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September 29, 2004

Governor Arnold Schwarzenegger
State Capitol
Sacramento, CA 95814

California Performance Review Commission
c/o Governor Arnold Schwarzenegger
State Capitol
Sacramento, CA 95814

Re: *Public Comments Related to California Performance Review RES 12 and the Baldwin Hills Conservancy*

Dear Governor Schwarzenegger and Members of the California Performance Review Commission:

I. Overview

The Center for Law in the Public Interest submits these comments on behalf of a diverse alliance that includes (partial list) Anahuak Youth Soccer Association, Antes Columbus Football Club, Ballona Creek Renaissance, California Chapter of REP America (a Republican environmental protection group), California League of Conservation Voters, Concerned Citizens of South Central Los Angeles, Environmental Justice Coalition for Water, Friends of the Baldwin Hills, Hyde Park Organizational Partnership for Empowerment, Kenneth Hahn State Recreation Area Walking Club, Ladera Civic Association, Los Angeles Audubon Society, Los Angeles Conservation Corps, Los Angeles for Democracy, Los Angeles Metropolitan Churches, Latino Urban Forum, NAACP Los Angeles Chapter, National Hispanic Environmental Council, Natural Resources Defense Council, Residents of Pico Rivera for Environmental Justice, Sierra Club Angeles Chapter, Southern California Watershed Alliance, and United Homeowners Association.

We strenuously oppose recommendations in RES 12 of the California Performance Review (“CPR”) to terminate the Baldwin Hills Conservancy (“Conservancy”), remove state-level majority participation on the governing board of the Conservancy, eliminate state environmental license plate funds and bond funds to support the Conservancy, and relegate the Conservancy to a status as a local joint power authority.

The CPR recommendations pose a substantial threat to the community and the park in the Baldwin Hills. The state park in the Baldwin Hills will be a two-square mile park that is slated to become the

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nation's biggest planned natural urban park in over 100 years, bigger than Golden Gate Park and Central Park. Without the Baldwin Hills Conservancy, the community-based vision for a park in the Baldwin Hills may never be realized.

The CPR recommendations undermine important values at stake and are inconsistent with federal and state civil rights and environmental justice laws. The park in the Baldwin Hills is the greatest public works project in the history of a community that has long suffered from environmental degradation and discrimination. Eliminating the Baldwin Hill Conservancy as a state entity would undermine the intent of the voters who approved Prop 40, which provides \$40 million for the Baldwin Hills Conservancy. Prop 40 passed with the overwhelming support of communities of color and low-income communities. State officials are threatening to eliminate the Baldwin Hills Conservancy in the historic heart of African-American Los Angeles, while simultaneously creating a new conservancy to serve the Sierra Nevada region. The CPR process denies the community full and fair participation in deciding the future of the Baldwin Hills, their lives, and their children's lives. The CPR recommendations have a disproportionate impact on the communities of color in the Baldwin Hills area, and perpetuate a history and pattern of discriminatory land use planning and policies.

The Baldwin Hills rest at the environmentally and demographically diverse center of Los Angeles. The park lies at the intersection of the African-American, Latino and Anglo communities. Within a three mile radius of the Baldwin Hills, the population is 36% African American, 29% Latino, 8% Asian and 23% Anglo. The community just east of the Baldwin Hills is over 90% African-American, compared to about 11% in Los Angeles generally. 19% of the households have incomes that fall below the poverty line.¹

The African-American community in and surrounding the Baldwin Hills is the heart of African-American Los Angeles and a center of excellence for African-Americans across the United States.

Los Angeles is park poor with fewer acres of parks per 1,000 residents compared to any major city in the country. There are also vast disparities in access to parks and recreation based on race, ethnicity, and other relevant factors. For example, the African-American community just east of the Baldwin Hills Park is particularly park-starved, with between .3 and .4 acres of parks per thousand residents, compared to 1.7 acres in disproportionately white, relatively wealthy parts of Los Angeles.²

Within a five mile radius of the Baldwin Hills there is only one picnic table for every 10,000 people, one playground for 23,000 children, one soccer field for 30,000 people and one basketball court for 36,000 people. On weekends and especially on holidays, the gates to Kenneth Hahn State Recreation Area often close before noon because the heavily used park has simply run out of space.

We demand that the State preserve the Baldwin Hills Conservancy to save the park and the community in the Baldwin Hills.

¹ Source: Census 2002

² Jocelyn Stewart, "Officials Resort to Creativity to Meet Need for Parks," *L.A. Times* (June 15, 1998).

II. The Struggle for the Baldwin Hills

A. A World Class Park in the Baldwin Hills

The Baldwin Hills is a two square mile natural oasis located in the heart of a densely populated and highly diverse urban area. The Baldwin Hills is one of the last vast open spaces in Los Angeles and contains unique and important cultural, scientific, educational, recreational, and scenic resources.³ Easily accessible to millions of people, with stunning views of the Los Angeles basin, the Pacific Ocean and surrounding mountains, the Baldwin Hills offer a unique opportunity within an urban community that is park poor to create a world-class park and natural space for all the people of California to enjoy.

Despite degradation due to urbanization, roads, and oil development dating back to the early 1900s, many native plants and wildlife remain in the Baldwin Hills.⁴ Within minutes of urban Los Angeles, “the delicate balance of plants and wildlife is maintained, where a tranquil recreational experience is easily accessible, and where people can go to enjoy the natural world that is an important part of protecting the health and quality of life in urban communities.”⁵

When the Baldwin Hills Conservancy was established, the Legislature declared that “the Baldwin Hills area should be held in trust to be preserved and enhanced for the enjoyment of, and appreciation by, present and future generations.”⁶ The Conservancy was charged with acquiring open space and managing public lands within the Baldwin Hills area, providing recreation, and restoring and protecting wildlife habitat for the public’s enjoyment and educational experience.⁷

After years of extensive public participation, a Master Plan for the Baldwin Hills Park was completed, setting forth a comprehensive vision for the Baldwin Hills that balances the recreational and cultural needs of the community with protection of sensitive plants and animals and their habitats. The state park in the Baldwin Hills will provide much-needed recreational, community, and cultural facilities, habitat restoration, recreation-related economic development, and educational opportunities.⁸

B. The Community Struggle for a Park in the Baldwin Hills

The community has struggled long and hard for a park in the Baldwin Hills. Plans for a park remained stagnant for nearly two decades until the community called on state elected officials to form the Baldwin Hills Conservancy. Community participation in the Master Plan for the park was extensive.⁹

Planning for the park began in 1998 with the support of over 30 different public agencies. The

³ Cal. Pub. Res. Code §32550(a).

⁴ Baldwin Hills Park Master Plan (May 2002) at 2-3.

⁵ *Id.* at 8.

⁶ Cal. Pub. Res. Code §32550(d).

⁷ Baldwin Hills Conservancy Mission Statement, available online at <http://www.bhc.ca.gov/>.

⁸ Baldwin Hills Park Master Plan at 8.

⁹ Baldwin Hills Park Master Plan at 4.

California Department of Parks and Recreation and the Baldwin Hills Conservancy played a key role in the development of the Master Plan, which involved public workshops and an 85-member Baldwin Hills Park Advisory Committee. Over 700 people attended community workshops between 2000 and 2001.¹⁰

In the midst of the energy crisis in 2001 and as the Master Plan was being finalized, the state made plans to develop a fast-track power plant in the Baldwin Hills. A remarkably diverse coalition of community and neighborhood stakeholders, environmental, environmental justice, and civil rights advocates, and civic leaders came together to stop the development and save the community and the park in the Baldwin Hills. Every elected African American official in the area supported the park and opposed the power plant. The Center for Law in the Public Interest on behalf of the community successfully established that the power plant was too little, too late, too expensive and not needed to solve the energy crisis. There was simply no justification for sacrificing the community and the park in the Baldwin Hills for the proposed power plant.¹¹ After decades of oil drilling and other industrial development, stopping the power plant was a watershed moment in the history of the region and for the historic heart of African-American Los Angeles.

In 2003, the City of Los Angeles nevertheless proposed building a 40,000 square foot garbage dump at the park's doorstep.¹² Once again, the Center for Law in the Public Interest led a diverse alliance of stakeholders to stop the dump and save the community and the park in the Baldwin Hills.¹³ The Los Angeles City Council required the Bureau of Sanitation to abandon all plans to develop the dump there, sending a powerful message that these underserved areas need public goods, not projects that degrade the community's quality of life.¹⁴

Strengthened by years of struggle, the community remains even more determined than ever to make the vision for a park in the Baldwin Hills into a reality for all the people of California to enjoy. Eliminating the Conservancy threatens that vision, that community, and that park.

