its own sake; it was symbolic of gentility, of leisure, of a quality of life beyond bare nuts-and-bolts survival.”⁷⁴ Theoretically, the gentility and leisure afforded by East Bay Parks lands could be available to all East Bay residents regardless of race or income.

In 1962, William Penn Mott took over as General Manager of East Bay Parks. Mott is credited with strengthening the financial condition of the agency through such measures as increasing the property tax assessment, securing supplemental federal funding for new acquisitions and forging partnerships with the private sector.⁷⁵ During Mott’s tenure (1962-1969) the agency also began to turn its attention from the hillsides to new parkland opportunities along the San Francisco Bay shoreline. Mott’s ally in this effort was East Bay Parks Board member Clyde Woolridge, who recalled: “We had nothing in the flatlands. We were hill people. We didn’t pay attention to the beaches or the flatlands until Bill Mott got in.”⁷⁶ In 1967, the agency made two significant flatland acquisitions—Coyote Hills Regional Park (just north of the east end of the Dumbarton Bridge in Hayward) and Crown Memorial Beach in the

⁷¹ MIMI STEIN, A VISION ACHIEVED: FIFTY YEARS OF EAST BAY REGIONAL PARK DISTRICT 14-15 (1984); Chiori Santiago, *A Modest Majesty: 70 Years of East Bay Parks*, BAY NATURE, Oct./Dec. 2004, at 14, available at <http://www.baynature.com/2004octdec/ebparks.html>.

⁷² MIMI STEIN, A VISION ACHIEVED: FIFTY YEARS OF EAST BAY REGIONAL PARK DISTRICT 14-15 (1984); Chiori Santiago, *A Modest Majesty: 70 Years of East Bay Parks*, BAY NATURE, Oct./Dec. 2004, at 14, available at <http://www.baynature.com/2004octdec/ebparks.html>.

⁷³ MIMI STEIN, A VISION ACHIEVED: FIFTY YEARS OF EAST BAY REGIONAL PARK DISTRICT 14-15 (1984); Chiori Santiago, *A Modest Majesty: 70 Years of East Bay Parks*, BAY NATURE, Oct./Dec. 2004, at 14, available at <http://www.baynature.com/2004octdec/ebparks.html>.

⁷⁴ Chiori Santiago, *A Modest Majesty: 70 Years of East Bay Parks*, BAY NATURE, Oct./Dec. 2004, at 12, available at <http://www.baynature.com/2004octdec/ebparks.html>.

⁷⁵ *Id.* at 16.

⁷⁶ *Id.* at 15.

City of Alameda.⁷⁷

The agency's increasing focus on the San Francisco Bay shoreline and the flatlands continued with East Bay Parks General Manager Richard Trudeau, who took over from Mott in 1969 and remained until 1986. During Trudeau's tenure, an additional 42,000 acres were added to the agency's parkland portfolio, including new flatland holdings such as Point Pinole in Richmond and the 12-mile long Alameda Creek Trail, as well as additional hillside holdings such as Black Diamond Mines Regional Preserve in Antioch.⁷⁸

The growing interest of East Bay Parks in the shoreline was also supported by California's passage of the McAteer-Petris Act in 1965, which created the San Francisco Bay Conservation and Development Commission (BCDC).⁷⁹ Under this legislation, BCDC was granted land-use permitting authority for those lands immediately adjacent to the bay. In 1969, BCDC adopted a document called the *San Francisco Bay Plan* to guide its land-use permit process. The McAteer-Petris Act and *San Francisco Bay Plan* helped elevate the policy objective and regulatory framework for increasing shoreline parkland.

For instance, the section on recreation in the *San Francisco Bay Plan* provides: "In 1963, only about four miles of the approximately 1,000-mile Bay shoreline were being used for waterfront parks. . . . All sites near the Bay that may be needed for parks in the future should be reserved now; otherwise, most of this land will have been taken for other uses by the time it is needed."⁸⁰ In a similar vein, the section on public access in the *San Francisco Bay Plan* states: "[D]emand for additional public access to the Bay continues due to a growing Bay Area population and the desirability of shoreline access areas."⁸¹ As a final example, in a section entitled "Develop Waterfront Parks and Recreation Facilities," the *San Francisco Bay Plan* concludes:

New shoreline parks, beaches, marinas, fishing piers, scenic drives, and hiking or bicycling pathways should be provided in many areas. The Bay and its shoreline offer particularly important opportunities for recreational development in urban areas where large concentrations of people now live close to the water but are shut off from it. Highest priority should be given

⁷⁷ *Id.* at 16.

⁷⁸ *Id.*

⁷⁹ CAL. GOV. CODE §§ 66600-66694 (Westlaw 2007).

⁸⁰ S.F. BAY CONSERVATION & DEV. COMM'N, 1969 SAN FRANCISCO BAY PLAN, at 50 (reprint Jan. 2006).

⁸¹ *Id.* at 56.

to recreational development in these areas, as an important means of helping immediately to relieve urban tensions.⁸²

By restricting the construction of new structures on bayfront lands through its land-use permitting authority, BCDC has helped create a regulatory environment in which shoreline park projects became a more viable alternative.

Beyond conservation objectives, there was also a recognition at East Bay Parks that the bay waterfront provided an opportunity to create parkland for residents in the flatlands. As noted in the 1984 East Bay Parks report *A Vision Achieved: Fifty Years of the East Bay Regional Park District* (“1984 Vision Achieved Report”): “Shoreline parks would also bring open spaces closer to the people who lived in the inner city and had little access to the hilltops.”⁸³

In addition to its comments on the reasons for East Bay Parks’ interest in shoreline parks, the *1984 Vision Achieved Report* also included the following analysis in a section labeled “Service to Urban Populations”:

With the passage of time, the “public” served by the District has experienced a rather remarkable change. Similar to urbanization found in other high-density areas of the United States, the District’s “majority” now includes some special populations with particular needs and identification—i.e. older Americans, physically and/or emotionally disabled, ethnic minorities, single parents, latchkey children, and new immigrants. Most demographic experts are convinced that this emergence of special populations will be a factor of major consequence in the foreseeable future. Thus, the District’s task includes a profound responsibility to accommodate the needs of these groups, as well as to encourage the kinds of appreciation and understanding which will assist each special population to enjoy and properly use the lands. With this special responsibility comes the recognition that for a variety of reasons such as physical disability, financial limits, age and lack of privately-owned transportation, many urban citizens cannot normally enjoy the benefits of the system. In a spirit of service and egalitarianism the District will accept the extra burden and special challenge to understand these impediments and to maximize the means by which all citizens can be served.⁸⁴

⁸² *Id.* at 4.

⁸³ MIMI STEIN, *A VISION ACHIEVED: FIFTY YEARS OF EAST BAY REGIONAL PARK DISTRICT* 56 (1984).

⁸⁴ *Id.* at 114.

In recent years, East Bay Parks has also benefited from the passage of local and statewide park bond measures. Locally, Measure AA (a local bond measure adopted in 1988) made \$225 million available to East Bay Parks and other park agencies operating in the East Bay, and enabled East Bay Parks to acquire an additional 30,000 acres of parkland.⁸⁵ Measure CC (adopted in 2004) established a new annual \$12 per year per parcel assessment for maintenance and operations of East Bay Parks' trails and parkland from the City of Richmond south through the City of Oakland to the City of Alameda.⁸⁶ Statewide, the passage of Proposition 40 in 2002 made \$2.6 billion available for parks, clean water and clean air.⁸⁷ Taken together, these bond measures have enabled East Bay Parks to expand its flatland portfolio. Two of the more noteworthy additions in this regard are Eastshore State Park (an 8.5-mile long shoreline park stretching from Richmond to the Bay Bridge undertaken in collaboration with California State Parks) and Middle Harbor Shoreline Park (a 38-acre park adjacent to the Port of Oakland).⁸⁸

As noted above, in the past few decades East Bay Parks has expanded its holdings in flatland and shoreline communities. Despite this expansion, however, most of the agency's parkland acreage remains in the hillsides.

The *1997 Master Plan* prepared by East Bay Parks explains that public parklands within the East Bay Parks' system are designated under one of the following five classifications and accompanying definitions:

- (1) *Regional Parks* (a spacious land area with outstanding natural features and sufficient size to support many outdoor recreational opportunities)
- (2) *Regional Preserves* (an area with outstanding natural or cultural features that are protected for their intrinsic value and for the enjoyment and education of the public)
- (3) *Regional Recreation Areas* (an area that will provide a variety of outdoor recreational experiences on a site that is particular well suited to the type of recreational activities that the District provides)
- (4) *Regional Shorelines* (an area that provides significant recreational, interpretative, natural, or scenic values on land, water, and tidal areas along the San Francisco Bay, San Pablo Bay and Sacramento/San

⁸⁵ Chiori Santiago, *A Modest Majesty: 70 Years of East Bay Parks*, BAY NATURE, Oct./Dec. 2004, at 33, available at <http://www.baynature.com/2004octdec/ebparks.html>.

⁸⁶ *Id.*

⁸⁷ Cal. State Parks, Proposition 40—2002 Resources Bond, http://www.parks.ca.gov/?page_id=21876 (last visited July 1, 2007).

⁸⁸ *A Haven for All*, CONTRA COSTA TIMES, Apr. 7, 2002; Port of Oakland, *Amidst the Iron and Steel*, PORT NEWS, Fall 2004, at 9-13.

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(5) *Regional Trails* (an area that provides non-motorized, multiple-use pedestrian, equestrian, and bicycle connections between parks and links with other local parks, trails, transportation and employment centers, and urban communities).⁸⁹

Most of the *Regional Parks* and *Regional Preserves* (such as Black Diamond Mines, Briones, Las Trampas Wilderness, Mission Peak, Ohlone Wilderness, Pleasanton Ridge, Redwood, Sunol Wilderness, Tilden and Wildcat Canyon) are located in the East Bay hillsides. Conversely, most of the *Regional Recreational Areas*, *Regional Shorelines* and *Regional Trails* (such as Alameda Creek Trail, Crown Memorial Beach, Eastshore State Park and Point Pinole) are located in the East Bay flatlands. In total, the East Bay Parks' system contains approximately 100,000 acres of public parkland. More than 75% of the nearly 100,000 acres under the agency's jurisdiction comprises parklands designated as *Regional Parks* or *Regional Preserves*—meaning a significant majority of the acreage in the East Bay Parks' system is located in the hillsides rather than the flatlands.⁹⁰

B. EAST BAY DEMOGRAPHICS AND PARK USAGE PATTERNS

The significance of the disparity between the amount of East Bay Parks' holdings located in the hillsides and the amount of East Bay Parks' holdings located in the flatlands relates to corresponding demographic differences between the racial and economic profiles of hillside and flatland communities in the East Bay.

The 2000 census indicates the following ethnic breakdown for Alameda and Contra Costa counties. For Alameda County, out of a total population of approximately 1.5 million people, the ethnic mix was reported at 41% white, 19% Hispanic, 21% Asian, and 15% African-American.⁹¹ For Contra Costa County, out of total population of approximately 1 million people, the ethnic mix was reported as 58% white, 18% Hispanic, 11% Asian and 9% African-American.⁹² However, these county-wide statistical averages are often not reflective of the population in particular flatland or hillside areas.

⁸⁹ EBRPD, MASTER PLAN 1997 52-53 (1997).

⁹⁰ EBRPD, <http://www.ebparks.org/parks> (last visited July 1, 2007).

⁹¹ BAY AREA OPEN SPACE COUNCIL, PARKS, PEOPLE AND CHANGE: ETHNIC DIVERSITY AND ITS SIGNIFICANCE FOR PARKS, RECREATION AND OPEN SPACE CONSERVATION IN THE SAN FRANCISCO BAY AREA 8 (Sept. 2004).

⁹² *Id.*

The City of Richmond, for instance, is located in a primarily flatland portion of Contra Costa County near the San Francisco Bay shoreline. As of 2000, the ethnic mix of Richmond was 44% African-American, 15% Latino, 12% Asian and 29% white.⁹³ Moreover, according to a 1999 report by the Urban Habitat Program in San Francisco, over 13% of Richmond residents live below the poverty level, and the city has the highest number of youth at or below the poverty level in Contra Costa County.⁹⁴

The situation in Oakland is similar. The City of Oakland stretches from the shoreline, across the flatlands and into the hillsides. However, Oakland's low-income and minority populations remain clustered in the flatlands in neighborhoods such as West Oakland, Southeast Oakland and the Fruitvale District. According to a 2003 report by the Brookings Institution's Center on Urban and Metropolitan Policy, titled *Oakland in Focus: A Profile from Census 2000*, West Oakland, Southwest Oakland and the Fruitvale District all had populations of African-Americans greater than 30% and populations of Hispanics/Latinos greater than 30%.⁹⁵ However, the Brookings Institution's *Oakland in Focus* report also indicated that African-American and Latino populations in hillside Oakland communities such as Montclair were both less than 5%.⁹⁶

The statistics in the Brookings Institution's *Oakland in Focus* also provide information on economic disparities in the city, and how these disparities break down based on race and geography. The report notes that the average median household income for whites in Oakland was \$57,399 while the average median household income for African-Americans was \$31,184, for Latinos/Hispanics was \$38,779 and for Asians was \$33,614.⁹⁷ The publication further indicates that the percentage of whites in Oakland living below the poverty line was 7.7%, while the percentage for African-Americans was 24.9%, for Hispanics/Latinos was 21.7% and for Asians was 22%.⁹⁸ Finally, *Oakland in Focus* reports that "Neighborhoods of high poverty extend primarily along the Bay from South Oakland to Richmond."⁹⁹

⁹³ PAC. INST. FOR STUDIES IN DEV., ENV'T & SEC., BROWNFIELDS REDEVELOPMENT: MEETING THE CHALLENGES OF COMMUNITY PARTICIPATION 58 (2000).

⁹⁴ LIZETTE HERNÁNDEZ ET AL., URBAN HABITAT PROGRAM, BUILDING UPON OUR STRENGTHS: A COMMUNITY GUIDE TO BROWNFIELDS REDEVELOPMENT IN THE SAN FRANCISCO BAY AREA 9 (1999).

⁹⁵ BROOKINGS INST. CTR. ON URBAN & METRO. POLICY, OAKLAND IN FOCUS: A PROFILE FROM CENSUS 2000, at 20-21 (2003).

⁹⁶ *Id.*

⁹⁷ *Id.* at 58.

⁹⁸ *Id.* at 60.

⁹⁹ *Id.* at 62.

Another noteworthy piece of information in *Oakland in Focus* can be found in the section on "Commuting." It is reported that while only 12% of whites in Oakland lack access to an automobile at home, 26% of African-Americans lack such access, 17% of Hispanics/Latinos lack such access, and 23% of Asians lack such access.¹⁰⁰ To the extent that notions of access to parkland managed by East Bay Parks are predicated on the ability to drive to parkland, these statistics are telling. For instance, East Bay Parks' 1997 *Master Plan* states: "One of the most attractive features of the East Bay Regional Park District is that its parks and trails are easily accessible to virtually every Bay Area resident. Most park visitors are drawn from the 2.1 million residents of Alameda and Contra Costa Counties, all of whom can find regional park areas within 15 to 30 minutes of their home."¹⁰¹ This "15 to 30 minutes" travel-time estimate presumably pertains to persons with access to a private automobile rather than persons attempting to reach parkland on foot, via bicycle or using public transit.

Robert Self offered the following characterization of the city's demographics in the 1950s in his book *American Babylon: Race and the Struggle for Postwar Oakland*. "Working-class Oakland lived and labored in the flatlands. In contrast, the city's professional, middle, and upper classes resided in the hillside districts, or in the 'foothills' along the edge of the flatlands."¹⁰² The statistics presented in the 2003 *Oakland in Focus* report suggest that the historic economic disparities between East Bay flatland and East Bay hillside communities noted in Self's book remain in place today, and may have taken on an even more pronounced racial aspect in recent decades.

When one compares the geographic distribution of East Bay Parks' present holdings with the racial and income distribution presented in the 2003 *Oakland in Focus* report, the following picture begins to emerge: the majority of park acreage owned and managed by East Bay Parks is located in or near communities where the majority of residents are white and affluent.

This general contours of this picture were effectively captured in a series of maps recently prepared by San Francisco office of the national land conservation group The Trust for Public Land (TPL). To enable the organization to better identify Bay Area neighborhoods with limited proximity and access to parkland, and to enable the organization to better

¹⁰⁰ *Id.* at 54.

¹⁰¹ EBRPD, MASTER PLAN 1997, at 27 (1997).

¹⁰² ROBERT O. SELF, AMERICAN BABYLON: RACE AND THE STRUGGLE FOR POSTWAR OAKLAND 7 (2003).

understand the demographics of such park-poor neighborhoods, TPL initiated a research project that became known as the Park Equity Needs Analysis. The basic approach of the project was as follows. First, TPL began with a map showing all of the parkland in the Bay Area. The definition of parkland employed by TPL was somewhat broader than the definition adopted in this article, in that TPL's definition was not limited to greenspace with a strong naturalist element. Second, TPL developed a series of maps that overlay this depiction of regional parkland with regional demographic data reflecting population density, percentages of children under the age of 18, and percentages of low-income families. Third, using the information in the underlying maps and taking into account other site-specific barriers to access (such as freeways, waterways or railroad routes), TPL prepared an integrated map titled Bay Area Park Equity Analysis.

TPL undertook its Park Equity Needs Analysis initially as an internal organizational exercise to help TPL target appropriate new locations for potential acquisition. At a May 3, 2007, Urban Parks Workshop held in Oakland (coordinated by the Bay Area Open Space Council and Greenbelt Alliance), the director of TPL's San Francisco Bay Area Program, Tim Wirth, made a presentation that included large-scale working versions of the composite Bay Area Park Equity Analysis map as well as several of the underlying demographic maps that contributed to the composite map. The maps prepared as part of TPL's Park Equity Needs Analysis were finalized in late June 2007.

Although TPL employed a somewhat more expansive definition of parks than that used in this article, and although TPL's analysis did not take specific account of racial concentrations and was not specifically focused on the parkland holdings of East Bay Parks, the maps produced as part of TPL's Park Equity Needs Analysis indicate that the East Bay flatland neighborhoods with the greatest density and lowest income tend to be the same neighborhoods with the greatest unmet park needs. Even when these differences in analytic modeling are taken into account, TPL's results are by-and-large consistent with and generally corroborate the other demographic data presented in this article.

A recent study on usage patterns for parklands in the San Francisco Bay Area, although based on small sampling period, also offers some statistical indication that East Bay Parks' holdings in the hillsides are being used usually primarily by whites, and that East Bay Park's holdings in flatland/shoreline communities are used by a more racially mixed group. In a 2004 report titled *Parks, People and Change: Ethnic Diversity and Its Significance for Parks, Recreation and Open Space Conservation in the San Francisco Bay Area (2004 Parks People and*

Change Report), the Bay Area Open Space Council looked at the racial mix of users (on a given weekend day) at Redwood Regional Park (in the Alameda County hills), Briones Regional Park in the Contra Costa County hills) and Point Pinole Regional Shoreline (near the City of Richmond in the Contra Costa County flatlands near San Francisco Bay) during all park hours on a single day. The fact that these park visitor surveys were not done over a longer multi-day period suggests that some caution should be used in relying too extensively on this data as proof of general park usage demographics. Nonetheless, the results of the study in the *2004 Parks, People and Change Report* were as follows:

- Visitors at Redwood Regional Park: 82% white, 7% Asian, 5% Latino, 1% African-American.
- Visitors at Briones Regional Park: 91% white, 9% Asian, 0% Latino, 0% African-American.
- Visitors at Point Pinole Regional Shoreline: 48% white, 22% Latino; 16% Asian, 13% African-American.¹⁰³

These park-usage data, although limited in nature, are consistent with what the previously discussed demographic data and TPL mapping suggest—namely that East Bay Parks’ hillside holdings, which constitute the majority of acreage in the agency’s parkland system, are being used primarily by whites.

East Bay Parks’ staff characterized the park usage data in the *2004 Parks, People & Change Report* as “unscientific” and discounted the significance of the results, explaining: “[W]e believe that use of this one-day survey conducted in only three Regional Parks is inappropriate.”¹⁰⁴

In addition to the data presented in the *2004 Parks, People & Change Report*, East Bay Parks has made available two other pertinent documents on the park usage question: a collection of anecdotal usage information as reported in 2005 by park supervisors (*2005 Anecdotal Collection*); and a summary of findings from a 2005 park user survey conducted by the Strategy Research Institute (*2005 Park User Survey Summary*).¹⁰⁵

¹⁰³ BAY AREA OPEN SPACE COUNCIL, PARKS, PEOPLE AND CHANGE: ETHNIC DIVERSITY AND ITS SIGNIFICANCE FOR PARKS, RECREATION AND OPEN SPACE CONSERVATION IN THE SAN FRANCISCO BAY AREA 63-66 (Sept. 2004).

¹⁰⁴ Memorandum from Pat O'Brien, General Manager of the EBRPD to author (July 27, 2007) (on file with author) (commenting on draft of ACCESS TO PARKLAND, *supra* note *).

¹⁰⁵ Letter from EBRPD Supervisors to author (Feb. 2007) (on file with author) (providing anecdotal information about park usage and diversity from EBRPD Park Supervisors); Strategy Research Inst. for E. Bay Parks, Findings from 2005 EBRPD Park User Survey (Feb. 2007) (on file with author).

Although the *2005 Anecdotal Collection* contains little information about the income/wealth of park users, it does suggest that the racial diversity of park users at any given park is often determined in large part by the particular racial diversity of the surrounding neighborhoods. For example, John Hitchen, Park Supervisor at Point Pinole Park (along the shoreline in the flatlands) reported: "Point Pinole's visitors closely match the demographics of its service areas—Richmond, San Pablo, El Sobrante, Pinole, Hercules and Rodeo Point. . . . Our visitors look like the communities we are a part of—in other words, very diverse."¹⁰⁶ Anne Rockwell, Park Supervisor at Crown Beach Park (along the shoreline in the flatlands) similarly noted: "The combination of no or low cost and the park's location make Crown Beach one of the most heavily-used parks in the East Bay Regional Park District. The proximity to mass transit and the urban interface makes the park's users as diverse as the surrounding communities."¹⁰⁷ Jeff Wilson, Regional Parkland Unit Manager for Tilden Park (in the Oakland hillsides) observed: "The regulars tend to be the REI [Recreational Equipment Inc.] crowd and immediate neighborhood walkers, they hit the trails. Most are white and well educated."¹⁰⁸ Many of the park supervisor reports in the *2005 Anecdotal Collection* also noted the racial diversity at hillside parks tends to improve somewhat on weekends and holidays, when presumably there is greater time for less-local residents (or less-affluent residents without cars who may need to rely on public transit or carpooling) to reach such hillside parks.¹⁰⁹

The *2005 Anecdotal Collection* appears to validate what East Bay Parks predicted in its *1984 Vision Achieved Report*—that the creation of additional shoreline parks helped "bring open spaces closer to the people who lived in the inner city and had little access to the hilltops."

The *2005 Park User Survey Summary* indicates that, in the summer and early fall of 2005, park user data was collected at 21 different parks within the East Bay Parks' system.¹¹⁰ This document does not explain why particular parks were selected for sampling, although more than half of the parks selected for the survey were located in the flatlands or shoreline (even though a significant majority of acreage in the East Bay

¹⁰⁶ Letter from EBRPD Supervisors to author (Feb. 2007) (on file with author) (providing anecdotal information about park usage and diversity from EBRPD Park Supervisors).

¹⁰⁷ *Id.*

¹⁰⁸ *Id.*

¹⁰⁹ *Id.*

¹¹⁰ Strategy Research Inst. for E. Bay Parks, Findings from 2005 EBRPD Park User Survey 1 (Feb. 2007) (on file with author).

Parks' system is located in the hillsides).¹¹¹ This document also does not indicate the number of park users at each of these 21 different parks, but rather simply reports the results (in total) for all of the park user sampling done at all of the 21 parks.¹¹² The "ethnic composition" results reported in the *2005 Park User Survey Summary* were as follows: 62% white; 10% Hispanic/Latino; 6% Black; 11% Asian.¹¹³ These results suggest a discrepancy in the overall, system-wide usage rates between whites and non-whites at the parklands operated by East Bay Parks, although this discrepancy is not as pronounced as the results suggested by some other studies and demographic data. However, given that it appears that flatland/shoreline parks may have been over-represented in the underlying sampling data (as least in relation to the total holdings by acreage within the East Bay Parks system) for this survey, this might account in part for the results. Additionally, to the extent a high percentage of the reported non-white users of the East Bay Parks' system (as reported in the *2005 Park User Survey Summary*) were clustered at a relatively small number of flatland/shoreline parks visited primarily on the weekends, this clustering would also impact an environmental justice assessment of the survey's system-wide ethnic composition totals.

In its July 2007 review of a pre-publication draft of the report from which this article is adapted, East Bay Parks provided some additional information as to its approach with the *2005 Parks User Survey Summary*:

While we appreciate the inclusion of information from both our park supervisors as well as our 2005 Park User Survey, [*Access to Parkland*] suggests that our study was disproportionately concentrated on flatland rather than hill area parks. By way of explanation, this park user research was conducted during the summer months and the specific parks surveyed were chosen because it was our intention to capture the higher use areas in parks that attract visitors during the summer months. With the exception of Del Valle, Shadow Cliffs and Contra Loma that offer swimming during the summer months, the majority of the Regional Parks on the eastern side of the hills are hot and dry during the summer and hence have lower use. Those parks along the shorelines are cooler and more heavily used during the summer months.¹¹⁴

¹¹¹ *Id.*

¹¹² *Id.*

¹¹³ *Id.* at 2.

¹¹⁴ Memorandum from Pat O'Brien, Gen. Manager of EBRPD, to author (July 27, 2007) (on file with author).

These comments may help explain why the *2005 Parks User Survey Summary* focused more on shoreline/flatland parks, but do not specifically address the question of whether this focus may have nonetheless resulted in a survey that may not be representative of the majority of East Bay Parks' holdings (in the hillsides) throughout the year.

The *2005 Park User Survey Summary* also included a noteworthy result based on interviews with 738 visitors at the 21 different parks where sampling was done. In a section titled "Attitudes & Behavioral Dimensions" the document reports the following percentages for visitors who drove a car to the park (as opposed to walked, bicycled, or took a public bus): 93% for whites; 95% for Hispanics/Latinos; 95% for blacks; 93% for Asians. These results provide further evidence that only a negligible portion of East Bay Parks' users utilize public transit to reach parkland, once again highlighting the access obstacles for low-income residents without access to a private car.

The transportation findings in the *2005 Park User Survey Summary* parallel the findings of other studies of public transit and parks, such as the March 2007 report submitted to the Golden Gate National Recreation Area (GGNRA), a division of the National Park Service that manages federal parklands in the San Francisco Bay Area. The March 2007 report was prepared by Nina S. Roberts, Assistant Professor at San Francisco State University, and titled *Visitor/Non-Visitor Use Constraints: Exploring Ethnic Minority Experiences and Perspectives (GGNRA Minority Perspectives Report)*. The *GGNRA Minority Perspectives Report* lists the following as a significant constraint on park usage by ethnic minorities: "Lack of a personal/private vehicle, poor public transport links, and/or lack of knowledge for accessing transportation to reach GGNRA units (offering recreational or educational opportunities) impacts independent, self-sustained access."¹¹⁵

On the transportation front, East Bay Parks has begun to recognize the need to improve public transit from the flatlands to hillside parks. The agency's *1997 Master Plan* comments: "The District also advocates and supports public transportation that provides easy access from communities throughout the District."¹¹⁶ Towards this objective, East Bay Parks' website now includes a direct link to the local "transit trip planner" website (which enables one to create a public transit itinerary from any location in Alameda or Contra Costa counties to any location in

¹¹⁵ NINA S. ROBERTS, S.F. STATE UNIV., VISITOR/NON-VISITOR USE CONSTRAINTS: EXPLORING ETHNIC MINORITY EXPERIENCES AND PERSPECTIVES 3 (2007).