C. The CPR Threatens the Community and the Park in the Baldwin Hills

The CPR represents the latest threat to the park in the Baldwin Hills. Once again, the community will beat back this threat.

The CPR recommendations would have a devastating impact on the Baldwin Hills Conservancy and on the Conservancy's ability to implement the Baldwin Hills Park Master Plan. Governor

¹⁰ Baldwin Hills Park Master Plan at 4-5.

¹¹ Joe Mozingo, "Plan for Baldwin Hills Power Plant Attacked," *L.A. Times* (June 19, 2001); "Stocker Officially Drops Plans for Power Plant," *L.A. Times* (July 6, 2001).

¹² Kevin Herrera, "Residents Fight City's Plan to Build Garbage Dump in Baldwin Hills," *Los Angeles Sentinel* (March 6-12, 2003).

¹³ Kevin Herrera, "City Removes Baldwin Hills From its List of Sites for Waste Transfer Center," *Los Angeles Sentinel* (July 3-9, 2003).

¹⁴ *Id.*

Schwarzenegger established the CPR under Executive Order S-5-04.¹⁵ The CPR recommends devolving the Baldwin Hills Conservancy from a state entity to a local joint-power authority, removing state participation on the Conservancy's board, and eliminating state funding to support the Conservancy's programs and operations.¹⁶

A Master Plan would not have been possible absent legislative mandate and support.¹⁷ The California Department of Parks and Recreation and the Baldwin Hills Conservancy have adopted and are implementing the Master Plan for the Baldwin Hills Park. Without the continued leadership of the Baldwin Hills Conservancy, state participation on the Conservancy's governing board, and voter-supported state funding for the Conservancy, the community-based vision for the Baldwin Hills may never be realized.

D. The People of California Support the Baldwin Hills Conservancy

The people of California voted to provide \$40,000,000 specifically for the Baldwin Hills Conservancy and the Baldwin Hills Park in Prop 40 in 2002.¹⁸ Prop 40 – the largest resource bond in United States history, with \$2.6 billion for parks, clean water and clean air – passed in March 2002 with the support of 77% of black voters, 74% of Latino voters, 60% of Asian voters, and 56% of non-Hispanic white voters. Seventy-five percent of voters with an annual family income below \$20,000 and 61% with a high school diploma or less supported Prop 40 – the highest among any income or education levels.¹⁹

Prop 40 demolished the myth that the environment is a luxury that communities of color and low-income communities cannot afford or are not willing to pay for. The Baldwin Hills Conservancy is one of the public benefit rewards to communities of color and low-income communities for getting out the vote and passing Prop 40.

According to a recent survey on Californians and the environment by the influential California Public Policy Institute, 64% of Californians say that poorer communities have less than their fair share of well-maintained parks and recreational facilities. Latinos are far more likely than non-Hispanic whites (72% to 60%) to say that poorer communities do not receive their fair share of these environmental benefits. A majority of residents (58%) agree that compared to wealthier neighborhoods, lower-income and minority neighborhoods bear more than their fair share of the environmental burdens of toxic waste and polluting facilities.²⁰

¹⁵ Cal. Exec. Order S-5-04. The stated purpose of the CPR is to “formulate and recommend practical changes to government agencies, programs and operations to reduce total costs of government operations, increase productivity, improve services and make government more responsive and accountable to the public.”

¹⁶ Prescription for Change: A Government for the People For a Change, a Report of the California Performance Review, [hereinafter “CPR”] at 1026 (2004).

¹⁷ See Cal. Pub. Res. Code § 32550 *et seq.*

¹⁸ Cal. Pub. Res. Code §5096.650(b)(7).

¹⁹ *L.A. Times* state-wide exit poll, March 7, 2002.

²⁰ Mark Baldasare, Public Policy Institute of California Statewide Survey: Special Survey on Californians and the Environment at vi (June 2002).

III. Our Vision and the Values at Stake

Los Angeles is park poor, and there are unfair disparities in access to parks and other open space benefits based on race, ethnicity, income, access to a car, and other factors.

We are guided by a collective vision for a comprehensive and coherent web of parks, beaches, forests, and other open space, schools with playing fields and playgrounds, and transit that serves the diverse needs of diverse users and reflects the cultural urban landscape.

Our vision is inspired in part by the classic 1930 report *Parks, Playgrounds, and Beaches for the Los Angeles Region* by Olmsted Brothers and Bartholomew & Associates. The Olmsted Plan envisioned a comprehensive and coherent regional system of open space and transportation to promote the social, economic and environmental vitality of Los Angeles and the health of its people. According to the Olmsted Report in words that remain true today:

Continued prosperity [in the Los Angeles region] will depend on providing needed parks, because, with the growth of a great metropolis here, the absence of parks will make living conditions less and less attractive, less and less wholesome. . . . In so far, therefore, as the people fail to show the understanding, courage, and organizing ability necessary at this crisis, the growth of the Region will tend to strangle itself.²¹

Implementing the Olmsted vision would have made Los Angeles one of the most beautiful and livable regions in the world. Powerful private interests and civic leaders demonstrated a tragic lack of vision and judgment when they killed the Olmsted Report.

One of the broadest and most diverse alliances ever behind any issue in Los Angeles is working to restore a part of the Olmsted vision and the lost beauty of Los Angeles. The urban park movement stopped the power plant and the garbage dump in the Baldwin Hills. The movement stopped warehouses and industrial projects to create state parks in the Cornfield and Taylor Yard as part of the greening of the Los Angeles River.

Parks are not a luxury. People in parks play, walk, talk, kiss, sit, jog, bike, learn, bird, protest, pray, and work. Parks are a democratic commons that provide a different rhythm for everyday life and bring people together as equals. Parks are fun, improve the environment, provide opportunities for athletics, improve academics, and build leadership, offer youth an alternative to gang violence, crime, drug abuse, and teenage pregnancy, and provide economic benefits to the community and the state. Parks improve human health and the environment. Parks are the city's lungs, essential components of its health and quality of life – cleaning the air, breaking the heat, breathing life into the neighborhood.

The State can and must continue to implement that vision and those values through the Baldwin Hills Conservancy.

²¹ Olmsted Brothers and Bartholomew & Associates, *Parks, Playgrounds, and Beaches for the Los Angeles Region I* (1930), reprinted in Greg Hise & William Deverell, *Eden by Design* 83 (2000).

A. Fun

The park in the Baldwin Hills will bring the simple joy of playing in the park to the children of California and their families. Fun is not frivolous. The United States was founded in part for the pursuit of happiness.²² The United Nations recognizes the right to play as a fundamental human right.²³ Fun goes hand in hand with recreation and the other values at stake, as discussed below.

B. Recreation, Human Health, and Human Development

1. Recreation

Recreation programs in the Baldwin Hills Park can make a difference in California and in the lives of young people and their families. As the California Department of Parks and Recreation has eloquently stated:

The importance of recreation in modern society cannot be overestimated. The opportunity to alter the pace of modern life and experience historic and natural settings or more actively participate in outdoor activities has been shown to improve societal well-being by maintaining the physical and emotional health and wellness of individuals and contributes to reduction in crime. Recreational activities on State, local, and regional parklands, open space, and trails provide strong support for community values and serves as a mechanism and social bridge for integrating people of all races, ages, incomes, and abilities. These lands educate, challenge, inspire, and entertain our

²² “We hold these truths to be self-evident, that all men are created equal, that they are endowed by their Creator with certain unalienable Rights, that among these are Life, Liberty and the pursuit of Happiness.” Declaration of Independence ¶ 2 (U.S. 1776).

²³ *Declaration of the Rights of the Child*, Proclaimed by General Assembly resolution 1386(XIV) of 20 November 1959, Principle 7 states:

The child is entitled to receive education... which will promote his general culture and enable him, on a basis of equal opportunity, to develop his abilities, his individual judgement, and his sense of moral and social responsibility, and to become a useful member of society. . . .

The child shall have full opportunity for play and recreation, which should be directed to the same purposes as education; society and the public authorities shall endeavour to promote the enjoyment of this right.