¹¹⁶ EBRPD, MASTER PLAN 1997, at 27 (1997).

the East Bay Parks' system).¹¹⁷ Although it is now more convenient to develop a public transit itinerary to reach such hillside parks (at least for those households with computers that can access the "transit trip planner" website), this does not necessarily mean that the itinerary will itself be convenient. Little of the East Bay Parks' system is within walking distance of stations for the Bay Area Rapid Transit (BART) train system, and public bus service to most of the hillside holdings in the East Bay Parks' systems remains infrequent with limited routes and few that run directly to flatland destinations.

One way that East Bay Parks has sought to address the transportation equity question is through its Parks Express program, which it has operated since 1982.¹¹⁸ The Parks Express program, coordinated by the agency, helps arrange and pay for group bus/van service for visits to East Bay Parks for organizations (such as Headstart Programs at local elementary schools) requesting such transit-related logistical and financial assistance.¹¹⁹ Group visits arranged through the Parks Express Program are often coordinated with education programs presented by East Bay Parks' Naturalists. From 1982 to 1991, East Bay Parks contracted with Alameda-Contra Costa Transit District (AC Transit) for the vehicles and drivers in the Parks Express program, but since 1991 the vehicles and drivers have been provided through contracts with private transit companies.¹²⁰ In 2007, the total projected budget for the Parks Express program was \$297,184, with \$130,713 for agency staff salary and benefits and \$117,413 for actual transportation costs.¹²¹ These figures compare with East Bay Parks' total projected 2007 budget of \$132.4 million.¹²²

The Parks Express program operated by East Bay Parks is augmented by certain transportation services funded by the Regional Parks Foundation, a local nonprofit organization based in Oakland. Funding provided by the Regional Parks Foundation has enabled additional low-income children to use the Parks Express program to participate in youth programs offered by East Bay Parks. For instance, the Regional Parks Foundation has helped pay for bus/van transportation

¹¹⁷ Letter from Jerry Kent, former Assistant Gen. Manager at EBRPD to author (Jan. 30, 2007) (regarding *Initial EBRPD Comments to Access to Parkland*).

¹¹⁸ *Id.*

¹¹⁹ *Id.*

¹²⁰ *Id.*

¹²¹ ROSEMARY CAMERON, ASSISTANT GEN. MANAGER, EBRPD, PARKS EXPRESS 2007 BUDGET (2007).

¹²² ROSEMARY CAMERON, ASSISTANT GEN. MANAGER, EBRPD, BUDGET OVERVIEW: BUDGET AT A GLANCE (2007) (summarizing the 2007 EBRPD Budget Projections).

services so that low-income children can participate in East Bay Parks' Camperships, Kids Day at Roberts Park and Park'n It Day Camp programs.¹²³ According to Rosemary Cameron, the organization's Executive Director, the annual amount of funding that the Regional Parks Foundation generally contributes specifically toward augmenting transit services provided through the Parks Express program is less than the \$134,413 allocated directly in the East Bay Parks' 2007 budget projections.¹²⁴ The Regional Parks Foundation is to be credited for providing supplemental funding to help the Parks Express program better meet the parkland transit needs of low-income East Bay residents (particularly children). However, this private supplemental funding also evidences that East Bay Parks' current level of support for the Parks Express program is not adequate to meet demand.

Putting aside the question of the relation of funding for the Parks Express program to East Bay Parks' overall budget, and the question of the role that funding from private organizations such as the Regional Parks Foundation plays in the Parks Express program, the program has helped many people to access parklands. According to East Bay Parks: "In its 25th year now, the Parks Express program has provided low-cost transportation to the Regional Parks for several hundred thousand people . . . between 2000 and 2006, 2,322 separate trips carried over 120,000 individuals passengers to various Regional Parks."¹²⁵

Beyond transportation and transit, one also finds increasing references in the agency's documents to considerations that touch on questions of equity. For instance, East Bay Park's *1997 Master Plan* and East Bay Parks' 2006 Budget both state: "The East Bay Regional Park District will achieve its vision in the following ways . . . Improve access to and use of the parks by members of groups that have been under represented, such as disabled, economically disadvantaged, and elderly visitors."¹²⁶ To the extent the mention of "economically disadvantaged visitors" can be understood as a reference to low-income residents, and the mention of "under represented" groups can be understood as a reference to non-white residents, these statements in the *1997 Master Plan* and 2006 Budget suggest that environmental justice considerations

¹²³ Letter from Jerry Kent, former Assistant Gen. Manager at EBRPD to author (Jan. 30, 2007) (on file with author) (regarding *Initial EBRPD Comments to Access to Parkland*)

¹²⁴ Telephone Interview with Rosemary Cameron, Assistant Gen. Manager, EBRPD, (June 20, 2007).

¹²⁵ Memorandum from Pat O'Brien, General Manager, EBRPD, to author (July 27, 2007) (on file with author).

¹²⁶ EBRPD, MASTER PLAN 1997, at 10 (2006), available at <http://www.ebparks.org/planning/mp>; EBRPD, ADOPTED BUDGET 2006, at 1 (2006).

are beginning to make their way (albeit somewhat obliquely) onto East Bay Parks' agenda.

The demographic and park-usage findings discussed above are significant from an environmental inequity standpoint. These findings by themselves, however, do not imply that hillside East Bay Park holdings were initially acquired because such holdings happened to be located adjacent to or near neighborhoods that were more affluent or racially homogeneous. Historically, the situation is much more complex.

As noted above, when East Bay Parks first acquired its early hillside lands in the 1930s, these lands were often fairly remote. Some residential development existed in the East Bay hills, but much of the hillside residential development came after rather than before the designation of East Bay Parks' hillside lands.¹²⁷ This suggests that East Bay Parks' acquisition of hillside parkland may have actually served as a catalyst for the development of more affluent adjacent hillside residential neighborhoods that could then take full scenic and recreational advantage of the recently created nearby parks.¹²⁸ The potential for this cause-and-effect relation was noted early on in the *1930 Parks Reservation Report* in a section entitled "Possible Effect of the Establishment of Parks on Adjacent Lands":

A direct advantage to the region can be expected to result, through the stimulating effect of actually setting aside of areas for park preservations and the establishment of definite uses for lands for which the future is now uncertain. Also the adoption of a plan for a reasonably satisfactory means of access into and along the various sections certainly should have a beneficent effect on the values of adjacent lands whether they be in private or in public ownership. Such effect should, in light of experiences elsewhere, lead to a very material increase in the salable and also the tax producing values of such lands.¹²⁹

Conversely, it could be argued that the historical absence of East Bay Parks' lands in the flatlands in the 1930s, 1940s and 1950s placed many

¹²⁷ See generally OLMSTED BROTHERS, LANDSCAPE ARCHITECTS & ANSEL F. HALL, NAT'L PARK SERV., PROPOSED PARK RESERVATIONS FOR EAST BAY CITIES (CALIFORNIA) 26 (1930 reprinted Dec. 1984).

¹²⁸ RICHARD A. WALKER, THE COUNTRY AND THE CITY: THE GREENING OF THE SAN FRANCISCO BAY AREA 75 (2008) (noting that hillside acquisitions by East Bay Parks "had the avid support of leading Oakland realtor Fred Reed, who emphasized the parks' benefits for home values.").

¹²⁹ OLMSTED BROTHERS, LANDSCAPE ARCHITECTS & ANSEL F. HALL, NAT'L PARK SERV., PROPOSED PARK RESERVATIONS FOR EAST BAY CITIES (CALIFORNIA) 26 (1930 reprinted Dec. 1984).

flatland residential neighborhoods in a less-advantageous position than hillside residential neighborhoods due to the corresponding lack of scenic and recreational amenities. To recall, and as noted above, in the 1930s, 1940s and 1950s many East Bay flatland neighborhoods were already entering a period of economic decline and increasing racial concentration due in part to federal housing policies in those decades that did not extend the mortgage guarantee program to mixed-race communities.¹³⁰ Thus, the establishment of East Bay Parks' initial holdings in the Oakland and Berkeley hills coincided with a federal housing policy that actively discouraged investment in properties located in the racially mixed flatlands and that actively steered investment into new hillside development.

Therefore, although we have not come across evidence to suggest that race was a factor in the establishment of East Bay Parks' initial hillside holdings, the establishment of that parkland in that location at that particular point in time may have had some unfortunate economic synergies with the contemporaneous government housing policy that was explicitly fostering *de facto* racial segregation. This historical relationship can be acknowledged without inferring that East Bay Parks or the agency's early supporters necessarily endorsed the federal housing program's race-driven assumptions or agenda.

In terms of race, it is also important to note how dramatically the racial mix of Alameda County and Contra Costa County has changed since the time the East Bay Parks system was founded. In 1930, just before state legislation created East Bay Parks, census figures indicated that only 6% percent of the two counties' population was non-white.¹³¹ In 2000, however, census figures indicated that 59% of Alameda County residents were non-white and that 42% of Contra Costa County residents were non-white.¹³² Any evaluation of the parkland acquisition decisions made by East Bay Parks in the past should take account of the East Bay racial demographics existing at the time such parkland acquisition decisions were made, rather than superimposing the East Bay racial demographics that exist today.

It is also important to take account of the ways that former maritime, industrial and railroad land uses may have affected what properties in the East Bay were considered viable for parkland use. As East Bay Parks' General Manager Pat O'Brien commented:

¹³⁰ ROBERT O. SELF, *AMERICAN BABYLON: RACE AND THE STRUGGLE FOR POSTWAR OAKLAND* 7 (2003).

¹³¹ Letter from Jerry Kent, former Assistant Gen. Manager at EBRPD to author (Jan. 30, 2007) (on file with author) (regarding *Initial EBRPD Comments to Access to Parkland*).

¹³² *Id.*

Any discussion of the opportunity for EBRPD to acquire land suitable for park or open space on the East Bay flatland areas west of the first range of hills must consider the historical pattern of development in those areas. Virtually all of the upland flat areas from Oakland north to central Richmond had been subdivided for residential or commercial/industrial uses prior to the 1960s, with the street and development pattern in most of the area in place before 1930. Land fronting San Francisco Bay was heavily committed to industry and port facilities, especially during World War II. This was consistent with the prevalent land-use and zoning thinking of the time, which considered waterfront land and land served by rail-lines (two major lines ran through the flatland areas) as appropriate for waterborne commerce and heavy industry.¹³³

Acknowledging these historical demographic changes and industrial land-use patterns does not diminish the present-day racial and economic inequities regarding access to the East Bay Parks system, or lessen the need to develop effective environmental justice responses to address these inequities. Such an acknowledgement merely places these current park inequities in a broader and more accurate historical context—one that is far more complicated than the explanation a purely environmental racism-based analysis might present.

C. RESPONSES/OBJECTIONS TO REPORT'S ACCESS ASSESSMENT

1. *Acreage-Based Equity Criteria*

As part of the preparation of the report on which this article is based, a draft version was circulated broadly for comment in December 2006. This draft was sent to several senior staff at East Bay Parks (as well as numerous other entities and individuals), and in late January 2007 a meeting took place at East Bay Parks headquarters. This meeting, which lasted more than two hours, was attended by Pat O'Brien (East Bay Parks' General Manager), Rosemary Cameron (East Bay Parks' Assistant General Manager), Mike Anderson (East Bay Parks' Assistant General Manager), Professor Alan Ramo (Director of the Environmental Law and Justice Clinic at GGU School of Law) and myself.

Beyond the discussions that took place at this meeting, Pat O'Brien, Rosemary Cameron and Mike Anderson provided a copy of a document

¹³³ Memorandum from Pat O'Brien, General Manager, East Bay Regional Parks District, to author (July 27, 2007) (on file with author).

that was titled *Initial EBRPD Comments to Access to Parkland (Initial Agency Comments)*. One of the points raised in this document concerned whether a comparison of total parkland acreage (between more affluent/less racially diverse hillside areas and less affluent/more racially diverse flatland areas) is an appropriate measure of equity. More specifically, *Initial Agency Comments* suggested:

Acreage of hillside or flatland parks by itself is not an appropriate factor for measuring equitability. In order to ensure an equitable distribution of both parklands and services, EBRPD's Master Plan divides the Park District into three geographic areas—West Metro Sector, South Metro Sector, and Diablo Sector. EBRPD Board and staff work diligently to ensure that an appropriate balance of acquisition, development and operation expenditures are maintained over time, across each of these three planning areas.

The Park District continues to actively work to accomplish acquisitions along the Bay Shoreline that have been designated in the Park District's Master Plan. Acquisitions in these highly developed urbanized areas are disproportionately more costly than more open space land, yet the District continues to place a high priority on completing these often complex and lengthy acquisitions, and then moving forward to complete cleanup and other remediation work that is so often a significant part of acquisition projects near the Bay.

. . . .
A more appropriate measure of EBRPD's commitment and level of service to the most urbanized and ethnically diverse East Bay communities would be the cost of operating (and hence the level of funding) those parks that primarily serve economically disadvantaged or minority populations.¹³⁴

These comments from East Bay Parks raise two questions that merit closer consideration.

First, these comments highlight that East Bay Parks (through its Master Plan process) has traditionally approached the issue of equity from a geographic rather than a demographic perspective. That is to say, East Bay Parks has sought to achieve equity in the parkland holdings and resources among its three administrative geographic sectors—West Metro, South Metro, and Diablo. Although the need for geographic sector designations within the East Bay Parks system may make sense for administrative purposes, and although achieving equitable parkland

¹³⁴ Letter from Jerry Kent, former Assistant Gen. Manager at EBRPD, to author regarding *initial EBRPD Comments to Access to Parkland* (Jan. 30, 2007) (on file with author).

holdings and expenditures among each of these three sectors may be a reasonable objective, this type of administrative equity is fundamentally different from the type of equity involved in the environmental justice context. More specifically, the term "equity" as used in this article refers to the issue of whether low-income minority residents have equal access to reach (and therefore use) the parkland holdings managed by East Bay Parks. The fact that East Bay Parks has been or is striving to achieve certain equity among its three internal administrative geographic sectors (which all include both hillside and flatland areas) is not a consideration relevant for environmental justice analytic purposes. If there are equal parkland holdings/services among all three sectors, but inequitable access to parkland for low-income minority residents within each of these three sectors, then a situation of environmental inequity nonetheless exists.