United Nations’ Convention on the Right of the Child, General Assembly resolution 44/25 of 20 November 1989, Article 31 states:

1. States/Parties recognize the right of the child to rest and leisure, to engage in play and recreational activities appropriate to the age of the child and to participate freely in cultural life and the arts.
2. States/Parties shall respect and promote the right of the child to participate fully in cultural and artistic life and shall encourage the provision of appropriate and equal opportunities for cultural, artistic, recreational and leisure activity.

children, offer safe and secure places for families and seniors, protect and conserve our natural and cultural resources. They also help to strengthen and stimulate California's economy through recreation-related sales of clothing, equipment, fees and services and the revenues generated from the tourism and hospitality industries. As California's population is expected to grow by nearly 30% in the next quarter century, the demand for recreational resources and open space to support this population demand as well as increased efforts to protect existing lands dedicated to this recreation purpose.²⁴

2. Recreation and Human Health

The human health implications of the need for open space for physical activity in the Baldwin Hills are profound.²⁵

If current trends in obesity, inactivity, and disease continue, today's youth will be the first generation in this nation's history to face a shorter life expectancy than their parents.²⁶ Adult onset diabetes now increasingly strikes children at younger and younger ages. As a result, children are more likely to suffer long range effects including death, loss of limbs, and blindness. This health crisis currently costs the U.S. over \$100 billion and 400,000 deaths each year.²⁷

There is not adequate open space for recreation in California, particularly for inner city residents.²⁸ All communities suffer from obesity and inactivity, but communities of color and low-income communities suffer first and worst. Communities of color and low-income communities are disproportionately denied the benefits of safe open spaces for recreation, and disproportionately suffer from diseases related to obesity and inactivity.

²⁴ Public Comments submitted by Ruth Coleman, Director, California Department of Parks and Recreation to California High Speed Rail Authority 11 (August 19, 2004).

²⁵ See generally Robert García *et al.*, "Healthy Children, Healthy Communities: Schools, Parks, Recreation, and Sustainable Regional Planning," *Fordham Urban Law Journal* Symposium on Urban Equity (forthcoming fall 2004).

²⁶ Eloisa Gonzalez, MD, MPH, (Jan. 21, 2004), L.A. County Dep't of Public Health, *Los Angeles Unified School District (LAUSD) Citizens' School Bond Oversight Committee*; see also Jennifer Radcliffe, "Going to War against Epidemic of Childhood Obesity," *Daily News*, Jan. 27, 2004, at 1.

²⁷ Rosie Mestel, "Obesity Gaining on Tobacco as Top Killer," *L.A. Times*, Mar. 10, 2004 (reporting study by JAMA, *et al.*; see CDC, *Nutrition, Physical Activity & Obesity*, available at http://www.chronicdisease.org/0602-nutrition_physical_activ.html. See also L.A. County Task Force on Children and Youth Physical Fitness, "Paving the Way for Physically Fit and Healthy Children: Findings and Recommendations," available at <http://lapublichealth.org/mch/reports/recommendations%20report.pdf>; U.S. Dept. of Health and Human Services, "The Surgeon General's Call to Action To Prevent and Decrease Overweight and Obesity" 9-10 (2001). See also Tomas Philipson *et al.*, "The Economics of Obesity: A Report on the Workshop Held at USDA's Economic Research Service," USDA Economic Research Service (May 2004), available at <http://www.ers.usda.gov/publications/efan04004/efan04004.pdf>.

²⁸ See Richard J. Jackson, MD, MPH and Chris Kochtitzky, MSP, *Sprawl Watch Clearinghouse Monograph Series, Public Health/Land Use Monograph, Creating a Healthy Environment: The Impact of the Built Environment on Public Health* [hereinafter *Jackson*], available at <http://www.sprawlwatch.org/health.pdf>.

OVERWEIGHT AND UNFIT CHILDREN IN CALIFORNIA²⁹

RACE/ETHNICITY	OVERWEIGHT	UNFIT
Latino	34%	45%
African American	29%	46%
White	20%	34%
Asian	18%	36%

In California, 27% of children are overweight and 40% are unfit.³⁰ Only 24% of the state's fifth-seventh- and ninth-graders met minimal physical fitness standards last year.³¹ The numbers are even lower within Los Angeles Unified School District (LAUSD), where just 17% of fifth-graders, 16% of seventh-graders, and less than 11% of ninth-graders met all six of the minimum fitness standards in the 2002-2003 school year.³² Over 91% of the students in LAUSD are students of color. The assembly districts with the highest proportion of overweight children in California also have the highest concentration of people of color.³³

DIABETES IN CALIFORNIA³⁴

RACE/ETHNICITY	AGE 18+	AGE 50-64
African American	10%	21%
American Indian and Alaskan Native	9%	20%
Latino	6%	18%
White	6%	8%
Asian and Native Hawaiian and Other Pacific Islanders	5%	11%

The benefits of open space extend beyond physical health. Research links open green spaces to improved mental health. For example, symptoms of children with attention deficit disorder (“ADD”) are relieved by contact with nature.³⁵ Views of nature benefit the mental health of children without ADD as well. African-American children in low-income inner city environments, and non-Hispanic white children from high-income families, concentrate better with views of open space.³⁶ Girls score

²⁹ Source: California Center for Public Health Advocacy, *An Epidemic: Overweight and Unfit Children in California Assembly Districts* (Dec. 2002).

³⁰ Press Release, CA Dept. of Educ., *State Schools Chief O’Connell Announces California Kids’ 2002 Physical Fitness Results*, (Jan. 28, 2003) [hereinafter *California Kids*]. In California, all students in grades 5, 7, and 9 are required to take the California Fitness Test in order to assess physical fitness in six health fitness areas: aerobic capacity, body composition, abdominal strength, trunk extension strength, upper body strength and flexibility. Students must meet all six standards in order to be considered fit. *California Kids*.

³¹ *Id.*

³² Cara Mia DiMassa, *Campus Crowding Can Make P.E. a Challenge*, L.A. Times, Nov. 19, 2003, Metro Part B, at 2.

³³ California Center for Public Health Advocacy, *An Epidemic: Overweight and Unfit Children in California Assembly Districts*, 5 (Dec. 2002) [hereinafter “*An Epidemic*”], available at <http://www.gisplanning.net/publichealth/help.asp>.

³⁴ Source: UCLA Center for Health and Policy Research, *Diabetes in California: Findings from the 2001 Health Interview Survey* (April 2003) [hereinafter “*UCLA Diabetes in California*”].

³⁵ A. Faber Taylor, *et al.*, “Coping with ADD: The surprising connection to green play settings,” *Environment & Behavior* 33, 54-77 (2001).

³⁶ *Id.* See also A. Faber Taylor, *et al.*, “Views of Nature and Self-Discipline: Evidence from Inner City Children,” *Journal*

higher on self-discipline tests when taken with a natural view.³⁷

The state of California does not adequately enforce its physical education requirements.³⁸ Physical education classes have so many students that teachers cannot give students the individual attention they need.³⁹ The average student-teacher ratio is 43-1, far exceeding the national recommendation of 25-1.⁴⁰ In LAUSD, middle school physical education classes average 55 to 65 students per class, with some gym classes exceeding 70 students per teacher.⁴¹ As a result, students in physical education sessions may spend more time standing on the sidelines waiting their turn, rather than actually participating in activity.⁴²

Regular physical activity is associated with enhanced health and reduced risk for all-cause mortality, heart disease, diabetes, hypertension, and cancer.⁴³ Physical activity for children and adolescents helps to build and maintain healthy bones, muscles, and joints; prevent or delay the development of high blood pressure; and reduce feelings of depression and anxiety.⁴⁴ People who are inactive are twice as likely to experience symptoms of depression as are more active people.⁴⁵ Depression can lead to suicide, the ninth-leading cause of death in America. Physical activity relieves symptoms of depression and anxiety and improves mood by providing opportunities for social interaction, increased feelings of self-mastery and self-efficacy, and relief from daily stress.⁴⁶

Beyond the physical and mental health benefits of the park, there are health-related economic benefits. The Surgeon General estimates the national cost of overweight and obesity in the year 2000 to have been \$117 billion, with \$61 billion in direct costs (including preventive, diagnostic, and treatment services related to overweight and obesity) and \$56 billion in indirect costs (the value of wages lost by people unable to work because of illness or disability, as well as the value of future earnings lost by premature death).⁴⁷

of Environmental Psychology (2001).

³⁷ *Id.*

³⁸ Vicki Kemper, *New Priorities Leave PE, Obese Children Behind*, L.A. Times, Sept. 15, 2003, quoting Dianne Wilson-Graham, director of physical education in California.

³⁹ U.S. Dept. of Health and Human Services and U.S. Dept. of Education, *Promoting Better Health for Young People Through Physical Activity and Sports*, 11 (Fall 2001) [hereinafter "Promoting Better Health for Young People"], available at http://www.cdc.gov/ncedphp/dash/physicalactivity/promoting_health/index.htm.

⁴⁰ Cara Mia Dimassa, *Campus Crowding Can Make PE a Challenge*, L.A. Times, Nov. 19, 2003, at B2.

⁴¹ *Id.*

⁴² Prevention Institute, *Strategies for Action: Integrating Nutrition and Physical Activity Promotion to Reach Low-Income Californians* 11 (October 2001), available at <http://www.preventioninstitute.org/nutrapp.html>.

⁴³ U.S. Dept. of Health and Human Services, *Physical Activity and Health: A Report of the Surgeon General*, 236 at 7, 85-87, 90-91, 102-03, 110-12, 127-30, 135 (1997) [hereinafter "Surgeon General"], available at <http://www.cdc.gov/nccdphp/sgr/pdf/sgrfull.pdf>.

⁴⁴ *Promoting Better Health for Young People*, *supra*, at 7.

⁴⁵ *Surgeon General*, *supra*, at 135-36, 141.

⁴⁶ *UCLA Diabetes in California*, *supra* at 54.

⁴⁷ U.S. Dept. of Health and Human Services, *The Surgeon General's Call to Action To Prevent and Decrease Overweight and Obesity* 9-10 (2001) [hereinafter "Call to Action"], available at <http://www.surgeongeneral.gov/topics/obesity/calltoaction/CalltoAction.pdf>.

The park in the Baldwin Hills will promote healthy living and reduce expenditures on health care.

3. Recreation and Human Development

Physically fit students perform better academically.⁴⁸ Recreation programs build character, pride, self esteem, teamwork, leadership, concentration, dedication, fair play, mutual respect, social skills, and healthier bodies for children.⁴⁹ Recreation programs help keep children in school; develop academic skills to do better in school and in life; and increase access to higher education.⁵⁰ Male athletes are four times more likely to be admitted to Ivy League colleges than are other males; for female recruits, the advantage is even greater.⁵¹

Recreation programs provide alternatives to gangs, drugs, violence, crime, and teen sex. A national survey of more than 14,000 teenagers found that those who took part in team sports were less likely to have unhealthy eating habits, smoke, have premarital sex, use drugs, or carry weapons.⁵² The Los Angeles County District Attorney concluded that among the reasons young people join gangs is “[the exclusion] by distance and discrimination from adult-supervised park programs.”⁵³ The study recommends that “alternative activities like recreation” should be part of every gang prevention strategy.⁵⁴ In the aftermath of the riots and rebellion following the acquittals of the police defendants in the state trial involving the Rodney King beating, gang members issued a manifesto calling for peace and listing the shortage of parks and open spaces as one of their major concerns.⁵⁵

C. Environmental Values

More than 160 bird species have been found in the Baldwin Hills. Fox, raccoon and other wildlife thrive within sight of downtown Los Angeles. The Baldwin Hills part of the 127 square-mile Ballona Creek Watershed. Preserving the area as open space will have direct impacts on reducing urban runoff and improving water quality in the Ballona Creek, Ballona Wetlands, and the Santa Monica Bay. Remediation of sites contaminated by oil drilling operations, reduction of non-native species, and elimination of artificial water regimes will increase the health of the ecosystems in the region. Reconstructing habitat linkage from the Baldwin Hills to the creek will help reverse the species fragmentation that has occurred due to urban sprawl.

⁴⁸ Press Release, CA Dep’t of Educ., *State Study Proves Physically Fit Kids Perform Better Academically*, (Dec. 10, 2002), available at <http://www.cde.ca.gov/news/releases2002/rel37.asp>.

⁴⁹ See Anastasia Loukaitou-Sederis & Orit Stieglitz, “Children in Los Angeles Parks: A Study of Equity, Quality, and Children Satisfaction with Neighborhood Parks,” *Town Planning Review* 1-6 (2002).

⁵⁰ *Id.*

⁵¹ See William G. Bowen *et al.*, *Reclaiming the Game: College Sports and Educational Values* (2003).

⁵² Russell R. Pate *et al.*, *Sports Participation and Health-Related Behaviors Among US Youth*, Archives of Pediatrics and Adolescent Medicine (Sept. 2000).

⁵³ L.A. District Att’y, *Gangs, Crime and Violence in Los Angeles: Findings and Proposals from the District Attorney’s Office* (1992).

⁵⁴ *Id.*

⁵⁵ Anastasia Loukaitou-Sederis & Orit Stieglitz, “Children in Los Angeles Parks: A Study of Equity, Quality, and Children Satisfaction with Neighborhood Parks,” *Town Planning Review* 1-6 (2002).

D. Economic Benefits

When cities create urban parks, property values rise and the number of businesses and jobs grows, contributing to the state and local economies.⁵⁶ The following examples illustrate a national trend on the beneficial economic impacts of parks on communities. These kinds of economic benefits will flow to the community in the Baldwin Hills through the park and the Conservancy. Conversely, the community will lose such economic benefits through the destruction of the Conservancy and the park:

- After Chattanooga, Tennessee, replaced abandoned warehouses with an eight-mile greenway, the number of full-time jobs and businesses more than doubled, and property values increased by 127%.
- After Oakland, California, created a three-mile greenbelt surrounding Lake Merritt near the city center, surrounding property values increased by \$41 million.
- After the revitalization of Meridian Hill Park in Washington, D.C., visits to the park tripled, and many park visitors use local businesses. Occupancy rates in surrounding apartment buildings dramatically increased.
- After expansion and restoration of the Martin Luther King, Jr. National Historic Site, Atlanta, Georgia's African-American "Sweet Auburn" neighborhood experienced a revitalization, with dozens of new homes, 500,000 annual visitors boosting local business, and a decrease in crime.
- After citizens prevented San Antonio, Texas, from burying the San Antonio River, the resulting river park has become the most popular attraction in the city's \$3.5 billion tourist industry.
- After the Pinellas Trail was built through Dunedin, Florida, store vacancy rates went from 35% to 0%.⁵⁷

E. Equal Justice, Democracy, and the Good Life

The struggle for the park in the Baldwin Hills is bringing people together to create the kind of community where they want to live and raise children. People who have never participated in government before are coming together to stand up for their right to equal access to parks and recreation -- and winning.

The Center for Law in the Public Interest has worked and published extensively on equal justice, democracy, and livability through the urban park movement, as discussed below. Professor Regina Austin among others has written eloquently on open space, social inequality, and the good life for all.⁵⁸

F. Spirituality

Social justice and stewardship of the earth have motivated spiritual leaders including Nobel Peace Prize Laureate Rigoberta Menchú, Cardinal Roger Mahony, and the Justice and Peace Commission of

⁵⁶ See, e.g., Steve Lerner & William Poole, *The Economic Benefits of Parks and Open Spaces* 12, 13, 17, 20, 26 (1999).

⁵⁷ *Id.*

⁵⁸ See, e.g., Regina Austin, "'Not Just for the Fun of It!': Governmental Restraints on Black Leisure, Social Inequality, and the Privatization of Public Space" 71 S. Cal. L. Rev 667, 694 (1998).

the Catholic Archdiocese of Los Angeles to actively support parks and open space in California.⁵⁹ African-American ministers called on their congregations to support Proposition 40 from the pulpit the Sunday before the election, and Cardinal Roger Mahony endorsed Prop 40.