Second, these comments note, quite correctly, that the costs of acquiring, developing and maintaining new parkland in the more urbanized flatlands can often be greater (on a per-acre basis) than acquiring, developing and maintaining parkland in less urbanized hillside locations, and suggest that (in part because of this cost differential) an alternative method for evaluating environmental justice at East Bay Parks might be to focus on the level of current agency acquisition and operational expenditures that primarily benefit low-income minority residents. The observations concerning the higher costs (including possible environmental remediation) of purchasing and developing more urbanized land for park use and the higher costs (such as security) of maintaining such parkland identify one of the key economic obstacles that East Bay Parks faces in addressing the question of equitable access for low-income minority residents (and thus is a consideration that should properly be taken into account). Additionally, the fact that East Bay Parks has demonstrated an increased willingness in recent years to purchase and maintain such urbanized parkland sites (despite the higher per-acre costs vis-à-vis most hillside sites) evidences the agency's growing attention to demographic disparities, and for this credit to the agency is due. The environmental justice assessment presented in this article, however, focuses on the present widespread inability of low-income minority residents in the East Bay to reach and use much of the parkland holdings of East Bay Parks. East Bay Parks' recognition that such inequities in access exist, and commitment of agency resources to try to address such inequities, is encouraging. This recognition and commitment, however, do not rebut or otherwise invalidate the legitimate environmental justice concerns raised by the demographic and usage park data noted above.

Moreover, it should also be noted that TPL's Bay Area Park Equity Analysis (discussed earlier) chose to focus on proximity to parkland rather than total parkland acreage (in different demographic neighborhoods) as an underlying statistical component for its composite regional park equity map. Yet even without consideration of total parkland acreage in different demographic neighborhoods in its analytic model, TPL's Bay Area Park Equity Analysis still found that the areas of Alameda and Contra Costa counties with the greatest current unmet park needs are those neighborhoods with higher percentages of low-income and non-white residents. For this reason, the equity conclusions reached in this article regarding discrepancies in East Bay Parks' total parkland acreage (between the hillsides and flatlands) tend to closely mirror the equity conclusions reached when the focus is on park proximity discrepancies.

The *Initial Agency Comments* provided by East Bay Parks also maintained that an analysis of environmental justice considerations should take account of the role the agency played in the passage of Measure AA in 1998 and the parkland acquisition resources that Measure AA made available to city park agencies operating in the East Bay. Measure AA provided approximately \$165 million to East Bay Parks and approximately \$60 million to city park agencies in Alameda and Contra Costa counties.¹³⁵ East Bay Parks took the lead in drafting and campaigning for Measure AA, and East Bay Parks' staff maintain that the inclusion of funding for city park agencies in the measure should be recognized as part of East Bay Parks' contribution to improving parkland resources for low-income minority residents.¹³⁶ An evaluation of this claim, however, requires recognition of the fact that, because East Bay Parks was looking to build a broad base of support for Measure AA (to secure its passage by voters), there may also have been potential political reasons to include funding for other park agencies in addition to itself. An evaluation of this claim also needs to consider that since East Bay Parks was to receive the lion's share of funding under Measure AA, it was perhaps appropriate that East Bay Parks play the most prominent role in pushing for its passage.

Pat O'Brien, General Manager for East Bay Parks, has denied that the inclusion of funding for city park agencies in Measure AA was motivated in part by a desire to increase local political support for the measure:

¹³⁵ Letter from Jerry Kent, former Assistant Gen. Manager at EBRPD, to author regarding *Initial EBRPD Comments to Access to Parkland* (Jan. 30, 2007) (on file with author).

¹³⁶ *Id.*

[N]otwithstanding the \$60 million included in Measure AA specifically for city park acquisition and development projects, the ballot measure never really received much support from local park agencies or cities in the way they routinely helped to support State Park Bond Acts. The Board of Directors of the East Bay Regional Parks District included local funding in Measure AA because it was the right thing to do, and would add some healthy funding, approximately 10 times more than the cities ever received from State Park Bond Funds, at the local level. The Park District's pre-election polling on Measure AA did not indicate that inclusion of local park funding would actually help garner additional public support for Measure AA.¹³⁷

2. *Access-Based Explanation for Park Usage Data*

In the academic literature on park usage, two primary explanations have been advanced to explain discrepancies in usage levels between whites and non-whites: marginality and ethnicity.¹³⁸

The marginality explanation for racial discrepancies in park usage focuses on poverty and socioeconomic discrimination.¹³⁹ It posits that lower park-usage levels among non-whites are due primarily to their reduced ability to access parks due to such considerations as lack of proximity, lower car-ownership rates and longer working hours.

The ethnicity explanation posits that racial discrepancies in park usage are instead due primarily to different ethnic preferences.¹⁴⁰ For instance, some writings on the ethnicity explanation have suggested that whites tend to use more naturalist parks because those parks are more conducive to solitary or small-group hiking for which whites have a greater cultural affinity (and that conversely non-whites visit naturalist parks less because they prefer public spaces more conducive to such activities as large-group picnics).¹⁴¹ Other writings on the ethnicity explanation suggest this theory posits that non-whites do not visit parks as often as whites because non-whites have not been "exposed to the value of the parks" and have not been "socialized into this activity."¹⁴² In

¹³⁷ Memorandum from Pat O'Brien, General Manager, EBRPD, to author (July 27, 2007) (on file with author).

¹³⁸ SETHA LOW, DANA TAPLIN & SUZANNE SCHELD, *RETHINKING URBAN PARKS: PUBLIC SPACE AND CULTURAL DIVERSITY* 41-43 (2005).

¹³⁹ *Id.*

¹⁴⁰ *Id.*

¹⁴¹ *Id.*

¹⁴² Andrea Waye, *An Environmental Justice Perspective on African-American Visitation to*

the comments and responses received on the December 2006 draft of the report from which this article is adapted, several individuals suggested that the lower usage rate of East Bay Parks' holdings by low-income minority residents was due in considerable part to the fact that East Bay Parks' focus on more naturalist/wilderness parkland was of limited interest to such residents.

To the extent a clearer appreciation of how different ethnic/racial groups tend to use parklands enables park agencies (such as East Bay Parks) to create, design and maintain parkland that is more responsive to the needs of non-white residents, and to the extent such an appreciation enables park agencies to emphasize aspects of the park experience that might result in increased interest by persons with limited previous exposure to parks, an examination of such preferences in park usage may be of some potential value. For instance, in its *2004 Parks, People and Change Report*, the Bay Area Open Space Council reported that the literature on park usage tends to indicate that:

Latino park users do not so much seek a "wilderness experience" as an opportunity to recreate in a beautiful outdoor setting with family members, and tend to prefer more developed sites that can accommodate larger groups.¹⁴³

. . . .

Walking for pleasure is the top activity for people who live in the Bay Area. Almost everyone says they do it, and positive response is consistently high (from 81% to 93%) regardless of ethnicity. However, the way people walk varies considerably by ethnicity. When surveys distinguish between "walking" and "hiking", the hikers end up being disproportionately white. And if hiking involves carrying a pack on your back, the pattern is even more pronounced with whites participating at a rate twice that of Latinos, and five times that of African Americans.¹⁴⁴

As explained further below, however, there are significant questions regarding the conceptual soundness of the ethnicity-based explanation for park usage patterns, and significant concerns about the potential misuse of the ethnicity-based explanation to justify inaction in addressing disparate park access for different racial groups.

Grand Canyon and Yosemite National Parks, 11 HASTINGS W.-NW. J. ENVTL. L. & POL'Y 125, 137 (2005).

¹⁴³ BAY AREA OPEN SPACE COUNCIL, PARKS, PEOPLE AND CHANGE: ETHNIC DIVERSITY AND ITS SIGNIFICANCE FOR PARKS, RECREATION AND OPEN SPACE CONSERVATION IN THE SAN FRANCISCO BAY AREA 13-14 (Sept. 2004).

¹⁴⁴ *Id.* at 16.

First, reliance on racial preference park-usage data is complicated by the fact that such data may be tied ultimately more to income than to race (e.g., affluent African-Americans may tend to hike more and less affluent whites may hike less), and by the ways in which access and racial discrimination can shape preferences. For example, the *2004 Parks, People and Change Report* discussed above also noted that the literature on park usage tends to indicate that:

The proportion of people engaged in outdoor recreation declines with distances from home.

....

Time constraints are the most frequently mentioned reason for why people do not engage in outdoor recreation.

....

Many people of color, but especially African-Americans, are concerned about the potential for discrimination and bigotry in rural America, and are thus reluctant to travel and recreate there.¹⁴⁵

The *2004 Parks, People and Change Report's* acknowledgement of discrimination concerns was also something noted in the March 2007 *GGNRA Minority Perspectives Report* (discussed above). More specifically, the *GGNRA Minority Perspectives Report* identified the following as a primary constraint factor limiting parkland use and visitation: "Experiences with and/or fear of potential discrimination was a real issue. . . . A few people provided explicit/overt examples including racial slurs and harassment by other visitors. Majority of comments related to overall discomfort with non-verbal body language and other non-verbal clues."¹⁴⁶

A 1996 article in *National Parks* magazine similarly reported: "An African-American couple entering the average Western park would feel much like a white couple walking into a room filled with black people. It's just a sign that you don't belong."¹⁴⁷

Given that a significant portion of African-Americans (and other people of color) may lack the time or money to reach the more-remote

¹⁴⁵ *Id.* at 12-13.

¹⁴⁶ NINA S. ROBERTS, S.F. STATE UNIV., VISITOR/NON-VISITOR USE CONSTRAINTS: EXPLORING ETHNIC MINORITY EXPERIENCES AND PERSPECTIVES, at Executive Summary 4 (2007) (report prepared for the Golden Gate National Recreational Area and the Golden Gate National Parks Conservancy).

¹⁴⁷ Jim Woolf, *In Defense of the Metropolitan Mosaic*, 70 NAT'L PARKS 41, 42 (2006) (cited in Andrea Waye, *An Environmental Justice Perspective on African-American Visitation to Grand Canyon and Yosemite National Parks*, 11 HASTINGS W.-NW. J. ENVTL. L. & POL'Y 125, 138 & n.105 (2005)).

large-acreage holdings where one might go backpack hiking, and given that a significant portion of African-Americans (and other people of color) may have concerns about encountering racism at such more remote large-acreage parks, it may not be surprising that a significant portion of African-Americans (and other people of color) may have little experience with or interest in such hiking. In short, sampling data suggesting differing racial preferences in park activities may be accounted for in part by differing racial access to more expansive naturalist parks and the racist environment encountered at more expansive naturalist parks. This circular interrelationship makes it difficult to effectively isolate the ethnicity explanation for racial park usage discrepancies from the marginality explanation.

Second, the literature on the ethnicity explanation for park usage at times seems to suggest (without making this point explicit) that perhaps certain racial groups' outdoor recreational preferences may have a genetic/physiological basis. That is to say, the literature on the ethnicity explanation raises the question of whether there may be something genetically intrinsic to whites of Northern European descent that accounts in part for their current widespread interest in solitary hiking, or something genetically intrinsic to Latinos/Hispanics that accounts in part for their current widespread interest in large-group picnics. At a minimum, the literature on the ethnicity explanation for park usage data unfortunately often lacks analysis that effectively clarifies that the ethnicity explanation is not based on this assumption.

Third, an additional concern with relying too heavily on the ethnicity explanation for park usage is that this explanation can provide park agencies with a ready-made justification for refusing to allocate additional resources to improve parkland access for non-white residents. Reduced to its most terse expression, this justification offers the defense that there is little reason to create enhanced parkland opportunities for non-whites (whether through the creation of new parks or improved public transit to existing parks) because "non-whites don't like parks." In effect, the ethnicity explanation has the unfortunate potential to be relied upon as an excuse for the status quo concerning access to parkland.

In addition to comments (on the draft of the report on which this article is based) touching on the ethnicity explanation for park usage data, there were also comments on the appropriateness and viability of East Bay Parks basing its new parkland acquisition decisions on whether potential new sites were easily accessible to low-income minority residents. As Jerry Kent, a former Assistant General Manager with East Bay Parks and now a member of the Sierra Club's East Bay Public Lands Committee, explained:

In my opinion, planning parkland locations and measuring equity today based on income or vehicle ownership would not be realistic or usable as acquisition criteria. Locating all new parklands within walking distance of low-income families or near a transit bus route for families without a vehicle may sound ideal, but would not be feasible even for new parklands that the District might consider in the future. Regional Parklands are usually located in each of the three Master Plan Sectors where a variety of natural resources and open space features are present or where land and water features exist for creating parklands that would be close to urban residents.¹⁴⁸

Jerry Kent's comments highlight the potential problem with making equity-in-access an inflexible litmus test for all new parkland acquisitions by East Bay Parks—an approach that, if taken to the extreme, could preclude consideration of ecological and scenic values in the parkland site-selection process. Even if one concedes that this rigid approach would not be desirable, however, there is the more workable proposition that equity-in-access should be elevated to a core institutional mission for East Bay Parks—equal to and alongside (rather than in lieu of) its traditional conservation mission.

3. *Low-Income Minority Resident Programs Not Related to Access*

The *Initial Agency Comments* provided by East Bay Parks also noted that there are a number of on-site programs designed to benefit low-income minority residents that are not related directly to the question of access. More specifically, the *Initial Agency Comments* stated:

EBRPD has, historically, committed significant resources both in terms of budget and staffing to a wide variety of programs and services to directly serve low-income minority communities, and especially youngsters. This occurs through Naturalist-led education programs in the parks serving low-income classrooms, recreation and aquatic programs specifically designed to reach low-income youngsters, partnership programs with a wide variety of non-profits and other public agencies, and funding provided by the Regional Parks Foundation, EBRPD's nonprofit fundraising support organization. Cumulatively, these programs reach thousands of primarily young people every year at a significant financial investment. A few examples:

....

¹⁴⁸ Letter from Jerry Kent, former Assistant Gen. Manager at EBRPD to author regarding *Initial EBRPD Comments to Access to Parkland* at 2 (Jan. 30, 2007) (on file with author).

Over the last ten years, the Regional Parks Foundation has raised and spent \$1,000,000 directly to fund “Camperships” for literally thousands of youngsters to participate in EBRPD day camping programs, swim lessons, Jr. Lifeguard programs, Naturalists educational programs, and to attend Camp Arroyo.

....

Martin Luther King Jr. Freedom Center—Nonprofit providing programs primarily for Oakland’s Castlemont High School has operated for ten years out of Martin Luther King Jr. Regional Shoreline at no cost.

....