According to the United States Catholic Conference, for example, Catholics are called upon to protect people and the planet, living their faith in relationship with all of God's creation. Catholics show their respect for the Creator through stewardship and care for the earth as a requirement of their faith.⁶⁰ The United Nations has published an interfaith book of reflection for action, *Earth and Faith*.⁶¹ Extensive information about spirituality and the environment is available at various web sites.⁶²

IV. The Heart and Soul of African American Los Angeles

It is necessary to connect the historical dots to understand how and why African-Americans came to live in disproportionate numbers in the areas surrounding the Baldwin Hills without adequate access to parks and recreation. The poverty of parks and environmental degradation in the African American community is not an accident of unplanned growth, but the direct result of a continuing history and pattern of discriminatory land use planning, restrictive housing covenants, federal mortgage subsidies for racially homogenous neighborhoods, and other discriminatory funding policies and practices.⁶³

The Center for Law in the Public Interest has worked and published extensively on these matters. *See generally* Robert García *et al.*, "Community, Democracy and the Urban Park Movement" (chapter in Dr. Robert Bullard's forthcoming book on Environmental Justice to be published by the Sierra Club); Robert García *et al.*, *The Cornfield and the Flow of History: People, Place, and Culture*, Center for Law in the Public Interest (2004);⁶⁴ *Dreams of Fields: Soccer, Community, and Equal Justice*, Center for Law in the Public Interest (2002);⁶⁵ Robert García, *Equal Access to California's Beaches*, Center for Law in the Public Interest (2002), published in the Proceedings of the Second National People of Color Environmental Leadership Summit - Summit II;⁶⁶ Robert García and Thomas A. Rubin, "Crossroad Blues: The MTA Consent Decree and Just Transportation," *chapter in* Karen Lucas, *ed.*, *Running on Empty: Transport, Social Exclusion, and Environmental Justice* 221-56 (2004); Robert García *et al.*, *Free the Beach!*, Center for Law in the Public Interest (forthcoming 2004).

A. The History and Pattern of Discrimination against African Americans in Los Angeles

The original settlers in 1781 of El Pueblo de Los Angeles, Los Pobladores, included Blacks and mulattos. A Black man, Francisco Reyes, served as alcalde (mayor) of El Pueblo in 1793, almost two

⁵⁹ García, *Dreams of Fields*, *supra*, at 10; Julia Romano, "A Controversial Woman of Peace," *Santa Monica Bay Week* (Nov. 21, 2002).

⁶⁰ United States Catholic Conference, Inc., Washington D.C. (1999).

⁶¹ Libby Bassett *et al.*, *Earth and Faith* (2000).

⁶² *See, e.g.*, Coalition for the Environment and Jewish Life of Southern California, www.CoeJLSC.org.

⁶³ *See, e.g.*, Mike Davis, *City of Quartz* 160-64 (1990); Mike Davis, "How Eden Lost Its Garden," *chapter in Ecology of Fear* (2000).

⁶⁴ Available online at www.clipi.org.

⁶⁵ *Id.*

⁶⁶ www.ejrc.cau.edu/summit2/Beach.pdf.

hundred years before Tom Bradley, the first Black man elected mayor under statehood.⁶⁷ The last Mexican governor of California before statehood, Pío Pico, was born of African, Native American, and European ancestry under a Spanish flag.⁶⁸

Biddy Mason, one of the most prominent citizens of early Los Angeles, was born a slave in Mississippi. She walked behind her owner's wagon first to Utah and then to Los Angeles. She gained her freedom in Los Angeles through a federal court order in 1856, just before the United States Supreme Court held in the *Dred Scott* case that slaves were chattel entitled to no constitutional protections because Blacks had "no rights which the white man was bound to respect."⁶⁹ With savings earned as a midwife, Biddy Mason bought a homestead a few blocks south of the Plaza on Spring Street between Third and Fourth. She helped found the First African Methodist Episcopal Church, one of the most influential and affluent African American churches in the City today. The Biddy Mason wall and pocket park in the heart of downtown Los Angeles commemorate her contributions to the City.⁷⁰

Despite the prominent role of Blacks in early Los Angeles, Black residential and business patterns began to change in response to discriminatory housing and land use patterns in the twentieth century. Los Angeles pioneered the use of racially restrictive housing covenants. The California Supreme Court sanctioned restrictive covenants in 1919 and California courts continued to reaffirm them as late as 1947.⁷¹ The Federal Housing Authority not only sanctioned restrictions, but developed a recommended formula for their inclusion in subdivision contracts.⁷² Blacks increasingly became concentrated in South Central Los Angeles. Restrictive city ordinances, housing covenants, and other racially discriminatory measures dramatically limited access by Black people to housing, jobs, schools, playgrounds, parks, beaches, restaurants, transportation, and other public accommodations.⁷³

The landmark Supreme Court decisions *Shelley v. Kraemer*⁷⁴ and *Barrows v. Jackson*,⁷⁵ decided in 1948 and 1953, respectively, legally abolished racially restrictive housing covenants. Even after the High Court declared those decisions to be the law of the land, however, the Los Angeles Urban League identified 26 different ploys that white homeowners used to exclude blacks, including payoffs by neighbors to discourage home sales to prospective black buyers, vandalism, cross burnings, bombings, and death threats.⁷⁶ Until the late 1950s, the Code of Ethics of the National Association of Real Estate

⁶⁷ Jean Bruce Poole and Tevvy Ball, *supra*, at 11.

⁶⁸ *Id.* at 30-31.

⁶⁹ *Scott v. Sandford*, 60 U.S. 393, 407 (1857).

⁷⁰ Dolores Hayden, *supra*, at 168-87.

⁷¹ The United States Supreme Court ultimately declared restrictive housing covenants unconstitutional and unenforceable in *Shelley v. Kramer*, 334 U.S. 1 (1948).

⁷² For example, the Federal Housing Administration Manual of 1938 states: "If a neighborhood is to retain stability, it is necessary that properties shall continue to be occupied by the same racial classes. A change in social or racial occupancy generally contributes to instability and a decline in values." See also Mike Davis, *City of Quartz* 160-64 (1990); Mike Davis, "How Eden Lost Its Garden," chapter in *Ecology of Fear* (2000).

⁷³ California Department of Parks and Recreation, *Five Views: An Ethnic Sites Survey for California* 68-69 (1988).

⁷⁴ *Shelley v. Kramer*, 334 U.S. 1 (1948).

⁷⁵ *Barrows v. Jackson*, 346 U.S. 249 (1953).

⁷⁶ Josh Sides, *L.A. City Limits: African American Los Angeles from the Great Depression to the Present* 101 (2003)

Boards contained a provision explicitly prohibiting real estate agents from introducing people of color into white neighborhoods. Banks and developers were unwilling to break the racial lines set by white homeowners and real estate agents. “In the postwar era many individual white homeowners, and virtually all the public and private institutions in the housing market, did everything possible to prevent African Americans from living outside areas that were already predominantly black.”⁷⁷

In the 1960s, as social and legal segregation began to fall, middle and upper class blacks disproportionately moved westward from South Central Los Angeles. White flight from advancing blacks opened up opportunities to rent or buy housing. Urban renewal programs targeted ethnic areas and wiped out most nineteenth century buildings and neighborhoods.⁷⁸ By the 1990s, the Baldwin Hills area including the Crenshaw District and Leimert Park had become the geographical focus of black Los Angeles.⁷⁹

B. The Baldwin Hills

Professor Josh Sides in his recent book describes the unique role of the Baldwin Hills in the history of African Americans in Los Angeles and across the nation:

By the late 1950s and early 1960s, blacks had pushed west and south of West Adams into Leimert Park and the exclusive area of Baldwin Hills, which quickly became the heart of affluent black Los Angeles, a position it still holds today.

A five-square-mile area of unincorporated hillside west of Leimert Park/Crenshaw and south of West Adams, Baldwin Hills boasted large homes and expansive views. Largely undeveloped until the 1940s, hundreds of houses and apartment complexes were built there in the 1950s. As they had in Compton, blacks moved into new and large homes, with an average of four to six bedrooms per household. African Americans in Baldwin Hills were generally much better educated than their South Central counterparts, a fact that translated into greater job opportunities in the post-boom economy. Accordingly, just over 71 percent of all employed African Americans in Baldwin Hills were white-collar workers. Many Baldwin Hills residents were typical of those who fled South Central after the Watts riot; according to the 1970 census, 57 percent of blacks in Baldwin Hills had lived in the central city in 1965.

In addition to superior housing, residents of Baldwin Hills and the nearby Leimert Park and Crenshaw areas also enjoyed many more conveniences as consumers. While many Watts and Willowbrook residents were forced to buy groceries at overpriced liquor stores, Baldwin Hills residents had other options. The Crenshaw Shopping Center—opened in 1947, as one of the first planned suburban malls in the United States—was the most popular shopping area for local residents. And, during the 1960s, the Baldwin

[hereinafter “*L.A. City Limits*”].

⁷⁷ *Id.* at 108.

⁷⁸ *Five Views*, *supra*.

⁷⁹ James P. Allen and Eugene Turner, *Changing Faces, Changing Places: Mapping Southern Californians* 16-20 (2002).

Hills Center and the Ladera Center also opened, offering residents even greater selection and convenience. Central to this improved consumer selection, and middle-class life in general, was the greater mobility of Baldwin Hills residents relative to blacks in the central city. Whereas 57 percent of Baldwin Hills households had one car, and 37 percent had two or more cars, a survey of Watts residents found that 57 percent did not own a car.

Perhaps the greatest advantage to residing in Baldwin Hills was the superior quality of the area's public schools. In 1971, the Los Angeles Department of City Planning described Baldwin Hills public schools as the "the best schools of any city area inhabited primarily by black people" and "on par with those in West Los Angeles and the San Fernando Valley." In addition to boasting low dropout rates and small class sizes relative to public schools in Watts and South Central, public schools in Baldwin Hills were also more racially integrated.⁸⁰

C. The Poverty of Parks

Los Angeles is marred by a history and continuing pattern and practice of racialized public space. Historic barriers to open space and recreation are perpetuated today by the poverty of parks in Los Angeles and disparities in access to parks, recreation, and open space based on race, ethnicity, income, and other salient factors.

As Professor Sides documents in his book on the history of African American Los Angeles:

Though never codified in law, there were many real racial barriers to the alluring amenities of public life in Los Angeles. African American youth, eager to escape the heat of central city summers, seldom found refuge in city swimming pools. In many parks, such as Centinella Park in the all-white suburb of Inglewood, blacks were simply not allowed in the pool. In other parks, blacks were allowed to swim only on the day before the pool was cleaned.⁸¹

African Americans were forced to recreate where they felt comfortable and not feared. For example, Lincoln Park in East Los Angeles was a popular destination for black and Mexican youth, which attracted the large Mexican and black populations from East Los Angeles and black children from South Central, who would take the Pacific Electric railroad to reach the park.⁸²

In 1978 in the wake of Proposition 13, local officials established funding formulas that cut off local funds for parks and schools. According to former Mayor Richard Riordan, poorer communities in the inner city have been historically short-changed by City funding formulas for parks and recreation programs. Money is not invested throughout the City based on need, but is distributed equally among the 15 City Council districts regardless of need, according to the Mayor as reported in the Wall Street

⁸⁰ *L.A. City Limits*, *supra* at 190-191.

⁸¹ *Id.* at 21.

⁸² *Id.*

Journal.⁸³

The City's Recreation and Parks Department has also long recognized the inequities in park funding. "It's a pattern we all understand," according to Dallan Zamrzla, then-director of planning and development for the Recreation and Parks Department. "The urban areas of Los Angeles have less park facilities than the new areas or outer lying areas, where ordinances require that parks be developed when housing developments go in."⁸⁴ Because there has been little new construction in poorer neighborhoods, those areas benefit little from the state Quimby Act, which requires developers to put money into parks near their new projects. Many of the urban parks are more heavily used and require more staff. These criteria and methods of administration have an adverse disparate impact because they fail to take into account for the needs of the poorest neighborhoods, which are disproportionately communities of color.⁸⁵

Local officials virtually abandoned public recreation in the wake of Proposition 13, which cut funding for local services. Los Angeles also adopted the principle of apportioning its park budget through a formula based on park size – which favors disproportionately white, relatively wealthy areas – while encouraging parks to operate as businesses based on user fees. Since the wealthier and whiter areas of the city have disproportionate shares of park area and fee generating facilities, this has entailed a regressive redistribution of park resources. The result is 'recreational apartheid' and a calamitous deterioration of public space in the inner city as parks become increasingly run down, unsupervised and dangerous."⁸⁶

A recent study by the University of Southern California documents what we all know to be true: there are not enough parks in Los Angeles, there are disparities in access to parks in communities of color and low income communities, and the method for distributing Proposition K park bond funding exacerbates rather than alleviates these inequities.⁸⁷ According to the USC study, low-income communities and communities that are disproportionately Latino, African-American, and Asian/Pacific Islander have dramatically lower levels of access to park resources than white-dominated areas of Los Angeles. Neighborhoods with the largest population of youth receive half as much Prop K funding as those areas with the smallest population of youth. Communities with the highest rate of park accessibility receive as much or more bond money than many areas with higher poverty levels, higher rates of young people, and below average park accessibility.

The poverty of parks is aggravated by the disappearance of schoolyards where children can play and join recreation programs, due to the epic overcrowding at public schools in Los Angeles and the concomitant use of portable classrooms that devour classroom space.

⁸³ Shirley Leung, "Riordan Seeks More Funds for Urban Core," *Wall Street Journal* (April 28, 1999).

⁸⁴ Jocelyn Stewart, "Officials Resort to Creativity to Meet Need for Parks," *L.A. Times* (June 15, 1998).

⁸⁵ *Id.*

⁸⁶ Davis, *supra*, at 308.

⁸⁷ Jennifer Wolch, et al., *Parks and Park Funding in Los Angeles: An Equity Analysis* (May 2002).

IV. Legal and Policy Justifications for Saving the Baldwin Hills Conservancy

A. The CPR Recommendations Violate State and Federal Civil Rights and Environmental Justice Laws

Title VI of the Civil Rights of 1964 and its implementing regulations prohibit both intentional discrimination based on race, color or national origin, and unjustified discriminatory impacts for which there are less discriminatory alternatives, by applicants for or recipients of federal funds. Title VI provides: “No person in the United States shall on the ground of race, color, or national origin, be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any program or activity receiving Federal financial assistance.”⁸⁸

The regulations that every federal agency has enacted pursuant to Title VI bar criteria or methods of administration by recipients of federal funds that have the effect of subjecting persons to discrimination because of their race, color, or national origin, or have the effect of defeating or substantially impairing accomplishment of the objectives of a program with respect to individuals of a particular race, color, or national origin. An important purpose of the statutory schemes is to assure that recipients of public funds not maintain policies or practices that result in racial discrimination.

California law prohibits intentional discrimination and unjustified discriminatory impacts under Government Code section 11135.⁸⁹

In addition, California law defines environmental justice as “the fair treatment of people of all races, cultures, and incomes with respect to the development, adoption, implementation, and enforcement of environmental laws, regulations, and policies.”⁹⁰

Implementing the recommendations of the CPR regarding the Baldwin Hills would violate both the disparate impact and intentional discrimination standards under federal and state law.

1. Unjustified Discriminatory Impacts.

There are three prongs to the discriminatory impact analysis: (1) whether an agency action has a disproportionate impact based on race, ethnicity, or national origin; (2) if so, whether the action is justified by business necessity; and (3) even if the action would otherwise be justified, the action is prohibited if there are less discriminatory alternatives to accomplish the same objective.⁹¹

a. Adverse Discriminatory Impacts

⁸⁸ 42 U.S.C. § 2000d (2004). The Equal Protection Clause of the Fourteenth Amendment to the United States Constitution also prohibits intentional discrimination. *See also* Section 1983 of the Civil Rights Act of 1871.

⁸⁹ *See* Cal Gov. Code § 11135 *et seq.*; 22 CCR § 9810.

⁹⁰ Cal. Gov. Code § 65040.12. The Governor’s Office of Planning and Research is currently working on implementing this code section.

⁹¹ *Larry P. v. Riles*, 793 F.2d 969, 983 (9th Cir. 1984).

The communities surrounding the Baldwin Hills are disproportionately communities of color and low-income communities, as described above. People of color and low-income people surrounding the Baldwin Hills are entitled to equal access to the benefits of parks and open space and of a state conservancy: fun; recreation; better health; athletics, academics, and alternatives to gangs, crimes, drugs, violence, prostitution, and teen sex; open space, wildlife, and a healthy environment; the economic benefits of parks and open space; and the other values described above.