North Richmond Shoreline Open Space Alliance—The alliance, in conjunction with the Sierra Club and Save the Bay, organized the Richmond Shoreline Festival held for the last two years at Point Pinole Regional Shoreline.

....

Youth Bike Adventures—This nonprofit provides organized mountain bike rides for low-income minority youth. Staff at Wildcat Canyon Regional Park store and transport the bikes for Youth Bike Adventures to hold six to eight rides annually at Wildcat Canyon and Point Pinole.¹⁴⁹

Because the focus of this article is on the particular issue of access, a detailed environmental justice analysis of East Bay Parks’ on-site activities is beyond the scope of this assessment. The comments above highlight, however, that access is not necessarily the only criterion for evaluating the extent to which the parkland system managed by East Bay Parks equitably serves low-income minority residents.

It should also be noted, however, that claims of commitment of “significant resources” are relative and depend on one’s perspective. For example, although East Bay Parks might consider the allocation of 1% of its total annual budget (\$1.34 million out of \$134 million)¹⁵⁰ to be a significant commitment toward programs directly serving low-income minority residents, such spending levels could be considered by others to be a fairly insignificant portion of the agency’s total expenditures. Moreover, it is unclear how the work of nonprofit organizations (such as the Regional Parks Foundation and the North Richmond Shoreline Open Space Alliance) to help low-income minority residents better use the lands managed by East Bay Parks is something for which East Bay Parks

¹⁴⁹ Letter from Jerry Kent, former Assistant Gen. Manager at EBRPD to author regarding *initial EBRPD Comments to Access to Parkland* at 6-7 (Jan. 30, 2007) (on file with author).

¹⁵⁰ Rosemary Cameron, Assistant Gen. Manager, EBRPD, Budget Overview: Budget at a Glance (2007) (summarizing the 2007 EBRPD Budget Projections).

can claim credit. The primary credit for these efforts/results seems due to these nonprofit organizations.

IV. EAST BAY PARKS ENVIRONMENTAL JUSTICE CASE STUDIES

A. TIDEWATER BOATHOUSE

In 2004, East Bay Parks submitted applications to California State Parks for grants to develop a boathouse, boat-launch dock and environmental education program on undeveloped East Bay Parks land on Tidewater Avenue along the Oakland Estuary.¹⁵¹ East Bay Parks' partner in the grant applications was Oakland Strokes—a nonprofit East Bay crew program for high school students.¹⁵² Oakland Strokes is a successful junior-level rowing club founded in 1974.¹⁵³ Each year a significant percentage of graduating Oakland Strokes' seniors go on to attend universities with strong rowing programs such as Princeton, Yale and Berkeley.¹⁵⁴

There can be significant costs involved for students to participate in Oakland Strokes' rowing. The Fall 2006 registration fee, for instance, was \$650 plus payment of an additional \$150 for an initial two-week mandatory tryout period.¹⁵⁵ Moreover, these dues do not cover travel expenses (such as transportation and lodging) to out-of-area youth rowing competitions in which Oakland Strokes teams participate, such as the Crew Classic in San Diego and the Head of the Lake/Frostbite Regatta and Windermere Cup events in Seattle, Washington.¹⁵⁶ To help make the organization's program available to students with lesser financial means, Oakland Strokes has created a scholarship fund (overseen by a Scholarship Committee) to help defray membership costs.¹⁵⁷ The financial aid application explains: "The Scholarship Committee makes awards based upon financial need, positive attitude

¹⁵¹ Grant Application, EBRPD for Tidewater Aquatic Center and Martin Luther King Jr. Regional Shoreline (submitted pursuant to Murray-Hayden Urban Parks and Youth Services Program, 2002 Resources Bond Act), at 10 (July 2003) (on file with author).

¹⁵² Oakland Strokes, <http://www.oaklandstrokes.org> (last visited July 1, 2007).

¹⁵³ Oakland Strokes, The Oakland Strokes Program/History, <http://www.oaklandstrokes.org/AboutUs.php?ics=a2> (last visited July 1, 2007).

¹⁵⁴ Jake Curtis, *Crew Teams Open Doors for City's Youth: Colleges Clamor to Recruit Rowing Talent from Bay Area*, S.F. CHRON. (July 25, 2005), at D-2.

¹⁵⁵ Oakland Strokes, <http://www.oaklandstrokes.org> (last visited July 1, 2007).

¹⁵⁶ *Id.*

¹⁵⁷ *Id.*

and active volunteer participation.¹⁵⁸

From 1975 to 2001, the Oakland Strokes leased and occupied a warehouse located on the Oakland Estuary waterfront on the southeast side of the Lake Merritt Channel.¹⁵⁹ In 2001, the Oakland Strokes moved their facilities across to the northwest side of the Lake Merritt Channel and began leasing two boat-bays from the City of Oakland's Office of Parks and Recreation.¹⁶⁰ In early 2002, the Oakland Strokes entered into negotiations with East Bay Parks for a longterm lease of a new proposed facility on the Tidewater Avenue property, and began to make plans to build a new boathouse.¹⁶¹ The proposed lease was for 15 years, with a rental rate of \$2,500 per year (or about \$208 per month), to be adjusted by the Consumer Price Index every 5 years.¹⁶² The group hired an architect to design a new boathouse and adjacent dock and began developing a fundraising plan to raise the estimated \$1.5 million needed to complete the construction project.¹⁶³

When the lease between Oakland Strokes and East Bay Parks was proposed, some equity concerns were raised concerning who would be served by the new boathouse. More specifically, when East Bay Parks' staff asked the agency's Park Advisory Committee to review and comment on the proposed agreement, several members of the Park Advisory Committee expressed reservations about providing a fairly exclusive private organization with long-term rights to occupy shoreline property without a commitment from the organization to programming and access to benefit the broader public and the surrounding community near the site.¹⁶⁴ The Park Advisory Committee is a 21-member citizens advisory group appointed by East Bay Parks' board of directors.¹⁶⁵

Sandra Threlfall is the founder of Waterfront Action, an Oakland-based nonprofit group that works to promote public access to the East Bay shoreline. Threlfall was serving on the Park Advisory Committee at

¹⁵⁸ Oakland Strokes, Application for Financial Aid, <http://www.oaklandstrokes.org/acrobatForms/FinAidApp.pdf> (last visited Dec. 1, 2007).

¹⁵⁹ E-mail from Robert Kidd to author (Mar. 30, 2007) (commenting on initial draft of ACCESS TO PARKLAND, *supra* note *) (on file with author).

¹⁶⁰ *Id.*

¹⁶¹ *Id.*

¹⁶² Sections 2(a) and 3 of April 2, 2002, Lease Agreement Between East Bay Regional Parks District and Oakland Strokes Inc. (on file with author).

¹⁶³ E-mail from Robert Kidd to author (Mar. 30, 2007) (commenting on initial draft of ACCESS TO PARKLAND, *supra* note *) (on file with author).

¹⁶⁴ Telephone Interview with Peter Heylin by Pamela Palitz, Golden Gate Univ. Sch. of Law, class of 2006 (Dec. 11, 2005); telephone interview with Sandra Threlfall by Pamela Palitz, Golden Gate Univ. Sch. of Law, class of 2006 (Dec. 12, 2005).

¹⁶⁵ EBRPD, Public Meetings, <http://www.ebparks.org/about/meetings#advisory> (last visited Mar. 23, 2008).

the time the Oakland Strokes agreement was proposed, and she recalls:

I came into the Oakland Strokes debate fresh from Waterfront Action's recent experience with Cal Crew [Berkeley's rowing club] at the Union Point site. With Union Point, which is on the Oakland Estuary near the Park Street Bridge, Cal Crew had proposed building a new boathouse but insisted on fencing down to the water that would have blocked a shoreline path. This demand was inconsistent with BCDC's policy of providing public access to the bay to the maximum extent possible, and eventually killed the Cal Crew negotiations. Union Point did not leave me with a particularly favorable impression of the East Bay rowing community.¹⁶⁶

At the Park Advisory Committee meeting when the Oakland Strokes agreement was discussed, Threlfall questioned the appropriateness of using public parkland to provide facilities at below-market for what appeared to be essentially an affluent private club with little connection to the adjacent neighborhood.¹⁶⁷

Peter Heylin, a member of the Oakland Strokes board of directors, similarly recalls that many of the exchanges at the Park Advisory Committee meeting were quite contentious, with one speaker calling the new boathouse proposal "a white splinter in the heel of black Oakland."¹⁶⁸ The representatives from Oakland Strokes responded to these points by outlining the group's plans to expand outreach and participation by the surrounding community, and by reaffirming that there would be public access to all the property (including the shoreline) surrounding the boathouse.¹⁶⁹ With these commitments, the Park Advisory Committee eventually endorsed the lease, which then led to the approval by the East Bay Parks' board of directors in April 2002.¹⁷⁰

By the fall of 2003, however, Oakland Strokes acknowledged that it had fallen far short of reaching its fund-raising goals¹⁷¹ The group had

¹⁶⁶ Letter from Sandra Threlfall to author (Sept. 17, 2006) (on file with author).

¹⁶⁷ Telephone Interview with Sandra Threlfall by Pamela King Palitz (Dec. 12, 2005) (a transcription of this interview was provided in Palitz's unpublished paper *Unequal Access to Open Space: Questions of Equity for the East Bay Regional Park District*).

¹⁶⁸ Telephone Interview with Peter Heylin by Pamela King Palitz (Dec. 11, 2005) (a transcription of this interview was provided in Palitz's unpublished paper *Unequal Access to Open Space: Questions of Equity for the East Bay Regional Park District*).

¹⁶⁹ *Id.*

¹⁷⁰ Res. No. 2002-3-68 of Board of Directors of EBRPD ("Authorization to Enter into Agreement with the Oakland Strokes for Construction and Operation of Boathouse and Dock at Martin Luther King, Jr. Regional Shoreline").

¹⁷¹ Telephone Interview with Peter Heylin by Pamela King Palitz (Dec. 11, 2005) (a transcription of this interview was provided in Palitz's unpublished paper *Unequal Access to Open*

managed to raise only \$400,000 towards construction of the new boathouse and dock—less than 30% of the projected \$1.5 million budget.¹⁷² As Peter Heylin put it, “We fell flat on our face in fundraising.”¹⁷³ This shortfall led Oakland Strokes board member Alan Sherman to contact East Bay Parks’ grant specialist Jeff Rasmussen to discuss possible grant opportunities.¹⁷⁴ Rasmussen then provided Sherman with information on the criteria for the statewide Urban Parks and Murray-Hayden grant program. This grant program, established under California’s Proposition 40 (passed in March 2002), provides funding on a competitive basis for areas that have a critical lack of parks and open space, shortage of youth services, and significant poverty and unemployment.¹⁷⁵

Rasmussen then contacted the Oakland Strokes with an offer to have East Bay Parks, on Oakland Strokes’ behalf, apply for state parks grant money to build the boathouse.¹⁷⁶ Rasmussen told the Strokes he was optimistic about its chances of being selected for a Proposition 40 grant.¹⁷⁷ Not surprisingly, Oakland Strokes enthusiastically agreed and formed a committee to work up their portion of the application.¹⁷⁸

In the grant proposal, Oakland Strokes was listed as one of four organizations that would develop on-the-water programming for youth, families and other residents of the central East Oakland neighborhood that adjoins the Oakland Estuary and San Leandro Bay.¹⁷⁹ Oakland Strokes would offer high school students from the delineated Project service area participation in its competitive rowing program, and would oversee development and operation of the Project’s recreational water sports programming (canoeing, kayaking, and rowing) for youth and adults, working alongside the YMCA of the East Bay, Save the Bay, and

Space: Questions of Equity for the East Bay Regional Park District).

¹⁷² *Id.*

¹⁷³ *Id.*

¹⁷⁴ See Grant Application, EBRPD for Tidewater Aquatic Center and Martin Luther King Jr. Regional Shoreline (submitted pursuant to Murray-Hayden Urban Parks and Youth Services Program, 2002 Resources Bond Act), at 2 (July 2003) (on file with author).

¹⁷⁵ Resolution of Board of Directors of EBRPD Authorizing Tidewater Boathouse Application (Nov. 18, 2003).

¹⁷⁶ Interview with Jeff Rasmussen by Pamela King Palitz at East Bay Parks’ headquarters (Sept. 13, 2005).

¹⁷⁷ September 13, 2005 interview by Pamela King Palitz with Jeff Rasmussen at East Bay Parks’ headquarters.

¹⁷⁸ Oakland Strokes, About Us, <http://www.oaklandstrokes.org/AboutUs.php?ics=o> (last visited Mar. 23, 2008).

¹⁷⁹ See Grant Application, EBRPD for Tidewater Aquatic Center and Martin Luther King Jr. Regional Shoreline (submitted pursuant to Murray-Hayden Urban Parks and Youth Services Program, 2002 Resources Bond Act), at 9 (July 2003) (on file with author).

Cal Adventures (UC Berkeley's Outdoor and Experiential Education Program).¹⁸⁰ The bond money specifically provided through Proposition 40 was available for site improvement but could not be used to supplement general operational expenses.¹⁸¹

The first selection criterion for the grant was that current facilities meet the needs of the Project service area.¹⁸² The application stated that in the low-income neighborhoods adjoining the Estuary and San Leandro Bay, few youngsters know how to swim and even fewer have ever participated in water sports activities.¹⁸³ As a part of the program offered through the proposed Tidewater Aquatic Center, the YMCA would offer swimming lessons at its pools and City of Oakland facilities, and then seek to funnel those students into the water sports programs at the Tidewater Boathouse.¹⁸⁴

The second criterion was a critical lack of park and open space within the Project service area.¹⁸⁵ The 43,870 residents of the Project area for the Tidewater proposal had access to 20 acres of parkland, or .45 acre per 1,000 residents.¹⁸⁶ That calculation was a "10" (out of 10 points) on the grantor's park scarcity scale—meaning there was a significant deficiency of parks and recreational facilities within a one-mile radius of the Project site.¹⁸⁷

The grant application touted Oakland Strokes' competitive rowing experience as one that "will exert a powerful impact on most of the young women and men who participate."¹⁸⁸ The application maintained that high-school-age rowers would:

thrive on the water, developing a deep sense of accountability to each other and an acute awareness of the extreme effort required to achieve what they and their boats are capable of. They grow in determination, self-reliance and confidence. Junior rowers often improve their school academic performance as a result of the focus and discipline required by their sport. Finally, many high school age rowers expand their

¹⁸⁰ *Id.* at 10.

¹⁸¹ Memorandum from Pat O'Brien, Gen. Manager, EBRPD, to author (July 27, 2007) (comments/supplemental information regarding ACCESS TO PARKLAND, *supra* note *).

¹⁸² Grant Application, EBRPD for Tidewater Aquatic Center and Martin Luther King Jr. Regional Shoreline (submitted pursuant to Murray-Hayden Urban Parks and Youth Services Program, 2002 Resources Bond Act), at 9-10, 12 (July 2003) (on file with author).

¹⁸³ *Id.*

¹⁸⁴ *Id.*

¹⁸⁵ *Id.* at 6.

¹⁸⁶ *Id.* at 6-7.

¹⁸⁷ *Id.*

¹⁸⁸ *Id.* at 10.

opportunities and choices for college admission, with young women in particular having greater access to athletic scholarships under Title IX.¹⁸⁹

Oakland Strokes is, by Heylin's account, a "lily-white organization," and the Tidewater Boathouse grant application was not the group's first attempt to attract low-income minority members.¹⁹⁰ As Heylin explains, "There are many of us who have been disappointed for years that the Oakland Strokes is really the Piedmont-Orinda-Lafayette Strokes and not really the Oakland Strokes."¹⁹¹ Piedmont, Orinda and Lafayette are three of the East Bay's more affluent suburbs that supply many of the group's rowers. Heylin's observations are corroborated by Robert Kidd, a former member of the Oakland Strokes' board of directors who is now involved with the youth rowing program at the Jack London Aquatic Center (also in Oakland):

Despite the appearance of Oakland in its name, the large majority of the Oakland Strokes' rowers live in Piedmont and Contra Costa County. I have not seen or conducted a roster survey, but I understand that only between 10-15% of the Strokes' rowers live in Oakland. Of these kids, all attend private schools. To the best of my knowledge, no students in the Oakland Unified School District or Oakland charter schools are currently members of the Oakland Strokes. As is characteristic of the vast majority of American rowing programs, the Oakland Strokes experience is white and suburban. While it is possible that children of color may now be or may in the past have been members of the Strokes, I cannot recall any such. The membership of the Strokes' non-profit corporate board of directors reflects the demographics of its rower-participants.¹⁹²

According to Peter Heylin:

In 1999, I went around, with the head of the Catholic Youth Organization, to all of the inner-city Catholic high schools with the specific goal of recruiting tall minority kids to our crew programs, and got nobody. It wasn't until we did our due diligence on the grant

¹⁸⁹ *Id.* at 11.

¹⁹⁰ Telephone Interview with Peter Heylin by Pamela King Palitz (Dec. 11, 2005) (a transcription of this interview was provided in Palitz's unpublished paper *Unequal Access to Open Space: Questions of Equity for the East Bay Regional Park District*. Confirmed in Aug. 2, 2007, phone conference between Peter Heylin and author).

¹⁹¹ *Id.*

¹⁹² E-mail from Robert Kidd to author (Mar. 30, 2007) (commenting on initial draft of ACCESS TO PARKLAND, *supra* note *) (on file with author).

application that I learned that over one third of the people who live in East Oakland didn't realize that Oakland has a waterfront, and that most of the kids in East Oakland can't swim. So it was no wonder that none of the kids were interested in rowing.¹⁹³

Heylin said that discovery was the genesis of Oakland Strokes' idea to partner with the local YMCA (which provides swimming lessons) on the Proposition 40 grant application for the Tidewater Boathouse.¹⁹⁴ Although the grant application did not provide any funding for the YMCA swim program, the YMCA of the East Bay was identified in the application as a "Project Partner."¹⁹⁵ Additionally, the grant application included a letter of support from the YMCA that stated: "The YMCA of the East Bay looks forward to working with Oakland Strokes and the East Bay Regional Park District by assisting in the recruitment of East Oakland youth to participate in the rowing program, as well as increasing competence in swimming and water safety skills for all participants."¹⁹⁶

East Bay Parks' Tidewater Boathouse application was selected for a Proposition 40 grant, and in October 2004 East Bay Parks was awarded its entire request of \$3 million.¹⁹⁷ The money will enable East Bay Parks to build the new Oakland Strokes' boathouse and dock on Tidewater Avenue, and will also fund the continuation of the Martin Luther King Regional Shoreline Trail along the Oakland Estuary. The trail currently ends about a half-mile south of the Tidewater site.¹⁹⁸

Regarding the swim-lesson component of the Tidewater Boathouse application, it remains to be seen the extent to whether this will be viable. As Robert Kidd notes:

¹⁹³ Telephone Interview with Peter Heylin by Pamela King Palitz (Dec. 11, 2005) (a transcription of this interview was provided in Palitz's unpublished paper *Unequal Access to Open Space: Questions of Equity for the East Bay Regional Park District*. Confirmed in August 2, 2007 phone conference between Peter Heylin and author).

¹⁹⁴ *Id.*

¹⁹⁵ See Grant Application, EBRPD for Tidewater Aquatic Center and Martin Luther King Jr. Regional Shoreline (submitted pursuant to Murray-Hayden Urban Parks and Youth Services Program, 2002 Resources Bond Act), at 17 (July 2003) (on file with author) ("partnering" with the "YMCA of the East Bay" for "Programs and Recruitment" for an "On-going" duration)..

¹⁹⁶ Letter from Billy Danna, V.P. of Camping Servs. for YMCA of the E. Bay, to the Cal. Dep't of Parks & Recreation Office of Grants & Local Services (included in Grant Application, EBRPD for Tidewater Aquatic Center and Martin Luther King Jr. Regional Shoreline (submitted pursuant to Murray-Hayden Urban Parks and Youth Services Program, 2002 Resources Bond Act), at 326 (July 2003) (on file with author).

¹⁹⁷ Cal. Proposition 40/50 Awards Website, <http://4050bonds.resources.ca.gov/> (last visited Mar. 13, 2008) (under the *Bond* menu select "Proposition 40," under the *Region Type* menu select "Zip Code," and under the *Zip Code* menu select "94601").

¹⁹⁸ *Id.*

The idea of the Oakland Strokes partnering with the YMCA sounds like a great idea; indeed, the idea is almost self-evident. The real proof, however, is in the precise details of that partnering, of precisely how the Strokes' rowing programs are going now to dovetail with the YMCA's swimming operations, and of the resources the Strokes' organization is prepared to devote to the partnering. Archly put: giving a YMCA swim-schedule to a non-swimming rowing hopeful might be a sort of partnering, but it is not meaningful partnering.¹⁹⁹

To the extent that East Bay Parks (or the public) wanted to monitor the efforts of the Oakland Strokes to enroll low-income and minority youth in the YMCA swim program or in the organization's rowing program, the terms of the grant application and the April 2002 lease agreement between the Oakland Strokes and East Bay Parks do not set forth objective benchmarks for such an evaluation. The grant application (which earmarks no funding for the YMCA swim program) simply states: "The YMCA of the East Bay will make swimming instruction available."²⁰⁰ Under Section 5(d) of the April 2002 lease agreement, the Oakland Strokes "agree to maintain an active program soliciting interested and qualified members from local high schools to participate in its rowing program."²⁰¹ These provisions may be well intended, but it unclear what (if anything) they obligate Oakland Strokes or the YMCA to do.

East Bay Parks maintains that it plans to set forth more specific obligations for the Oakland Strokes (regarding the level of participation by low-income youth in its rowing programs and regarding financial support for swimming programs) in connection with a detailed Community Outreach Program that will be included in a new lease agreement that is being negotiated.²⁰²

Given that the Tidewater Boathouse proposal came at a time when many low-income minority residents in Oakland were requesting additional funds from East Bay Parks as well as city park agencies for park improvement and expansion in their neighborhoods, the unfolding and outcome of the Tidewater Boathouse proposal raises several

¹⁹⁹ E-mail from Robert Kidd to author (Mar. 30, 2007, 13:35 PST) (commenting on initial draft of ACCESS TO PARKLAND, *supra* note *) (on file with author).

²⁰⁰ Grant Application, EBRPD for Tidewater Aquatic Center and Martin Luther King Jr. Regional Shoreline (submitted pursuant to Murray-Hayden Urban Parks and Youth Services Program, 2002 Resources Bond Act), at 12 (July 2003) (on file with author).

²⁰¹ April 2, 2002 Lease Agreement Between East Bay Regional Parks District and Oakland Strokes Inc.

²⁰² Memorandum from Pat O'Brien, Gen. Manager of the EBRPD, to author (July 27, 2007) (comments/supplemental information regarding ACCESS TO PARKLAND, *supra* note *).

environmental justice issues.

First, it raises the issue of whether East Bay Parks has historically provided the same level of fundraising assistance to groups representing low-income minority communities as the agency provided to the Oakland Strokes in the case of the Tidewater Boathouse. And if the answer to this question is no, why have groups such as the Oakland Strokes received greater support and service from East Bay Parks than groups representing low-income minority constituencies?

Second, it raises the issue of whether East Bay Parks is providing parkland resources that are responsive to the needs of low-income minority residents. Given the limited amount of funding available for public parkland, the neighborhoods surrounding the Tidewater Boathouse site might have preferred that the Proposition 40 grant money designated for the boathouse be spent differently—such as for improved landscaping and facilities projects either at this site or at other parks. And if the answer to this question is yes, why were the parkland needs priorities of low-income minority neighborhoods adjacent to the Tidewater Boathouse site not better reflected in the process that resulted in the Proposition 40 grant?

B. BREUNER MARSH

The City of Richmond, with a population of nearly 100,000, is located in west Contra Costa County and borders San Francisco Bay.²⁰³ As noted earlier in this article, as of 2000 the ethnic mix of Richmond was 44% African-American, 15% Latino, 12% Asian and 29% white, and the city has the highest number of youth at or below the poverty level in Contra Costa County.

Parchester Village is a residential community built in the late 1940s near the shoreline. At the time it was built, many neighborhoods in the East Bay maintained restrictive covenants that prohibited the sale or rental of homes to African-Americans (such racially restrictive covenants were later deemed unenforceable by the U.S. Supreme Court in the 1950s).²⁰⁴ Parchester Village was therefore conceived by its developer to provide home-buying opportunities for African-Americans that had been excluded from living in other nearby areas.²⁰⁵

²⁰³ PAC. INST. FOR STUDIES IN DEV., ENV'T & SEC., *BROWNFIELDS REDEVELOPMENT: MEETING THE CHALLENGES OF COMMUNITY PARTICIPATION* 58 (2000).

²⁰⁴ Whitney Dotson & Norman La Force, *Breuner Marsh Owner Rebuffs Park District, Seeks New Developer*, SIERRA CLUB YODELER, May-June 2004 available at <http://sanfranciscobay.sierraclub.org/yodeler/html/2006/05/conservation14.htm>.

²⁰⁵ *Id.*

To encourage people to purchase new homes in Parchester Village, the City of Richmond had pledged to maintain the adjacent wetlands as open space and to eventually develop a shoreline park.²⁰⁶ Although the City never formally designated the adjacent shoreline property as a park, and although it remained in private ownership, it was used as a de facto park for walking, biking and fishing by Parchester Village residents for many decades.²⁰⁷ Current Parchester resident Whitney Dotson spent his childhood exploring this area with its striking contrasts of industry and wilderness. As an August 2006 article in the *Los Angeles Times* recounted:

Whitney didn't know what was on the other side of that berm. But at age 8, he and his brother Richard and a group of their friends got the gumption to set out and explore.

They hiked east to Tank Farm Hill, where about 50 gas and oil tanks dominated the open grasslands like forts. They built a raft and, in ponds filled with shattered glass created by foundry waste, bravely fought off [imaginary] Indian pirates. And nothing could keep them from going across the tracks. But first, like [Davy] Crockett, they put an ear to the rail to see if a locomotive was coming. A vibration against their ears meant "TRAIN!"

On the other side, Whitney and his friends discovered an expanse of richly textured marsh, green and lush in summer. Tidal sloughs snaked their cool, clear way out to the bay. Sea Gulls, ospreys and avocets banked sharply in the marine air, and the pickleweed underfoot smelled awful. . . .

Having never heard the word "marsh," they just called it "over the tracks," and in sun or fog they swam in the tidal channels and stomped through the glistening salt grass in the yellow boots that Mary Lee [Whitney's mother] bought for them. They caught tadpoles in jars and watched them turn to frogs, running to their treasures first thing in the morning to see how the creatures had changed overnight.²⁰⁸

²⁰⁶ *Id.*; Tomio Geron, *Richmond Activists Fight for Wetlands, Open Space*, N. GATE NEWS ONLINE, Oct. 28, 2004, available at <http://journalism.berkeley.edu/ngno/2004/10/>.

²⁰⁷ Whitney Dotson & Norman La Force, *Breuner Marsh Owner Rebuffs Park District, Seeks New Developer*, SIERRA CLUB YODELER, May-June 2004 available at <http://sanfranciscobay.sierraclub.org/yodeler/html/2006/05/conservation14.htm>.; Tomio Geron, *Richmond Activists Fight for Wetlands, Open Space*, N. GATE NEWS ONLINE, Oct. 28, 2004, available at <http://journalism.berkeley.edu/ngno/2004/10/>.

²⁰⁸ Aleta George, *Saving the Marsh: Postcard from Parchester Village*, L.A. TIMES, Aug. 6, 2006.

Over time, the undeveloped shoreline area adjacent to Parchester Village (consisting of 238 acres) became known as Breuner Marsh—after the longtime owner of the property Gerry Breuner (founder of the Breuner Furniture Company).²⁰⁹ And over time, proposals to develop Breuner Marsh as something other than open space and de facto parkland began to surface.