Abolishing the Baldwin Hills Conservancy would disproportionately deprive those communities of color and low-income communities of these benefits and of the benefits of state conservancies.

b. No Business Necessity Justifies the Discriminatory Impacts

The burden is on the state to prove that discriminatory impacts are justified by business necessity. The CPR has failed to do so. Claims by the CPR are refuted below to demonstrate that no business necessary justifies the discriminatory impact.

No Business Necessity Justifies Creating a New Sierra Nevada Conservancy and Simultaneously Abolishing the Baldwin Hills Conservancy.

The discrimination here is stark and unjustified. The Governor has just signed legislation creating a new conservancy in California with built-in state funding for the Sierra Nevada.⁹² A.B. 2600, signed by the Governor on September 23, 2003, establishes the Sierra Nevada Conservancy to serve the Sierra Nevada region and creates the Sierra Nevada Conservancy Fund in the State Treasury to “be available, upon appropriation, for the purposes of the conservancy.”⁹³ At the same time, the CPR is recommending the elimination of the Baldwin Hills Conservancy to save money for the state. The Sierra Nevada region, which covers 21 counties in California, is a non-urbanized area that is far-less diverse than the Baldwin Hills region. A full 16 of the 21 counties in the Sierra Nevada region have a non-Hispanic white population of 70% or higher and 12 of the 21 counties have a non-Hispanic white population of 80% or higher.⁹⁴ The non-Hispanic white population in Los Angeles County, where the Baldwin Hills are located, is 31%.⁹⁵ Creating a new Sierra Nevada Conservancy and simultaneously abolishing the Baldwin Hills Conservancy is unjustified and discriminatory.

No Business Necessity Justifies the Unsupported Claim that Local Authorities Will Effectively Take Over the Baldwin Hills Park.

The Baldwin Hills Park Master Plan requires state leadership and state funding for implementation.

Relinquishing control over the Baldwin Hills Park to local authorities will hurt the community and the park. Local officials simply cannot be trusted with a world-class park in Los Angeles. The City of

⁹² Press Release, Office of Governor Arnold Schwarzenegger, “Governor Schwarzenegger Signs Historic Legislation Creating 25 Million Acre Sierra Nevada Conservancy” (Sept. 23, 2004).

⁹³ A.B. 2600.

⁹⁴ U.S. Census Bureau, County QuickFacts, available at <http://quickfacts.census.gov/qfd/states/06/06003.html>.

⁹⁵ *Id.*

Los Angeles tried to put a garbage dump in the Baldwin Hills in 2003. The City of Los Angeles opposed the state parks in the Cornfield and Taylor Yard until 2001.

The state relegated a state park to local status when it abandoned El Pueblo State Historic Park in the 1990s. In 1980, the state adopted a General Plan for El Pueblo de Los Angeles State Historic Park, offering a blueprint for an historic park linking El Pueblo and its historic buildings to the surrounding community. The General Plan described in detail a joint project by the California Department of Parks and Recreation, the City of Los Angeles, and the County of Los Angeles.⁹⁶ The State withdrew from the project in 1990.

In April 2004, Los Angeles City Controller Laura Chick published an audit of the city department that runs El Pueblo and found a situation bordering “on the brink of financial disaster.”⁹⁷ What should be a first-rate historic State Park is now besieged by ineffective management and administration.⁹⁸

Manuel Mollinedo, former general manager of the Los Angeles Department of Recreation and Parks, resigned from his position in January 2004 because “the mayor had not provided the agency with adequate support or resources.”⁹⁹

Local authorities lack the leadership, funding, and infrastructure to implement the vision for a park in the Baldwin Hills. The community will suffer the consequences if the state implements the CPR recommendations.

No Business Necessity Justifies the Unsupported Claim that Abolishing the Baldwin Hills Conservancy Would Save Money.

The CPR fails to provide a cost-benefit analysis of its recommendations regarding the Baldwin Hills Conservancy. While the CPR claims its recommendations overall could save the state \$32 billion over five years, a review by the nonpartisan Legislative Analyst’s Office said those projected savings were overstated by as much as \$15 billion.¹⁰⁰ Rather than addressing the limitations and inefficiencies of each of the conservancies on a case-by-case basis and weighing those limitations against the benefits provided by each of the conservancies, the CPR makes a blanket assertion that eliminating the Baldwin Hills and several other Conservancies will save money.¹⁰¹

The Conservancy provides priceless as well as economic benefits to the people of California, as described above. Cost savings alone cannot justify discrimination based on race and ethnicity here.

⁹⁶ The Center for Law in the Public Interest has reissued the General Plan in a digital version that is available on the Center’s website at www.clipi.org in an effort to guide policy makers and advocates in making El Pueblo and the Cornfield a world-class historic park.

⁹⁷ Letter from City Controller Laura N. Chick to Mayor James K. Hahn regarding the Financial and Compliance Audit of the Department of El Pueblo de Los Angeles Historical Monument (April 29, 2004).

⁹⁸ *See id.*

⁹⁹ Patrick McGreevy, “Mayor Names City Official to Run L.A. Parks,” *Los Angeles Times* (Jan. 22, 2004).

¹⁰⁰ Tom Chorneau, “Computer-center move sparks questions about special interests” *San Jose Mercury News* (Sept. 17, 2004).

¹⁰¹ *Id.*

No Business Necessity Justifies the Undefined Distinction Between Local or Regional Interests and State Interests.

The CPR fails to define “statewide interest” or “local or regional interests.” The lack of a meaningful standard produces arbitrary, capricious, and discriminatory decisions and results.

The CPR recommends keeping the conservancies for the Tahoe region, Santa Monica Mountains, and California Coast.¹⁰² The values at stake in the Baldwin Hills are of state-wide interest at least as much as the values at stake in those conservancies. Each of those conservancies disproportionately benefit non-Hispanic whites and wealthier people compared to the Baldwin Hills Conservancy.

The Baldwin Hills Conservancy serves important state interests. “Rising 500 feet above the Los Angeles Basin floor and visible for many miles, the hills are a natural jewel – an oasis in the heart of one of the most densely populated areas in California.”¹⁰³ Ironically, “years of oil production have protected the Baldwin Hills as open space, and provided a rare opportunity to reclaim and restore these dramatic ridgelines and hidden canyons to provide a place of rare peace and tranquility—a chance to create a world-class Baldwin Hills Park.”¹⁰⁴

The Baldwin Hills Conservancy was established in 2001 by Senate Bill 1625 to acquire and direct the management of public lands within the Baldwin Hills area. At that time, the Legislature identified the Baldwin Hills as an area with unique and important cultural, scientific, educational, recreational, and scenic resources.¹⁰⁵ The Baldwin Hills Park Master Plan covers a two square mile area that will attract visitors from across the nation and state. Larger than San Francisco’s Golden Gate Park and New York City’s Central Park, the Baldwin Hills Park will not only benefit over one million people, 30 communities, 55 schools, and 60 churches within five miles of the Baldwin Hills.¹⁰⁶ The park is accessible to millions within Southern California via major surface streets, and accessible to millions throughout the state via three major freeways.¹⁰⁷ The Master Plan presents a vision of a world-class park and natural space for all the people of California to enjoy.

c. The Baldwin Hills Conservancy Is a Livable and Less Discriminatory Alternative

Even if there were a business necessity that would justify the Commission’s recommendations regarding the Baldwin Hills Conservancy— and the Commission has not presented any — there are less discriminatory alternatives than abolishing the Conservancy. The CPR recommends retaining the Santa Monica Mountains Conservancy, the California Tahoe Conservancy, and the Coastal

¹⁰² CPR at 1026.

¹⁰³ See Kenneth Hahn State Recreation Area General Plan Amendment at 1-5, available online at <http://www.parks.ca.gov/pages/21299/files/Introduction.pdf> (emphasis added).

¹⁰⁴ Baldwin Hills Park Master Plan at 8.

¹⁰⁵ Cal. Pub. Res. Code §32550(a).

¹⁰⁶ See Baldwin Hills Master Plan at 2, 4.

¹⁰⁷ Baldwin Hills Park Master Plan at 3.

Conservancy. The state has just created the new Sierra Nevada Conservancy. If those are consistent with good government, so is the Baldwin Hills Conservancy.

2. Intentional Discrimination

To evaluate an intentional discrimination claim, courts consider the following kinds of evidence: (1) the impact of the action, whether it bears more heavily on one racial or ethnic group than another; (2) any history of discrimination; (3) any departures from procedural norms; (4) any departures from substantive norms; (5) the decision maker's knowledge of the harm caused and would continue to cause; (6) a pattern or practice of discrimination.¹⁰⁸

Applying the intentional discrimination analysis here: (1) Abolishing the Baldwin Hills Conservancy has a discriminatory impact against communities of color, as discussed above.

(2) and (6) The CPR recommendations would perpetuate the pattern and history of intentional discrimination against African-Americans resulting in segregated communities and unequal access to parks and recreation, as described above. This history includes the previous efforts to site a power plant in the Baldwin Hills Park, and efforts by the City of Los Angeles to site a garbage dump in the park.

(3) and (4) The CPR process is replete with procedural and substantive irregularities, as discussed throughout these comments, and in other public challenges to the CPR. As more fully addressed below, access to information related to the CPR, notice of public hearings, and the format for public comments, has been inadequate and discriminatory. The Governor has already taken action to implement portions of the CPR and the CPR was largely influenced by outside private interests. As described at length above, the CPR relies on undefined and arbitrary distinctions in recommending the elimination of some conservancies as state entities. The CPR recommends removing state funding and support for some conservancies as the Governor stands poised to create a new conservancy with built-in state funding.

(5) Decision-makers know the impact their actions would have on communities of color and low-income communities. We document those impacts here.

B. Communities of Color and Low-Income Communities Have Been Denied Full and Fair Participation in the Public Planning Process

The absence of meaningful public participation also constitutes intentional discrimination and unjustified disparate impact discrimination under the authorities and for the reasons stated above.

The entire process of public participation, including access to information, notice of public hearings, and the format for public comments, has been inadequate and discriminatory. Recent actions by the Governor and the role of private interests in influencing those actions calls into question whether the

¹⁰⁸ See *Village of Arlington Heights v. Metropolitan Housing Dev. Corp.*, 429 U.S. 252, 265 (1977); *United States Department of Justice, Civil Rights Division, Title VI Legal Manual (Sept. 1998)* at 49-53 and authorities cited.

CPR's request for public input is even genuine.

In addition to establishing the CPR, Executive Order S-5-04 also created the California Performance Review Commission ("Commission") to exist for the duration of the Performance Review and to "provide independent guidance and input."¹⁰⁹ The CPR Commission has been charged with conducting public meetings and taking public testimony to assist the CPR process. The CPR, which is over 2,000 pages, was completed June 30, 2004. Public hearings throughout the state began August 12 and continue into September. Written public comments on the topics covered at public hearings are due to the CPR Commission by September 30.¹¹⁰

Notice about the CPR and the public hearings has been inadequate and access to information difficult. We are only aware of notice of the hearings via the CPR website, which has a discriminatory impact on those groups who do not have access to the internet. The CPR is available online or you can order a printed version for \$95. This also raises concerns for low-income individuals whose access to the internet is limited and whose ability to pay nearly \$100 for a report is unlikely.

The schedule for public hearings is inadequate to ensure full and fair public participation regarding a 2,500 page document that addresses numerous issues of utmost importance to the people of California. The CPR Commission has only scheduled seven public hearings to engage all Californians. The only hearing scheduled to take place in Los Angeles, California's largest metropolis, took place on Thursday, September 9, 2004 from 10pm to 5pm. The timing of the hearing on a weekday in the middle of the afternoon made it difficult for many individuals and families to take time from work to attend. Due to inadequate notice, the community had very little time to make arrangements to the attend hearing.

Limitations on the public hearing agendas has had a disparate impact on working families, communities of color, low-income communities, and on those who lack access to a car or other means to travel great lengths to participate. Each public hearing addresses specific topics in the CPR. The topics on the agenda for the September 9 hearing included Education, Training and Volunteerism. Although the Commission set aside some time to speak about issues in the CPR not on the agenda, the individuals who attended the hearing to address the Baldwin Hills Conservancy were told that only three people would be allowed to speak regarding the Conservancy. Individuals who wanted to speak about the Baldwin Hills Conservancy when the CPR actually addressed conservation issues had to travel all the way to Fresno on September 17. At both the Los Angeles and Fresno hearings, the time set aside for public comments was reduced because the Commission and panelists exceeded the time limits set forth on the agenda.

Even if participation in the public planning process were accessible to all, recent actions by the Governor and the role of private interests in securing those actions suggests that input from the public regarding the CPR is not being taken seriously anyway. In a press conference in early September, Governor Schwarzenegger announced a retreat of his cabinet on September 11-12 "to discuss how to

¹⁰⁹ Cal. Exec. Order S-5-04.

¹¹⁰ <http://cpr.ca.gov/>

implement recommendations made by the California Performance Review.”¹¹¹ The retreat took place a full three weeks before the close of the public comment period.

Even prior to that retreat, the Governor “made his first executive order based on a recommendation by his government-reforming California Performance Review - consolidation of the state’s two largest computer centers.”¹¹² Private information technology consultants and high-tech firms “had ongoing contact with the governor’s reorganization team” and “directly lobbied the CPR staff in favor of the merger or other technology proposals, according to state lobbying records.”¹¹³

Lobbyists from ChevronTexaco, a major contributor to the Governor, have also acknowledged shaping key CPR recommendations on energy issues.¹¹⁴ According to the USC-CalTech Center for Law and Politics, “Whenever government officials seek expert advice from companies or groups with a vested interest in upcoming decisions, they risk conflicts of interest.”¹¹⁵

The public participation process has been flawed, but the Governor’s recent actions, coupled with the apparent influence of private interests, suggests public opinion means very little anyway.

C. Eliminating Voter-Approved Funding from Proposition 40 Discriminates against the People of Color and Low-Income People Who Overwhelmingly Supported It

Eliminating voter-approved Prop 40 funds for the Baldwin Hills also constitutes intentional discrimination and unjustified disparate impact discrimination under the authorities and for the reasons stated above.

The CPR recommends eliminating state Environmental License Plate Fund and bond funds for supporting the Baldwin Hills Conservancy.¹¹⁶

Although the CPR does not directly mention Proposition 40, the recommendations call into question the \$40 million in state bonds approved by the voters to support the Baldwin Hills Conservancy. As discussed above, California voters approved Proposition 40 in 2002, providing \$445,000,000 to California conservancies, including \$40,000,000 to the Baldwin Hills Conservancy “for the acquisition, development, rehabilitation, restoration, and protection of land and water resources” and “for grants and state administrative costs.”¹¹⁷ Prop 40 passed with unprecedented support from communities of color and low-income communities.

Pursuant to the California Constitution, “[The Legislature] may amend or repeal an initiative statute by another statute that becomes effective only when approved by the electors unless the initiative statute

¹¹¹ Joe Mathews, “After Convention Roar, Gov. Clarifies His Positions,” *L.A. Times* (Sept. 3, 2004).

¹¹² Tom Chorreau, “Computer-center move sparks questions about special interests” *San Jose Mercury News* (Sept. 17, 2004).

¹¹³ *Id.*

¹¹⁴ *Id.*

¹¹⁵ *Id.*

¹¹⁶ CPR at 1026.

¹¹⁷ Cal. Pub. Res. Code §5096.650(b).

permits amendment or repeal without their approval.”¹¹⁸ In other words, bond funds approved by voters may not be diverted absent amendment or repeal by another statute approved by the people of California. Proposition 40 funds for the Baldwin Hills Conservancy have been approved by the voters and must be distributed by the state as the voters intended when they voted for the Proposition. Diverting or denying voter-approved funding for the Baldwin Hills Conservancy under Proposition 40 would discriminate on communities of color and low-income communities who supported the proposition in substantial numbers.

V. Conclusion

The CPR recommendations to terminate the Baldwin Hills Conservancy, remove state-level majority participation on the governing board of the Conservancy, eliminate state environmental license plate funds and bond funds to support the Conservancy, and relegate the Conservancy to a local joint power authority are inconsistent with federal and state civil rights and environmental justice laws and pose a substantial threat to the Master Plan for the Baldwin Hills Park. The public participation process has been inadequate and discriminatory. Withholding voter-approved bond money for the Conservancy would have a disparate impact on the communities of color and low-income communities that overwhelmingly supported Proposition 40.

For years, the community has struggled to implement the vision for a park in the Baldwin Hills. The CPR must preserve the Baldwin Hills Conservancy.

Respectfully submitted,

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¹¹⁸ Cal. Const. Art. II, § 10(c).