In the early 1970s Breuner proposed constructing a private airport on the site, but strong opposition by Parchester residents (including Whitney Dotson's father, the late Reverend Richard Daniel Dotson) stopped this plan.²¹⁰ Then, in 2001, a proposal was made by new owner Bay Area Wetlands LLC to develop Breuner Marsh as a light-industrial complex called Edgewater Technology Park.²¹¹ This proposal led Whitney Dotson to help form the North Richmond Shoreline Open Space Alliance—which includes individual residents as well as groups such as the Parchester Village Neighborhood Council, the Sierra Club and the Urban Creeks Council of California.²¹² When the Edgewater Technology Park plan fell through, Bay Area Wetlands LLC entered into a purchase option with Signature Properties.²¹³ After evaluating the level of community opposition and its prospects for obtaining the rezoning needed for a residential project, Signature Properties chose not to exercise its option.²¹⁴

The debate over the future of Breuner Marsh has been increasingly characterized by concerns over equity and race. As an October 28, 2004 report by UC Berkeley's School of Journalism recounted:

Richmond residents also deserve the open space, [Jonna Papaefthimiou of the San Francisco Bay Sierra Club] said. "Most of the Richmond shoreline has been lost to Chevron or the Navy or another industrial company," she said. "Even though [Richmond residents] have a huge shoreline, most of it is polluted or not accessible to the public."

²⁰⁹ Tomio Geron, *Richmond Activists Fight for Wetlands, Open Space*, N. GATE NEWS ONLINE, Oct. 28, 2004, available at <http://journalism.berkeley.edu/ngno/2004/10/>; Kathryn Gillick, *Parchester's Marsh*, TERRAIN, Fall 2005, at 26.

²¹⁰ Tomio Geron, *Richmond Activists Fight for Wetlands, Open Space*, N. GATE NEWS ONLINE, Oct. 28, 2004, available at <http://journalism.berkeley.edu/ngno/2004/10/>; Kathryn Gillick, *Parchester's Marsh*, TERRAIN, Fall 2005, at 27-28; Aleta George, *Saving the Marsh: Postcard from Parchester Village*, L.A. TIMES, Aug. 6, 2006.

²¹¹ Tomio Geron, *Richmond Activists Fight for Wetlands, Open Space*, N. GATE NEWS ONLINE, Oct. 28, 2004, available at <http://journalism.berkeley.edu/ngno/2004/10/>.

²¹² Kathryn Gillick, *Parchester's Marsh*, TERRAIN, Fall 2005, at 28.

²¹³ Tomio Geron, *Richmond Activists Fight for Wetlands, Open Space*, N. GATE NEWS ONLINE, Oct. 28, 2004, available at <http://journalism.berkeley.edu/ngno/2004/10/>.

²¹⁴ *Id*

The lack of open space in Richmond is an environmental justice issue and a form of racial discrimination, said [Henry Clark, director of the West County Toxics Coalition]. “This is on a spiritual level—being by the water. Not having that access is an attack on the life and well-being of this community.”²¹⁵

The North Richmond Shoreline Open Space Alliance had proven successful in stopping development plans for Breuner Marsh, but its longterm goal was to avoid these ongoing battles by having the shoreline area formally designated as parkland. The most promising strategy to achieve this goal appeared to be having East Bay Parks acquire Breuner Marsh—a strategy that fit well with East Bay Parks’ efforts to expand its parkland holdings near low-income minority neighborhoods. Presented with this opportunity, East Bay Parks obtained an appraisal for the 238-acres at \$4.9 million and made an offer to Bay Area Wetlands LLC in 2003.²¹⁶ Bay Area Wetlands LLC rejected East Bay Parks’ purchase offer, indicating that it instead planned to move ahead with its own plans to build 1,050 new residential units on the site.²¹⁷ When its offer was rejected, East Bay Parks then began to move forward with plans to obtain the site through the exercise of its eminent domain powers.²¹⁸ In developing these plans, East Bay Parks had consulted extensively with the individuals and groups involved in the North Richmond Shoreline Open Space Alliance, but there remains debate as to the extent to which the members of the Richmond City Council were consulted.²¹⁹

In 2005, the City of Richmond faced a municipal budget deficit of approximately \$35 million, and some looked to the development of shoreline properties like Breuner Marsh as a means to help address this shortfall.²²⁰ The Richmond City Council responded to East Bay Parks’ plans to exercise eminent domain to take Breuner Marsh as parkland by adopting a resolution in October 2005 that authorized the initiation of

²¹⁵ *Id.*

²¹⁶ Timothy Martin, *Park District Aims to Save Richmond Marsh*, BERKELEY DAILY PLANET, Oct. 18, 2005, available at <http://www.berkeleydailyplanet.com/issue/2005-10-18/article/22535>.

²¹⁷ John Geluardi, *District Condemns Breuner Property to Build Park*, CONTRA COSTA TIMES, Mar. 9, 2006, available at http://www/sfbayjv.org/news_summaries/2006march/District_condemns_Breuner_Property_to_build_park.

²¹⁸ *Id.*

²¹⁹ Telephone Interview with Norman La Force, N. Richmond Shoreline Open Space Alliance (Jan. 11, 2007).

²²⁰ Tomio Geron, *Richmond Activists Fight for Wetlands, Open Space*, N. GATE NEWS ONLINE, Oct. 28, 2004, available at <http://journalism.berkeley.edu/ngno/2004/10/>.

legal proceedings to try to block East Bay Parks' acquisition.²²¹ This Richmond City Council resolution was adopted by a vote of 5-3, and the vote may have had as much to do with how East Bay Parks proceeded with its eminent domain plans as with the plans themselves.²²² As an article in the magazine *Terrain* reported:

[S]everal councilmembers made it clear they were more insulted that the district did not notify them about its plans than opposed to its use of eminent domain. [Councilmember] Nathaniel Bates, who voted for the resolution, said that his vote was about "respect, respect, respect." Councilmembers were also insulted by the district's decision to not send a representative to the [Richmond City Council] meeting.²²³

This point was also highlighted in an October 18, 2005, article in the *Berkeley Daily Planet*:

At least one councilmember was critical of the park district's failure to inform the city of its intentions, and said that the lack of dialogue may have affected the council's vote. "Had they contacted the city before we started hearing what their intentions were, things might have turned out differently," said councilmember John Marquez. "As two public entities we ought to have communication."²²⁴

These allegations of non-consultation, however, are contested. Members of the North Richmond Shoreline Open Space Alliance counter that the Richmond City Council had been well aware for some time of East Bay Parks' eminent domain plans and that the disputes over the future of the site had nothing to do with any lack of prior notification.²²⁵

Faced with the Richmond City Council resolution, in November 2005, East Bay Parks' board of directors voted to postpone initiating eminent domain proceedings to acquire Breuner Marsh, to allow a period of further consultation with the City of Richmond.²²⁶ These discussions between East Bay Parks and the City of Richmond did not persuade East

²²¹ *Id.*

²²² Timothy Martin, *Park District Aims to Save Richmond Marsh*, BERKELEY DAILY PLANET, Oct. 18, 2005, available at <http://www.berkeleydailyplanet.com/issue/2005-10-18/article/22535>.

²²³ Kathryn Gillick, *Parchester's Marsh*, TERRAIN, Fall 2005, at 29.

²²⁴ Timothy Martin, *Park District Aims to Save Richmond Marsh*, BERKELEY DAILY PLANET, Oct. 18, 2005, available at <http://www.berkeleydailyplanet.com/issue/2005-10-18/article/22535>.

²²⁵ Telephone Interview with Norman La Force, N. Richmond Shoreline Open Space Alliance (Jan. 11, 2007).

²²⁶ J. Douglas Allen Taylor, *Park District Postpones Breuner Marsh Vote*, BERKELEY DAILY PLANET (Nov. 4, 2005), available at <http://www.berkeleydaily.org/article/cfm?achriveDate=11-04-05&storyID=22694>.

Bay Parks to abandon its plans to acquire the site as parkland, but the talks did result in East Bay Parks seeking to acquire only 218 of the 238 acres of Breuner Marsh. This decision by the East Bay Parks Board to proceed with eminent domain proceedings to acquire the 218 acres was made in March 2006.²²⁷

It has been reported that East Bay Parks chose not to seek title to the remaining 20 upland acres because those 20 acres were identified as developable in the North Richmond Shoreline Specific Plan.²²⁸ The decision to not acquire these 20 upland acres could be seen as an accommodation to those Richmond City Councilmembers who were looking to the site for possible tax revenues and an accommodation to the owner's development plans, or it could also be seen as a prudent business decision by East Bay Parks given that the appraised present value of the developable 20 acres far exceeded the appraised present value of the remaining 218 acres. Regarding this latter possible explanation, it should be noted that although East Bay Parks had offered \$4.9 million to acquire all 238 acres of Breuner Marsh in 2003, its March 2006 offer to acquire the 218 acres was for \$892,000.²²⁹

It remains to be seen whether, and to what extent, the City of Richmond and Bay Area Wetlands LLC will challenge East Bay Parks' eminent domain plans. It also remains to be seen whether the North Richmond Shoreline Open Space Alliance and its member organizations will seek other means to preserve the remaining 20 upland acres as open space. As a June 2006 article in the newspaper of the Sierra Club's San Francisco Bay Chapter commented:

While the District is to be applauded for its new acquisition, the marsh is not safe until the coastal upland is protected from development. The District could ensure this by either acquiring or restricting access to those 20 acres. The Sierra Club will be working to get those 20 acres protected.²³⁰

The Breuner Marsh controversy presents several environmental justice issues that merit closer consideration for East Bay Parks and its

²²⁷ Whitney Dotson & Norman La Force, *East Bay Regional Park District to Acquire Most of Breuner Property*, SIERRA CLUB YODELER, May-June 2006.

²²⁸ *Id.*

²²⁹ John Geluardi, *District Condemns Breuner Property to Build Park*, CONTRA COSTA TIMES, Mar. 9, 2006, available at http://www/sfbayjv.org/news_summaries/2006march/District_condemns_Breuner_Property_to_build_park.

²³⁰ Whitney Dotson & Norman La Force, *East Bay Regional Park District to Acquire Most of Breuner Property*, SIERRA CLUB YODELER, May-June 2006.

constituents.

First, although East Bay Parks District may possess eminent domain authority to acquire parkland over the objections of a local city council in which a parcel may be located, should East Bay Parks scale back or otherwise compromise its parkland acquisition plans to accommodate local development interests?

Second, although many low-income minority residents in the East Bay seek to expand their supply of accessible parkland, it is also true that many low-income city governments in the East Bay seek to increase their tax revenues. To what extent do these dual objectives conflict and to what extent can they be mutually supporting, and are adequate mechanisms and policies currently in place at East Bay Parks to address this question?

Finally, what specific environmental justice advocacy strategies did the North Richmond Shoreline Open Space Alliance employ in its effort to preserve Breuner Marsh as parkland, and what do these strategies reveal about which forums or procedures within East Bay Parks are most responsive to environmental justice concerns?

V. ADVANCING ENVIRONMENTAL JUSTICE AT EAST BAY PARKS

The foregoing analysis indicates that East Bay Parks confronts many complex environmental justice questions in connection with its parkland holdings. Perhaps the most pressing question is presented by the demographics of the East Bay, which reveal that the majority of East Bay Parks' acreage is located adjacent to affluent white neighborhoods and that the amount of agency holdings in or near low-income minority neighborhoods is still fairly minimal. There can be debate about how this distribution of parkland came to be and about what should be done going forward, but a useful starting point for this debate is the acknowledgement that, at present, much of the East Bay Parks system is functionally inaccessible to many low-income minority residents.

With the objective of moving the discussion of environmental justice at East Bay Parks forward, below are items that appear to merit closer consideration by East Bay Parks and its constituents.

A. AGENCY SELF ASSESSMENT

In recent years, many public agencies have undertaken environmental justice assessments to identify specific areas where inequities exist and to identify opportunities to address these inequities. A useful framework for conducting such environmental assessments was

established pursuant to California Senate Bill (SB) 828, signed into law in 2001.²³¹ Among other things, SB 828 calls for the formation of a Working Group on Environmental Justice that is mandated to undertake certain actions.²³² More specifically, SB 828 amends Section 71113 of the California Public Resources Code to require that:

(c) the working group shall do all of the following on or before April 1, 2002:

(1) Examine existing data and studies on environmental justice, and consult with state, federal and local agencies and affected communities.

(2) Recommend criteria to the [California] Secretary for Environmental Protection for identifying and addressing any gaps in existing programs, policies or activities that may impede the achievement of environmental justice.

(3) Recommend procedures and provide guidance to the California Environmental Protection Agency for the coordination and implementation of intra-agency environmental justice strategies.

(4) Recommend procedures for collecting, maintaining, analyzing and coordinating information relating to an environmental justice strategy.

(5) Recommend procedures to ensure that public documents, notices and public hearings relating to human health or the environment are concise, understandable, and readily accessible to the public. The recommendation shall include guidance for determining when it is appropriate for the California Environmental Protection Agency to translate crucial public documents, notices, and hearings related to human health or the environment for limited-English-speaking populations.

(6) Hold public hearings to receive and respond to public comments regarding recommendations required pursuant to this section, prior to the finalization of the recommendation. The California Environmental Protection Agency shall provide public notice of the availability of draft recommendation at least one month prior to the public meetings. . . .²³³

A similar process of review, hearings and recommendations might be undertaken by East Bay Parks, perhaps with East Bay Parks' Public Advisory Committee assuming the role designated to the Working Group on Environmental Justice under SB 828.

Other models for agency environmental justice assessment can be

²³¹ CAL. PUB. RES. CODE §§ 71110-71115 (Westlaw 2007); S.B. 828, 2001-2002 Reg. Sess. (Cal. 2001), §§ 3-7, 9 (amending and renumbering §§ 72000-72003 as §§ 71110-71114).

²³² CAL. PUB. RES. CODE § 71113(c) (Westlaw 2008).

²³³ *Id.*

found in an October 2003 report by the California Office of Planning and Research (OPR) titled *Environmental Justice in California State Government*.²³⁴ In California's SB 115 legislation, which went into effect in 1999, OPR was designated as the "coordinating agency in state government for environmental justice programs."²³⁵ In its 2003 report, OPR provides examples of how different California state agencies have sought to address environmental justice concerns, and the report appendices provide copies of environmental justice policies that have been adopted by such state agencies as the California Air Resources Board, the California Department of Toxic Substances Control, the California Department of Pesticide Regulation, the California Department of Transportation and the California Resources Agency.²³⁶ These existing agency environmental justice policies may provide a starting point for East Bay Parks to develop its own set of environmental justice policies.

Finally, in developing an appropriate analytic framework for such self assessment, East Bay Parks may want to evaluate the recent work undertaken by TPL's Bay Area Park Equity Analysis, The City Project's *Mapping Green Access Analysis*, and by the access-to-nature component of the *Regional Equity Atlas Project* of Portland State University's Population Center and the Coalition for a Livable Future.²³⁷

B. PUBLIC TRANSIT TO PARKS

Many residents and households in East Bay low-income minority neighborhoods do not have access to cars, and many East Bay Parks are not now conveniently accessible by public transit. East Bay Parks now provides its constituents with accurate and more accessible on-line information about how to reach agency parklands via public transit from different locations throughout Alameda and Contra Costa counties.

²³⁴ See generally CAL. OFFICE OF PLANNING & RESEARCH, ENVIRONMENTAL JUSTICE IN CALIFORNIA STATE GOVERNMENT (Oct. 2003), available at http://www.opr.ca.gov/planning/publications/OPR_EJ_Report_Oct2003.pdf.

²³⁵ CAL. GOV'T CODE § 65040.12(b) (Westlaw 2008); S.B. 115, 1999-2000 Reg. Sess. (Cal. 1999) ("An act to add Section 65040.12 to the Government Code, and to add Part 3 (commencing with Section 72000) to Division 34 of the Public Resources Code, relating to environmental quality.").

²³⁶ See CAL. OFFICE OF PLANNING & RESEARCH, ENVIRONMENTAL JUSTICE IN CALIFORNIA STATE GOVERNMENT, at i, 33-81 (Oct. 2003), available at http://www.opr.ca.gov/planning/publications/OPR_EJ_Report_Oct2003.pdf.

²³⁷ See generally, COAL. FOR A LIVABLE FUTURE, ACCESS TO NATURE AND REGIONAL EQUITY: A SUMMARY OF RESULTS FROM THE COALITION FOR A LIVABLE FUTURE'S REGIONAL EQUITY ATLAS PROJECT (Mar. 2006), available at <http://www.urbanfauna.org/files/EquityAtlasInsert.pdf>.

Although providing this information is helpful, East Bay Parks could become more actively involved in ensuring there is in fact actual regularly scheduled transit available so that residents in low-income minority neighborhoods can more quickly and inexpensively reach more of the parklands in the system. This may involve East Bay Parks spending more of its own agency budget (i.e., amounts beyond that currently allocated to the Parks Express program) to support regular bus lines (even if such bus lines are operated by other agencies such as the Alameda-Contra Costa Transit District), such as those between parks and Bay Area Rapid Transit (BART) train stations. This may also involve East Bay Parks working more closely and more effectively with regional transportation agencies such as BART, Alameda-Contra Costa Transit District (AC Transit) and the Metropolitan Transportation Commission (MTC), and with Bay Area non-governmental groups such as the Transportation and Land Use Coalition (TALC) to ensure that parkland accessibility concerns are better reflected in the allocation of transportation funding.

C. MINIMUM ACREAGE REQUIREMENTS

According to East Bay Parks *1997 Master Plan*, there are minimum acreage requirements for different parkland designations: a Regional Park should be at least 500 acres; a Wilderness Preserve (a sub-designation of Regional Preserves) should be at least 3,000 acres; an Open Space Preserve (another sub-designation of Regional Preserves) should be at least 200 acres; and a Regional Recreation Area should be at least 40 acres.²³⁸ In the more urbanized flatland areas of the East Bay, undeveloped or vacant sites of 3,000, 500 or 200 contiguous acres that might be available for parkland acquisition are virtually unheard of, and even sites of 40 acres or more are quite rare. This means, aside from Regional Shorelines (which have no minimum acreage requirement), many potential flatland park sites fall outside of East Bay Park's acreage criteria. As Mike Anderson (East Bay Parks' Assistant General Manager) observed in a December 2005 interview: "We have to be thinking in terms of threshold experiences for urban folks. If we wait for 50-acre parcels, then it will never happen, and people will never form any sort of connection to the parks."²³⁹

One example of the potential effect of the agency's minimum

²³⁸ See EBRPD, MASTER PLAN 1997, at 52 (1997) (table 3).

²³⁹ Telephone Interview with Mike Anderson by Pamela King Palitz (Dec. 13, 2005) (a transcription of this interview was provided in Palitz's unpublished paper *Unequal Access to Open Space: Questions of Equity for the East Bay Regional Park District*).

acreage requirements is 5-acre Union Point Park along the Oakland Estuary shoreline. Union Point Park opened in 2005 and is now managed by a local city park agency, but there were early discussions with East Bay Parks, which many park advocates believed would be the most capable agency to manage the parkland proposed for the site.²⁴⁰ According to persons involved in early efforts to create the park, it was reported that East Bay Parks refused to consider such a role, in part because it considered the proposed Union Point Park site too small.²⁴¹

In a heavily urbanized setting, a safe and well-planned 5-, 10- or 25-acre park can be a significant open-space amenity for surrounding neighborhoods. The experience of California State Parks with the Cornfield site along the Los Angeles River and the experience of the Santa Monica Mountains Conservancy with Augustus Hawkins Park in South Central Los Angeles, discussed above in Sections II(B) and II(C) of this article, respectively, may be instructive to East Bay Parks in this regard.

D. COLLABORATION WITH CITY PARK AGENCIES

One of the reasons that East Bay Parks may have concentrated on larger hillside parklands is that the management of smaller parks in the flatlands may have been seen as the province and responsibility of city park agencies (such as the Oakland Department of Parks and Recreation). Unfortunately, city park agencies are themselves often poorly funded, particularly when the city is home to a high percentage of low-income residents. For instance, in 2002 the Oakland Parks Coalition (a private parks advocacy group) released a report that found the overall rating for city park maintenance in Oakland was below acceptable standards.²⁴² The report by the Oakland Parks Coalition noted the accumulation of high volumes of litter in city parks and the consistently unhygienic conditions of city park restrooms.²⁴³ Similarly, a May 2006 report prepared by Urban Ecology (for the Groundwork Oakland Steering Committee) noted how the lack of adequate City of Oakland Park Rangers has impacted safety conditions at urban parkland:

One of the most significant barriers to using parks and natural areas,

²⁴⁰ Telephone Interview with Martha Murrington, Spanish-Speaking Unity Council (Mar. 12, 2007).

²⁴¹ *Id.*

²⁴² URBAN ECOLOGY FOR GROUNDWORK OAKLAND STEERING COMM., GROUNDWORK OAKLAND - FEASIBILITY STUDY AND STRATEGIC PLAN (DRAFT) 14 (May 2006).

²⁴³ *Id.*

especially for women and children, is the either real or perceived belief that parks in Oakland are dangerous. Parents and park neighbors repeatedly emphasize that patrolling parks from a police car, as is the practice of beat officers, is insufficient and does not deter illegal or deviant use of city parks and natural areas. Oakland's Park Rangers, in contrast, are trained specifically to respond to the unique needs and problems that arise in parks, green spaces and natural areas.

....
Oakland's Park Ranger force, which is made up of 7 officers, is already small and in danger of becoming smaller as one of its members is leaving the force and there is no movement afoot to replace the officer.²⁴⁴

City park agencies that lack funds to safely maintain and operate existing parks may be understandably hesitant to acquire new parkland (even if funding for the acquisition of such new parkland is made available to city park agencies via bond money such as that resulting from the passage of Measure AA) because this will only stretch already scant maintenance/operational budgets even further.

Given this situation, there may be a role for East Bay Parks to play in assisting city park agencies with maintenance and improvement of existing city parks, or with the acquisition of new urban parkland. East Bay Parks engaged in this type of collaboration with California State Parks in connection with Eastshore State Park, and there is no reason why similar joint agency parkland projects could not be undertaken with city park agencies. The city park agencies operating in the East Bay flatlands may be in a better position than East Bay Parks staff to assess the parkland needs of low-income minority residents. Moreover, East Bay Parks' *1997 Master Plan* specifically acknowledges that "the District uses plans adopted by other agencies, as appropriate, to avoid duplication of effort and to make planning more efficient."²⁴⁵ A starting point for this effort might be for East Bay Parks to initiate a series of joint-strategy meetings with park department staff in such cities as Oakland, Richmond and Berkeley to identify specific potential collaborative parkland projects.

E. JOINT POWERS AUTHORITIES

Through the use of joint power agreements and the creation of joint power authorities, California law provides a means for agencies to

²⁴⁴ *Id.* at 35.

²⁴⁵ EBRPD, MASTER PLAN 1997, at 55 (1997) (table 3).

formally collaborate.²⁴⁶ This approach can be particularly suitable when a potential parkland site presents itself but one park agency may be reluctant (or lack the resources or expertise) to take on sole responsibility for acquiring, developing and maintaining the site as parkland. Even when different park agencies do cooperate at a given site, the results are often less than satisfactory. At the new Eastshore State Park, for instance, California State Parks took primary responsibility for acquiring the land, and East Bay Parks assumed responsibility for developing and maintaining the park.²⁴⁷ Since its creation, however, there has been criticism that inadequate resources have been provided to develop and maintain Eastshore State Park, and that as a result, much of the park acreage remains in a degraded or even dangerous condition.²⁴⁸

An alternative to the approach used at Eastshore State Park might have been the creation of a new joint powers authority (i.e. an “Eastshore Park Authority”) with exclusive authority over the site. A useful model in this regard is the Mountains Recreation and Conservation Authority (MCRA) in Los Angeles County. MCRA was established as an independent agency in 1985 by the Santa Monica Mountains Conservancy (a state agency), the Conejo Recreation and Park District, and the Simi Recreation and Park District. MCRA manages and provides ranger services for approximately 50,000 acres of public parkland (including Augustus Hawkins Natural Park discussed above in this article). The Joint Exercise of Powers Agreement that created MCRA states:

The land within the Santa Monica Mountains Zone and contiguous watersheds, and other open space and recreation resources in Southern California, constitute unique and valuable economic, agricultural, environmental, scientific, educational and recreational resources that should be held in trust for present and future generations.

....

The Conservancy and the Districts find and determine that there is a need to expand, enhance, and restore these resources and it would be to their mutual advantage and the public benefit to coordinate their power and authority and expertise to facilitate the acquisition, development, and conservation of such lands and resources.

....

The purpose of this agreement is to establish as a local agency

²⁴⁶ Joint Exercise of Powers Act, CAL. GOV'T CODE §§ 6500-6514.5 (Westlaw 2007).

²⁴⁷ See A.B. 754, 1991-1992 Reg. Sess. (Cal. 1992) (delineating respective roles of California State Parks and East Bay Parks in regard to Eastshore State Park).

²⁴⁸ Telephone Interview with Norman La Force, N. Richmond Shoreline Open Space Alliance (Jan. 11, 2007).

pursuant to applicable State law a legal entity separate from the parties to acquire, develop and conserve additional park and open space lands with special emphasis on recreation and conservation projects, the protection and conservation of watersheds, and the development of river parkways.²⁴⁹

With the goal of expanding and improving parkland resources in the flatlands and shoreline of Alameda and Contra Costa counties, East Bay Parks could take the lead in creating a joint power authority (or joint power authorities if need be) that would include other park agencies operating in these areas.

F. GRANT EDUCATION OUTREACH

As noted above in the case study of the Tidewater Boathouse, there are public grant programs available to provide community-driven initiatives with additional resources for parkland development and operations in the East Bay. To date, it appears that East Bay Parks' staff has made itself available to assist groups seeking such funding but has done so primarily in a responsive capacity. That is, if and when a group approaches East Bay Parks with a project that might be a candidate for such grant funds, East Bay Parks will work with the group. The problem with this responsive approach, however, is that many of the residents most in need of these park-related funds may be the same residents that are least likely to be aware of these funding opportunities or of the fact that East Bay Parks staff may be available to assist in seeking such funds.

An alternative way for East Bay Parks to approach this situation would be for the agency to first clearly identify those public grant programs that may be available to enhance East Bay parkland resources, and to then conduct grant education outreach to low-income minority neighborhoods in the East Bay about these grant application opportunities. This would help ensure that East Bay Parks lends its support to those applications that tend to reflect the most pressing local parkland needs, as opposed to reflecting the needs of those groups/residents that may happen to know about such public grant programs.

VI. CONCLUSION: DOWN THE HILL

As East Bay Parks turns its attention to access-related

²⁴⁹ Mountains Recreation & Conservation Auth., Joint Exercise of Powers Agreement (executed Nov. 19, 2004), *available at* <http://www.mrca.ca.gov/11-04%20MRCA%20JPA.pdf>.

environmental justice considerations in a more deliberate manner, it need not start from scratch. Considerations of equity in access—although generally not framed expressly in terms of race and income—have begun filtering into East Bay Parks' acquisition and operational priorities in recent decades, providing a foundation upon which to build. However, given the shifting regional demographics, this process needs to continue and deepen if the agency's system of parklands is to serve as a meaningful environmental amenity for those East Bay residents most seriously in need of parks.

To make headway in this regard, East Bay Parks may need to engage in a more searching evaluation of the ways in which its obligations have evolved. Historically, East Bay Parks has viewed itself (and been viewed by others) as a parkland agency that does not share many of the same objectives and responsibilities as city park agencies. As a member of the Sierra Club East Bay Public Lands Committee commented in a review of a draft of the report on which this article is based:

EBRPD is not simply one of many public park agencies. It can be set apart from many/most urban park agencies by the scope and charter of its mission. Large, wildland open space provision is not strictly comparable to those whose mission is to provide small urban park amenities.²⁵⁰

As the comment above correctly notes, the question of the definition of East Bay Parks' mission is critical to any environmental justice assessment of the agency. There is little dispute that the current large-acreage hillside holdings of East Bay Parks offer a sense of expansive wilderness that few city park agencies (in the East Bay or elsewhere) can match. Yet there is also little dispute that city park agencies in the East Bay have so far proven unable to provide low-income minority residents with adequate parkland and that these same residents often face profound obstacles to reaching East Bay Parks' hillside holdings.

Therein lies the quandary—for East Bay Parks to hold too closely to a self-conception as an agency whose dominant mission is preservation of large-acreage wildlands may be, on a practical level, to perpetuate the current lack of equitable access to parkland in the East Bay.

²⁵⁰ Letter from Peter Rauch, Member of Sierra Club E. Bay Pub. Lands Comm., to author (Jan. 23, 2007) (commenting on draft of ACCESS TO PARKLAND, *supra* note *).

